

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 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, 2022  
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 001-34785  
XWELL, Inc.  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of incorporation or organization)

20-4988129  
(I.R.S. Employer Identification No.)

254 West 31<sup>st</sup> Street, 11<sup>th</sup> Floor  
New York, NY  
(Address of principal executive offices)

10001  
(Zip Code)

Registrant's telephone number, including area code: (212)-750-9595

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	XWEL	The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: None

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 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	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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 registrant's common stock held by non-affiliates of the registrant (without admitting that any person whose shares are not included in such calculation is an affiliate), as of June 30, 2022, the last business day of the registrant's most recently completed second quarter, was \$65,798,587 computed by reference to the closing sale price of \$0.69 per share on the Nasdaq Stock Market LLC on June 30, 2022.

As of April 14, 2023, 83,418,535 shares of the registrant's common stock are outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Certain information required by Part III will be included in an amendment to this Annual Report on Form 10-K.

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## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

*This Annual Report on Form 10-K contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These statements relate, among other matters, to our anticipated financial performance, future revenues or earnings, business prospects, projected ventures, new products and services, anticipated market performance and similar matters.*

These risks and uncertainties, many of which are beyond our control, include, but are not limited to, the following:

- the adverse effects of public health epidemics, similar to the coronavirus outbreak, on our business, results of operations and financial condition;
- our previously identified material weakness related to our internal control over financial reporting, which remains unremediated as of the date of this report;
- our ability to develop and offer new products and services.
- our ability to effectively deploy our available cash resources, as well as our ability raise additional capital to fund our operations and business plan, to the extent necessary;
- general economic conditions and level of consumer and corporate spending on health, wellness and travel;
- our ability to secure new locations, maintain XpresSpa and CDC Biosurveillance testing locations, and ensure continued customer traffic at those locations;
- our ability to hire a skilled labor force and the costs associated with that labor;
- our ability to accurately forecast the costs associated with opening new retail locations and maintaining or converting existing ones, and the revenue derived from our retail locations;
- performance by our Airport Concession Disadvantaged Business Enterprise partners on obligations set forth in our joint venture agreements;
- our ability to protect our confidential information and customers’ financial data and other personal information;
- failure or disruption to our information technology systems;
- our ability to retain key members of our management team;
- the loss of, or an adverse change with regard to, one or more of our significant suppliers, distributors, vendors or other business relationships;
- unexpected events and trends in the health, wellness and travel industries;
- market acceptance, quality, pricing, availability and useful life of our products and/or services, as well as the mix of our products and services sold;
- competitive conditions within our industries;
- our compliance with laws and regulations in the jurisdictions in which we do business and any new laws and regulations or changes in existing laws and regulations;

- further regulatory actions in the healthcare sector that could impact our ability to continue operations;
- the discontinuance of emergency use authorization (“EUA”) policies that could impact our business
- lawsuits, claims, and investigations that may be filed against us and other events that may adversely affect our reputation; and
- our ability to protect and maintain our intellectual property.

*Forward-looking statements may appear throughout this Annual Report on Form 10-K, including, without limitation, the following sections: Item 1 “Business,” Item 1A “Risk Factors,” and Item 7 “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” The statements contained herein that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Forward-looking statements are often identified by the use of words such as, but not limited to, “anticipates,” “believes,” “can,” “continues,” “could,” “estimates,” “expects,” “intends,” “may,” “will,” “will be,” “will continue,” “will likely result,” “plans,” “predicts,” “projects,” “seeks,” “should,” “future,” “targets,” “continue,” “would,” or the negative of such terms, and similar or comparable terminology or expressions or variations intended to identify forward-looking statements. These statements are based on current expectations and assumptions based on information currently available to us. Such forward-looking statements are subject to risks, uncertainties, assumptions (that may never materialize or may prove incorrect) and other important factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. These forward-looking statements are not guarantees of future performance, and actual results may vary materially from the results and expectations discussed. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in our Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and in this Annual Report on Form 10-K, and in particular, the risks discussed under the caption “Risk Factors” in Item 1A of this report and those discussed in other documents we file with the Securities and Exchange Commission (“SEC”). The forward-looking statements set forth herein speak only as of the date of this report. We undertake no obligation to revise or publicly release the results of any revision to these forward-looking statements to reflect events or circumstances that may arise after the date of such forward-looking statements, except as required by law. Given these risks and uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements.*

All references in this Annual Report on Form 10-K to “we,” “us” and “our” refer to XWELL, Inc. (prior to October 25, 2022 known as “XpresSpa Group, Inc.” and prior to January 5, 2018, known as “FORM Holdings Corp.”), a Delaware corporation, and its consolidated subsidiaries unless the context requires otherwise.

## **PART I**

### **ITEM 1. BUSINESS**

#### **Overview**

XWELL, Inc., (formerly known as XpresSpa Group, Inc.) (“XWELL”) is a global travel health and wellness services holding companies. XWELL currently has four reportable operating segments: XpresSpa®, XpresCheck®, Treat™ and Hyperpointe™.

XWELL’s subsidiary, XpresSpa Holdings, LLC (“XpresSpa”) has been a global airport retailer of spa services through its XpresSpa spa locations, offering travelers premium spa services, including massage, nail and skin care, as well as spa and travel products.

Following a non-essential closure of all spas during the COVID-19 pandemic, XpresSpa reopened 25 domestic locations and operated nine international locations as of December 31, 2022 as described under “Recent Developments - XpresSpa Spa Services” below.

Following the temporary closure of all global XpresSpa locations due to the categorization by local jurisdictions of the spa locations as “non-essential services” in connection with the outbreak of COVID-19, we launched our XpresCheck® segment through XWELL’s subsidiary XpresTest, Inc. (“XpresCheck” or “XpresTest”).The XpresCheck Wellness Centers offered COVID-19 and other medical diagnostic testing services to the traveling public, as well as airline, airport and concessionaire employees, and TSA and U.S. Customs and Border Protection agents during the pandemic.

At one point, XpresCheck had 15 locations open in 12 airports across the United States. Following the relaxation of testing requirements by the US and other countries in 2022, XpresCheck locations began to close. As of March 31, 2023, all XpresCheck locations have been closed except for one location serving our military forces being stationed overseas and flying out of of Seattle, WA.

Treat, which is operating through XWELL’s subsidiary Treat, Inc. (“Treat”) launched in 2021 as our travel, health and wellness brand transforming the way we provide care to our customers through a suite of health and wellness services supported by an integrated digital platform and a relevant retail offering to the traveling public.

Treat’s on-site centers (currently located in JFK International Airport, and in Salt Lake City International Airport) provide access to health and wellness services for travelers. Our teams provide travel-related diagnostic testing for virus, cold, flu and other illnesses as well as hydration therapy, IV drips, and vitamin injections. Travelers can purchase time blocks to use our wellness rooms to engage in interactive services like self-guided yoga, meditation and low impact weight exercises or to relax and unplug from the hectic pace of the airport and renew themselves before or after their trip.

Treat offers a website (www.treat.com) and mobile app to complement the offering with relevant health and wellness content designed to help people on the go with information that could impact their travel. The platform provides travelers access to a comprehensive online marketplace of services including global illness tracker tools such as the COVID-19 Requirements Map and a scheduler to arrange for direct care at one of our on-site locations.

XWELL’s subsidiary, gcg Connect, LLC, operating as HyperPointe segment, which was acquired in January 2022, provides direct to business marketing support across a number of health and health-related channels. From the creation of marketing campaigns for the pharmaceutical industry, to learning management systems to website and health related content creation, HyperPointe is a complementary service provider to XWELL’s health-focused brands as well as providing the majority of services to the external community.

Although we recognize four segments of business, our strategy for the future is to create and leverage a fully integrated set of products and services that are both profitable and scalable across our portfolio of brands. Additionally, we are expanding our retail strategy, not only adding more products for sale but aligning those products more efficiently to our service

offerings. This product strategy includes, for example, adding muscle relaxation patches to a neck or back massage to continue treatment after the delivery of the service.

We also plan to build our capability for delivering health and wellness services outside of the airport. We believe operating outside of the airport complements our offering and represents the fastest way to scale the XWELL family of brands.

We will be looking to further expand internationally. With international travel slowly returning to pre-pandemic levels, we continue to be opportunistic in our approach, by taking advantage of the current market to growth. We believe a strategy for international expansion further advances our ability to expand our other brands including biosurveillance outside of the US.

These strategic imperatives will be accomplished through development of an infrastructure specifically focused on enabling scalable and efficient growth.

### **Recent Developments**

#### **XpresCheck Wellness Centers Transition to CDC Biosurveillance Testing Centers**

During 2022, as countries continued to relax their testing requirements resulting in a rapid decline of testing volumes at the XpresCheck locations, all of the Company XpresCheck locations were closed except for one location in Seattle that services the military.

XpresCheck began conducting biosurveillance monitoring with the Centers for Disease Control and Prevention (CDC) in collaboration with Concentric by Ginkgo in 2021 and on January 31, 2022, we announced the extension of our initial program, bringing the total contract to \$5.6 million. Approximately \$4.0 million and \$1.6 million were recognized in 2022 and 2021, respectively. As of August 2022, the program was renewed in partnership with Ginkgo BioWorks. A new two-year contract was initiated which represents approximately \$7.3 million in revenue (for the first year) for the XpresTest segment. Funding for the second year is anticipated but has not been confirmed at this time.

#### **XpresSpa Spa Services**

There are currently 25 operating XpresSpa domestic locations. During 2022, the Company sold one location in Austin-Bergstrom International Airport to its franchisee which now operates both locations at this airport. As the Company continues to monitor fluctuating airport volumes, the Company will also continue to review operating hours to optimize revenue opportunity.

The Company also has 10 international locations operating, including 2 XpresSpa locations in Dubai International Airport in the United Arab Emirates, 3 XpresSpa locations in Schiphol Amsterdam Airport in the Netherlands and 5 XpresSpa locations in Istanbul Airport in Turkey. We had signed for 5 locations at Istanbul Airport in Turkey of which 4 of them opened during the fourth quarter of 2022, and we opened the remaining one location in January 2023.

#### **Treat**

Throughout 2022, our Treat brand opened new locations in Phoenix Sky Harbor (pre-security) and Salt Lake City International Airport. With respect to these locations in Phoenix and Salt Lake City, agreements had already been executed with the airports and the decision was made to convert these locations to Treat.

By the third quarter of 2022, it became clear that the Treat business was underperforming and as a result, we began to retool the offerings within the Treat locations by providing additional retail as part of our retail strategy expansion as well as lay the foundation to bring more spa-like services into the Treat location in an attempt to unify our core offering.

By the fourth quarter of 2022, the decision was made to close the pre-security Treat location at Phoenix Sky Harbor Airport. As of March 31, 2023, the Treat brand operates 2 locations (JFK International Airport and Salt Lake City

International Airport). These remaining Treat locations offer a full retail product offering and a suite of wellness and spa services.

### **Share Repurchase Program**

On August 31, 2021, the Company's board of directors initially authorized a stock repurchase program that permitted the purchase and repurchase of up to 15 million shares of its common stock through September 15, 2022. In May 2022, the Board increased the share repurchase program by an additional 10 million shares and extended its effectiveness through September 15, 2023. Under this stock repurchase program, management has discretion in determining the conditions under which shares may be purchased from time to time. The program does not require us to repurchase any specific number of shares, and may be modified, suspended or terminated at any time without prior notice.

In 2021, the Company repurchased and redeemed 4,702,072 shares at average cost of \$1.66 per share, for a total of \$7.8 million. During 2022, the Company continued to execute on its share repurchase program, repurchasing and retiring 19,526,706 shares at an average cost of \$1.22 per share, for a total of \$23.8 million. As of December 31, 2022, the Company was permitted to repurchase an additional 0.8 million shares under this program.

### **HyperPointe Acquisition**

In January 2022, the Company announced and closed on the acquisition of gcg Connect, LLC d/b/a HyperPointe. HyperPointe is a leading digital healthcare and data analytics relationship marketing agency servicing the global healthcare and pharmaceutical industry. HyperPointe has significant experience in patient and healthcare professional marketing and deep technological experience with CXM (customer experience management) and data analytics. Since June 2020, HyperPointe's management team and suite of services and technology have been used to develop and deploy the technological infrastructure needed to scale the growth of our XpresCheck business. HyperPointe's experience in this space continues to serve the XpresCheck business and should play a critical role in the expansion of on-going biosurveillance efforts.

Terms of the transaction were \$7.1 million in cash, and \$0.9 million in common stock, offset by the settlement of intercompany accounts payable of \$0.8 million, as well as potential additional earn-out payments of up to \$7.5 million over a three-year timeframe based upon future performance; these earn-out payments may be satisfied in cash or common stock or a combination thereof subject to various terms and conditions.

HyperPointe currently operates as a stand-alone entity within XWELL's corporate structure. Ezra Ernst, the current Chief Executive Officer ("CEO") of HyperPointe, also serves as CEO of XpresCheck, reporting to Scott Milford, XWELL's CEO. Mr. Ernst is spearheading efforts to further integrate XpresCheck's biosurveillance screening and testing business with HyperPointe's customer experience management technology and data management know how in the healthcare and pharmaceutical verticals to further drive new revenue opportunities.

### **Our Strategy and Outlook**

We believe that our company is well positioned to benefit from consumers' growing interest and pent-up demand in travel health and wellness and increasing demand for health and wellness related services and products. Our go-forward plan includes the expansion and integration of products and services across our four brands; the right-sizing of our existing airport portfolio to a leaner and more profitable business; the execution of an 'off-airport' strategy through acquisition to deliver more products and services, which will serve as a catalyst for our future growth; the implementation of an international expansion plan; and ensuring we can scale our growth in a responsible way that drives shareholder value. Through right-sizing our existing business, optimizing our cost structure and making acquisitions that further leverage the strength of our brand portfolio, XWELL is positioning itself for both financial and operational growth now and in the future.

### ***Impairment***

We completed an assessment of our property and equipment, operating lease right of use assets and intangible assets for impairment as of December 31, 2022. Based upon the results of the impairment test, we recorded an impairment expense related to property and equipment, intangible assets, and operating lease right of use assets of \$4.6 million, \$0.1 million, and \$1.1 million, respectively, during the year ended December 31, 2022, which is included in *Impairment of long-lived assets and Impairment of operating lease right-of-use assets* in our consolidated statements of operations and comprehensive income (loss). The expense was primarily related to the impairment of leasehold improvements made to our Treat, XpresCheck and Spa locations and its operating lease right of use assets where management determined that the locations discounted future cash flows were not sufficient to recover the carrying value of these assets over the remaining lease term. We also impaired intangible assets pertaining to our Treat and XpresTest segments.

In 2021 we recorded an impairment expense of approximately \$68K and \$747K related to property and equipment, and operating lease right of use assets, respectively, which is included in *Impairment of long-lived assets and Impairment of operating lease right-of-use assets* in our consolidated statements of operations and comprehensive loss as of December 31, 2021. This expense was related to the impairment of the XpresSpa trademarks, where management determined that in light of the effect of the COVID-19 pandemic, the XpresSpa brand's discounted future cash flows were not sufficient to recover the carrying value of these assets.

### ***Chief Executive Officer Transition***

Mr. Scott R. Milford, previously our Chief Operating Officer was promoted to the CEO effective January 19, 2022. Mr. Milford, 57, has served as the Company's Chief People Officer since July 2019 until his promotion to the Chief Operating Officer in December 2020. Before joining the Company, he served as VP, People Operations of SoulCycle from January to July 2019. Prior to that, he served as Chief People Officer for Bayada Home Health during 2018. Previously, he was Senior Vice President – Human Resources for Le Pain Quotidien from 2016 to 2018, and Senior Vice President – Human Resources for Town Sports from 2009 to 2015. His other relevant experience includes senior Human Resources leadership positions at Starbucks Coffee Company (2003-2008), Universal Music Group (1999-2003), and Blockbuster Entertainment and its parent Viacom International (1991-1999).

### **Competition**

Our domestic units operate within many of the largest and most heavily trafficked airports in the United States. The balance of the domestic market is highly fragmented and is represented largely by small, privately-owned entities. The largest domestic competitor operated 21 locations in 11 airports in the United States.

### **Our Market**

Airport retailers differ significantly from traditional retailers. Unlike traditional retailers, airport retailers benefit from a steady and largely predictable flow of traffic from a constantly changing customer base. Airport retailers also benefit from “dwell time,” the period after travelers have passed through airport security and before they board an aircraft. For over 21 years, increased security requirements have led travelers to spend more time at the airport. In addition, in anticipation of the long and often stressful security lines, travelers allow for more time to get through security and, as a result, often experience increased downtime prior to boarding. XWELL is uniquely positioned to address this gap focusing on an expedient experience that still allows its customers to escape the hectic confines of the airport.

We believe that XWELL is well positioned to benefit from consumers' growing interest in health and wellness and increasing demand for products and services designed to improve overall health and well-being.

In addition, a confluence of microeconomic events has created favorable conditions for the expansion of retail concepts at airports, in particular, retail concepts that attract higher spending from air travelers. Post COVID consumer preferences have changed considerably and passengers are looking for unique products that can address their overall well-being while



they travel and beyond. For this reason, XWELL has made significant investments in a new retail offering that addresses this growing consumer demand. Further, as more and more airports exchange services for more traditional food and beverage providers, XWELL is positioned to take advantage of passenger demand for more healthy and bio-nutrient rich snack and food offerings as part of its grab and go strategy.

The competition for airplane landings has forced airports to lower landing fees, which in turn has necessitated augmenting their retail offerings to offset budget shortfalls. Infrastructure projects at airports across the country, again intended to make an airport more desirable to airlines, require funding from bond issuances that in turn rely upon, in part, the expected minimum rent guarantees and expected income from concessionaires.

Equally as important to the industry growth is XWELL's flexible, valuable and desirable retail format and footprint within the airport retail segment. XWELL historically opened multiple locations annually, which have ranged in size from 200 square feet to 2,600 square feet, with a typical size of approximately 800 square feet. XWELL has been able to adapt its operating model to almost any size location available in space constrained airports. This increased flexibility compared to other retail concepts has allowed, and will continue to allow XWELL to operate multiple stores within an airport, including in some cases for different concepts.

XWELL is pursuing new locations at airports and terminals around the country. Historically, XpresSpa has won the majority of all requests for proposal ("RFP") in which it has participated.

Our new concept envisions delivering expedient wellness care, through technology and services, accessed at on-site airport wellness centers as well as outside of airports. We expect this travel health and wellness brand to expand our relevant market well beyond the flying passengers of the airports, in which we have a physical presence, and into off-airport locations which are able to conveniently provide a fully integrated set of health and wellness services that can be adapted locally for people on the go. We also believe these offerings will be more relevant products and services and hence consumed by a greater portion of our target population.

## **Regulation**

Our operations are subject to a range of laws and regulations adopted by national, regional and local authorities from the various jurisdictions in which we operate, including those relating to, among others, licensing (e.g., massage, nail, and cosmetology), public health and safety and fire codes. Failure to obtain or retain required licenses and approvals, including those related to licensing, public health and safety and fire codes, would adversely affect our operations. Although we have not experienced, and do not anticipate, significant problems obtaining required licenses, permits or approvals, any difficulties, delays or failures in obtaining such licenses, permits or approvals could delay or prevent the opening, or adversely impact the viability, of our operations.

Airport authorities in the United States frequently require that our airport concessions meet minimum Airport Concession Disadvantaged Business Enterprise ("ACDBE") participation requirements. The Department of Transportation's ("DOT") ACDBE program is implemented by recipients of DOT Federal Financial Assistance, including airport agencies that receive federal funding. The ACDBE program is administered by the Federal Aviation Administration ("FAA"), state and local ACDBE certifying agencies and individual airports. The ACDBE program is designed to help ensure that small firms owned and controlled by socially and economically disadvantaged individuals can compete for airport contracting and concession opportunities in domestic passenger service airports. The ACDBE regulations require that airport recipients establish annual ACDBE participation goals, review the scope of anticipated large prime contracts throughout the year, and establish contract specific ACDBE participation goals. We generally meet the contract specific goals through an agreement providing for co-ownership of the retail location with a disadvantaged business enterprise. Frequently, and within the guidelines issued by the FAA, we may lend money to ACDBEs in connection with concession agreements in order to help the ACDBE fund the capital investment required under a concession agreement. The rules and regulations governing the certification of ACDBE participation in airport concession agreements are complex, and ensuring ongoing compliance is costly and time consuming. Further, if we fail to comply with the minimum ACDBE participation requirements in our concession agreements, we may be held responsible for breach of contract, which could result in the termination of a concession agreement and monetary damages. See "Item 1A. Risk Factors – Risks Related to our Business

Operations – Failure to comply with minimum airport concession disadvantaged business enterprise participation goals and requirements could lead to lost business opportunities or the loss of existing business.”

We are subject to the Fair Labor Standards Act, the Immigration Reform and Control Act of 1986, the Occupational Safety and Health Act, the Family and Medical Leave Act, the Affordable Care Act, the Healthcare Insurance Portability and Accountability Act and various federal and state laws governing matters such as minimum wages, overtime, unemployment tax rates, workers’ compensation rates, citizenship requirements and other working conditions. We are also subject to the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in public accommodations and employment, which may require us to design or modify our concession locations to make reasonable accommodations for disabled persons.

We are also subject to certain truth-in-advertising, general customs, consumer and data protection, product safety, workers’ health and safety and public health rules that govern retailers in general, as well as the merchandise sold within the various jurisdictions in which we operate.

We are also subject to HIPAA and the HITECH Act as they relate to patients’ Protected Health Information (PHI), patient rights, breach notification and other actions.

### **Employees**

As of March 24, 2023, we had approximately 382 full-time and 101 part-time employees of XWELL. We consider our relationships with our employees to be good.

### **Corporate Information**

Our common stock, par value \$0.01 per share, which was previously listed since January 8, 2018 under the trading symbol “XSPA” on the Nasdaq Capital Market, has been listed under the trading symbol “XWELL” since October 25, 2022. Our principal executive offices are located at 254 West 31<sup>st</sup> Street, 11<sup>th</sup> Floor, New York, New York 10001. Our telephone number is (212) 309-7549 and our website address is [www.xwell.com](http://www.xwell.com). We also operate the websites [www.xpresspa.com](http://www.xpresspa.com), [www.treat.com](http://www.treat.com) and [www.xprescheck.com](http://www.xprescheck.com).

References in this Annual Report on Form 10-K to our website address does not constitute incorporation by reference of the information contained on the website. We make our filings with the Securities and Exchange Commission, or the SEC, including our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, other reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, and amendments to the foregoing reports, available free of charge on or through our website as soon as reasonably practicable after we file these reports with, or furnish such reports to, the SEC. In addition, we post the following information on our website:

- our corporate code of conduct and our insider trading compliance manual; and
- charters for our audit committee, compensation committee, and nominating and corporate governance committee.

The SEC maintains an Internet website that contains reports, proxy and information statements, and other information regarding issuers, including us, that file electronically with the SEC. The public can obtain any documents that we file with the SEC at <http://www.sec.gov>.

## **ITEM 1A. RISK FACTORS**

*Our business, financial condition, results of operations and the trading price of our common stock could be materially adversely affected by any of the following risks as well as the other risks highlighted elsewhere in this Annual Report on Form 10-K. Although this section discusses all of the material risks currently known to us, additional risks and*

*uncertainties not presently known to us or that we currently deem immaterial also may materially affect our business, financial condition and results of operations.*

### **Risk Factor Summary**

#### *Risks Related to our Financial Condition and Capital Requirements*

- Despite the closure of most of our XpresCheck locations, the unpredictability regarding the continued spread of COVID-19 throughout the United States and worldwide may continue to adversely affect our business operations, employee availability, financial condition, liquidity and cash flow for an extended period of time.
- We may be unable to remediate the material weaknesses in our internal control over financial reporting that we identified, or otherwise to maintain effective internal control over financial reporting.
- Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.
- Global economic and market conditions may adversely affect our business, financial condition and operating results.
- Increasing inflation could adversely affect our business, financial condition, results of operations or cash flows.
- Our business requires substantial capital expenditures and we may not have access to the capital required to maintain and grow our operations.

#### *Risks Related to our Business Operations*

- We may be unable to successfully secure new locations for, or transition our existing spa facilities or any disputes relating to improper handling, storage or disposal of the potentially hazardous materials, chemicals and patient samples in our XpresCheck diagnostic testing and vaccination business could be time consuming and costly.
- Changes in laws and regulations to which our business is subject, or failure to comply with existing or future laws and regulations, could result in increased costs and the imposition of fines or penalties.
- Changes in the way that the FDA regulates COVID-19 tests and other diagnostic tests could result in additional expenses in offering tests and would affect the profitability of our Treat and XpresCheck businesses.
- We depend on third parties to provide services critical to our XpresCheck business and we would be adversely impacted by their failure to comply with applicable laws and regulations or breaches of their information technology systems.
- Our business operations may be materially impaired if we do not comply with privacy laws or information security policies, including laws protecting health information and personal data.
- Hardware and software failures or delays in our information technology systems or payment systems could disrupt our operations and cause the loss of confidential information, customers and business opportunities.
- Delays in the processing of special permits, applications and licenses by state and federal departments may result in contractual delays.
- Our capital expenditures for Treat may not generate a positive return and we will incur significant additional costs.
- We rely on international and domestic airplane travel, and the time that airline passengers spend in United States airports post-security.
- We rely on a limited number of distributors and suppliers for certain of our products, and events outside our control may disrupt our supply chain and ultimately cause us to lose our concessions.
- Our operating results may fluctuate significantly due to factors beyond our control.
- Our expansion into new airports or off-airport locations may present increased risks due to our unfamiliarity with those areas.
- We may not be able to execute our growth strategy to expand and integrate new concessions or future acquisitions into our business or remodel existing concessions.
- If the estimates and assumptions we use to determine the size of our market are inaccurate, our future growth rate may be impacted.
- We currently rely on a skilled, licensed labor force to provide services, and the supply of this labor force is finite.

- Unionization of our labor force or continued minimum wage increases could increase our cost of labor.
- We compete for new locations in airports and may not be able to secure new locations.
- We may not be able to predict accurately or fulfill customer preferences or demands.
- Our leases may be terminated, either for convenience by the landlord or as a result of a default.
- Our ability to operate depends on the traffic patterns of the terminals in which we operate.
- We are dependent on our local partners.
- Failure to comply with minimum airport concession disadvantaged business enterprise participation goals and requirements could lead to lost business opportunities or the loss of existing business.
- If we are unable to protect our customers' credit card data and other personal information, we could be exposed to data loss, litigation and liability, and our reputation could be significantly harmed.
- Negative social media regarding XpresSpa, XpresCheck, Treat and Hyperpointe could result in decreased revenues and impact our ability to recruit workers.
- We source, develop and sell products that may result in product liability defense costs and product liability payments.
- We may fail or be unable to protect our patents, trademarks or other proprietary rights we use.
- We and our subsidiaries have been, are, and may become involved in litigation that could divert management's attention and harm our businesses.
- Our future acquisitions or business opportunities, could involve unknown risks that could harm our business and adversely affect our financial condition and results of operations.
- Laws regulating the corporate practice of medicine could restrict the manner in which we are permitted to conduct our XpresCheck and Treat businesses, and the failure to comply with such laws could subject us to penalties or require a restructuring of our business.

#### *Risks Related to Capital Stock*

- The market price of our common stock historically has been and likely will continue to be highly volatile, and our common stock has historically traded in low volumes.
- Future sales of our shares of common stock or the exercise of a substantial number of warrants or options could cause the market price of our common stock to drop significantly, even if our business is otherwise performing well.
- We have no current plans to pay dividends on our common stock, and our investors may not receive funds without selling their stock.
- Our failure to meet the continued listing requirements of The Nasdaq Capital Market could result in a delisting of our common stock.

#### **Risks Related to our Financial Condition and Capital Requirements**

***The unpredictability regarding the continued spread of COVID-19 throughout the United States and worldwide, may continue to adversely affect our business operations, employee availability, financial condition, liquidity and cash flow for an extended period of time.***

The unpredictability of the COVID-19 pandemic continues to have an impact on the global economy, and may continue to manifest in rapidly changing market and economic conditions. Similar to many businesses in the travel sector, our business was and may continue to be materially adversely impacted by the COVID-19 pandemic due to the restrictions on travel that have been implemented, and which may be reimplemented, from time to time. Effective March 24, 2020, we temporarily closed all global spa locations, largely due to the categorization of our spa locations by local jurisdictions as "non-essential services" in connection with the outbreak of COVID-19. This initially created a materially adverse impact on our cash flows from operations and caused a liquidity crisis, and continues to adversely affect our spa business even as we have gradually re-opened many of our spa locations. The continuing impact of COVID-19 on our spa business, and as

our result financial results, liquidity and cash flows, depends on future developments, including new information that may emerge concerning future variants, the severity of those variants and action taken to contain or prevent further spread within the U.S. and the related impact on consumer confidence and spending, all of which are highly uncertain and cannot be predicted. It is impossible to predict the effect and ultimate impact of the future spread of COVID-19 as the situation continues to evolve. Even as travel and other activities return to normalized, pre-pandemic levels, the ongoing development and evolution of the COVID-19 pandemic continues, and we expect there will continue to be significant and material disruptions to our operations, which will have a material adverse effect on our business, financial condition and results of operations.

***In connection with the preparation of our annual financial statements for the year ended December 31, 2020, we identified a material weakness in our internal control over financial reporting, and that weakness has not been fully remediated as of December 31, 2022. Any continuing failure to maintain effective internal control over financial reporting could have a material adverse effect on our results of operations and financial position.***

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. In connection with our audit of the year ended December 31, 2020, we identified a material weakness in our internal controls over our financial close and reporting process. A material weakness is a deficiency, or 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 and corrected on a timely basis. Our management has concluded that additional formal procedures need to be put in place in the financial close and reporting process to ensure that appropriate reviews occur on all financial reporting analysis in a timely manner. We also concluded that we did not maintain a sufficient complement of corporate employee personnel with appropriate levels of accounting and controls knowledge and experience commensurate with our financial reporting requirements to appropriately analyze, record and disclose accounting matters completely and accurately. As this deficiency created a reasonable possibility that a material misstatement would not have been prevented or detected in a timely basis, management concluded that the control deficiency represented a material weakness and accordingly our internal control over financial reporting was not effective as of December 31, 2020.

We are currently still considering the full extent of, and implementing, procedures to implement in order to remediate the material weakness described above. Our preliminary remediation plan, complemented by our existing outsourced internal audit procedures, includes implementing a more robust review process, an increase in the supervision and monitoring of the financial reporting processes and our accounting personnel, and implementing better controls over calculations, analysis and conclusions associated with non-routine transactions at a more precise level. Moreover, we hired a corporate controller in March 2021 and are actively seeking a permanent chief financial officer, and such individuals are critical to the implementation of such procedures. However, notwithstanding this remediation plan, and the steps taken in fiscal year 2021 and 2022, management concluded that the control deficiency continued to represent a material weakness and accordingly our internal control over financial reporting was not effective as of December 31, 2022.

We cannot assure you that any of our remedial measures will be effective in resolving this material weakness. If our management is unable to conclude that we have effective internal control over financial reporting, or to certify the effectiveness of such controls, or if additional material weaknesses in our internal controls are identified in the future, we could be subject to regulatory scrutiny and a loss of public confidence, which could have a material adverse effect on our business and our stock price. In addition, if we do not maintain adequate, qualified financial and management personnel, processes and controls, we may not be able to manage our business effectively or accurately report our financial performance on a timely basis, which could adversely affect our results of operations and financial condition.

***Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.***

As of December 31, 2022, our estimated aggregate total net operating loss carryforwards (“NOLs”) were \$150.9 million for U.S. federal purposes, expiring 20 years from the respective tax years to which they relate, and \$75.0 million for U.S. federal purposes with an indefinite life due to new regulations in the Tax Cuts and Jobs Act of 2017. Our ability to utilize our NOLs may be limited under Section 382 of the Internal Revenue Code. The limitations apply if an ownership change,

as defined by Section 382, occurs. Generally, an ownership change occurs when certain stockholders increase their aggregate ownership by more than 50 percentage points over their lowest ownership percentage in a testing period (typically three years). Additionally, the Tax Reform Act of 1986 imposed substantial restrictions on the utilization of NOL and tax credits in the event of an ownership change of a corporation. Thus, our ability to utilize all such NOL and credit carryforwards may be limited. Future changes in stock ownership may also trigger an ownership change and, consequently, a Section 382 limitation.

***Global economic and market conditions may adversely affect our business, financial condition and operating results.***

Our business plan depends significantly on worldwide economic conditions and our success is dependent on consumer spending, which is sensitive to economic downturns; inflation and any associated rise in unemployment; declines in consumer confidence; adverse changes in exchange rates; increases in interest rates; the impact of high energy, fuel, food and healthcare costs; , deflation, direct or indirect taxes, increases in consumer debt levels; fears of war or actual conflicts, such as the Russian invasion of Ukraine, civil unrest, terrorism or violence; and increased stock market volatility. As a result, economic downturns may have a material adverse impact on our business, financial condition and results of operations. Moreover, uncertainty about global economic conditions poses a risk as businesses and individuals may postpone spending in response to tighter credit, negative financial news and declines in income or asset values. This could have a negative effect on corporate and individual spending on health and wellness and travel. These factors, taken together or individually, could cause material harm to our business, financial condition and results of operations.

***Increasing inflation could adversely affect our business, financial condition, results of operations or cash flows.***

Inflation and some of the measures taken by or that may be taken by the governments in countries where we operate in an attempt to curb inflation may have negative effects on the economies of those countries generally. If the United States or other countries where we operate experience substantial inflation in the future, our business may be adversely affected. In addition, we may not be able to adjust the prices we charge for our products and services to offset the impact of inflation on our expenses, leading to an increase in our operating expenses and a reduction in our margins. This could have a material adverse impact on our business, financial condition, results of operations or cash flows.

***Our business requires substantial capital expenditures and we may not have access to the capital required to maintain and grow our operations.***

The development of our new branding concept in the travel health and wellness space, as well as maintaining and expanding our operations in our existing and new locations, are all capital intensive activities. Specifically, the construction, redesign and maintenance of our locations in airport terminals where we operate, technology costs, and compliance with applicable laws and regulations require substantial capital expenditures. Moreover, the creation of a digital platform in the travel health and wellness space will take substantial capital resources. In connection with all of the foregoing, we will require significant capital to fund our operations and respond to potential strategic opportunities, such as investments, acquisitions and expansions.

Since mid-2020, we have been able to obtain additional capital through access to the equity markets, selling our common stock and warrants. While we have mitigated the cash crisis we faced in the first half of 2020, throughout our operating history prior to the successful launch of our XpresCheck business, we did not generate sufficient cash from operations to fund new store development. Accordingly, we will be dependent upon managing and effectively deploying our existing cash resources and may require additional funding to fully realize the design and implementation of our travel health and wellness concept. If and to the extent we determine it is necessary or desirable, we may not be able to obtain such additional financing, through equity capital when needed, on acceptable terms, or at all. In addition, the terms of our financings may be dilutive to, or otherwise adversely affect, holders of our common stock. Moreover, our ability to raise additional equity capital will be constrained because of our relatively low stock price, and we may need to undertake a reverse stock split in the near future to maintain our Nasdaq listing and flexibility in access to the equity capital markets. If we are unable to obtain additional funding on a timely basis, we may be required to curtail or terminate some or all of our business plans. Any such financing that we undertake will likely be dilutive to our current stockholders.

We must continue to invest capital to maintain or to improve the success of our concessions and to meet refurbishment requirements in our concessions. Decisions to expand into new terminals could also affect our capital needs. Our actual capital expenditures in any year will vary depending on, among other things, the extent to which we are successful in renewing existing concessions and winning additional concession agreements.

### **Risks Related to our Business Operations**

***We use potentially hazardous materials, chemicals and patient samples in our Treat business and in our XpresCheck diagnostic testing and biosurveillance business and any disputes relating to improper handling, storage or disposal of these materials could be time consuming and costly.***

Our professional practice partner's diagnostic testing activities involve the controlled use of hazardous laboratory materials and chemicals, including small quantities of acid and alcohol, and patient samples. They are subject to U.S. laws and regulations related to the protection of the environment, the health and safety of employees and the handling, transportation and disposal of medical specimens, infectious and hazardous waste. They could be liable for accidental contamination or discharge or any resultant injury from hazardous materials, and conveyance, processing, and storage of and data on patient samples. If they fail to comply with applicable laws or regulations, they could be required to pay penalties or be held liable for any damages that result and this liability could exceed their financial resources. Further, future changes to environmental health and safety laws could cause them to incur additional expense or restrict operations.

In the event of a lawsuit or investigation concerning such hazardous materials, we could be held responsible for any injury caused to persons or property by exposure to, or release of, these hazardous materials or patient samples that may contain infectious materials. The cost of this liability could exceed our resources. While we expect to maintain broad form liability insurance coverage for these risks, and we expect our professional practice partner to maintain appropriate malpractice insurance, the level or breadth of our or their coverage may not be adequate to fully cover potential liability claims to which we might be exposed.

***Our XpresCheck diagnostic testing and vaccination business could be harmed from the loss or suspension of a license or imposition of a fine or penalties under, or future changes in, or interpretations of, the law or regulations of the Clinical Laboratory Improvement Act of 1967, and the Clinical Laboratory Improvement Amendments of 1988 ("CLIA"), or those of Medicare, Medicaid or other national, state or local agencies in the U.S. and other countries where we operate laboratories.***

The performance of laboratory testing is subject to extensive U.S. regulation, and many of these statutes and regulations have not been interpreted by the courts. CLIA extends federal oversight to virtually all physician practices performing clinical laboratory testing and to clinical laboratories operating in the U.S. by requiring that they be certified by the federal government or, in the case of clinical laboratories, by a federally approved accreditation agency. The sanction for failure to comply with CLIA requirements may be suspension, revocation or limitation of a laboratory's CLIA certificate, which is necessary to conduct business, as well as significant fines and/or criminal penalties. In addition, we expect to be subject



to regulation under state law. State laws may require that laboratories and/or laboratory personnel meet certain licensing or other qualifications, specify certain quality controls or require maintenance of certain records. Applicable statutes and regulations could be interpreted or applied by a prosecutorial, regulatory or judicial authority in a manner that would adversely affect our business. Potential sanctions for violation of these statutes and regulations include significant fines and the suspension or loss of various licenses, certificates and authorizations, which could have a material adverse effect on our business. In addition, compliance with future legislation could impose additional requirements on us, which may be costly.

***U.S. Food and Drug Administration (“FDA”) regulation of diagnostic products could result in increased costs and the imposition of fines or penalties, and could have a material adverse effect upon our business.***

The FDA has regulatory responsibility for instruments, test kits, reagents and other devices used by clinical laboratories. The FDA enforces laws and regulations that govern the development, testing, manufacturing, performance, labeling, advertising, marketing, distribution and surveillance of diagnostic products, and it regularly inspects and reviews the manufacturing processes and product performance of diagnostic products.

FDA regulation of the diagnostic products we use could result in increased costs and administrative and legal actions for noncompliance, including warning letters, fines, penalties, product suspensions, product recalls, injunctions and other civil and criminal sanctions, which could have a material adverse effect on our business, financial condition, results of operation and cash flows.

***If we fail to comply with the complex federal, state, local and foreign laws and regulations that apply to all of our businesses, we could suffer severe consequences that could materially and adversely affect our operating results and financial condition.***

Our XpresCheck operations are subject to extensive federal, state, local and foreign laws and regulations, all of which are subject to change. These laws and regulations currently include, among other things:

- CLIA, which requires that laboratories obtain certification from the federal government, and state licensure laws;
- FDA laws and regulations;
- HIPAA, which imposes comprehensive federal standards with respect to the privacy and security of protected health information and requirements for the use of certain standardized electronic transactions, and amendments to HIPAA under the HITECH, which strengthen and expand HIPAA privacy and security compliance requirements, increase penalties for violators, extend enforcement authority to state attorneys general and impose requirements for breach notification;
- state laws regulating genetic testing and protecting the privacy of genetic test results, as well as state laws protecting the privacy and security of health information and personal data and mandating reporting of breaches to affected individuals and state regulators;
- the federal anti-kickback law, or the Anti-Kickback Statute, which prohibits knowingly and willfully offering, paying, soliciting, receiving, or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing, arranging for, or recommending of an item or service that is reimbursable, in whole or in part, by a federal healthcare program;
- other federal and state fraud and abuse laws, such as anti-kickback laws, prohibitions on self-referral, and false claims acts, which may extend to services reimbursable by any third-party payor, including private insurers;
- the federal Physician Payments Sunshine Act, which requires medical device manufactures to track and report to the federal government certain payments and other transfers of value made to physicians and teaching hospitals and ownership or investment interests held by physicians and their immediate family members;



- Section 216 of the federal Protecting Access to Medicare Act of 2014, which requires applicable laboratories to report private payor data in a timely and accurate manner beginning in 2017 and every three years thereafter (and in some cases annually);
- state laws that impose reporting and other compliance-related requirements;
- state billing laws, including regulations on “pass through billing” which may limit our ability to submit claims for payment and/or mark up the cost of services in excess of the price paid for such services, and “direct-bill” laws which may limit our ability to purchase services from a laboratory and bill for the services ordered; and
- similar foreign laws and regulations that apply to us in the countries in which we operate.

These laws and regulations are complex and are subject to interpretation by the courts and by government agencies. Our failure to comply could lead to civil or criminal penalties, exclusion from participation in state and federal healthcare programs, or prohibitions or restrictions on our laboratory’s ability to provide or receive payment for our services. We believe that we are in material compliance with all statutory and regulatory requirements, but there is a risk that one or more government agencies could take a contrary position, or that a private party could file suit under the qui tam provisions of the federal False Claims Act or a similar state law. Such occurrences, regardless of their outcome, could damage our reputation and adversely affect important business relationships with third parties, including managed care organizations, and other private third-party payors.

***Changes in the way that the FDA regulates COVID-19 tests could result in the additional expense in XpresCheck offering tests and would affect the profitability of our XpresCheck business.***

Historically, the FDA has exercised enforcement discretion with respect to most laboratory-developed tests (“LDTs”) and has not required laboratories that furnish LDTs to comply with the agency’s requirements for medical devices (e.g., establishment registration, device listing, quality systems regulations, premarket clearance or premarket approval, and post-market controls). In recent years, however, the FDA publicly announced its intention to regulate certain LDTs and issued two draft guidance documents that set forth a proposed phased-in risk-based regulatory framework that would apply varying levels of FDA oversight to LDTs. However, these guidance documents were withdrawn at the end of the Obama administration and replaced by an informal discussion paper reflecting some of the feedback that FDA had received on LDT regulation. The FDA acknowledged that the discussion paper in January 2017 does not represent the formal position of the FDA and is not enforceable. Nevertheless, the FDA wanted to share its synthesis of the feedback that it had received in the hope that it might advance public discussion on future LDT oversight. Notwithstanding the discussion paper, the FDA continues to exercise enforcement discretion and may decide to regulate certain LDTs on a case-by-case basis at any time, which could result in additional expense in offering tests. Until the FDA finalizes its regulatory position regarding LDTs, or other legislation is passed reforming the federal government’s regulation of LDTs, it is unknown how the FDA may regulate tests we use in the future and what testing and data may be required to support any required clearance or approval.

***We depend on third parties to provide services critical to our Treat business and our XpresCheck diagnostic testing and biosurveillance business, and we depend on them to comply with applicable laws and regulations. Additionally, any breaches of the information technology systems of third parties could have a material adverse effect on our operations.***

We depend on third parties to provide services critical to our Treat business and our XpresCheck diagnostic testing and biosurveillance business, including supplies, ground and air transport of clinical and diagnostic testing supplies and specimens, research products, and people, among other services. Third parties that provide services to us are subject to similar risks related to security of customer-related information and compliance with U.S., state, local, or international environmental, health and safety, and privacy and security laws and regulations as those faced by us. Any failure by third parties to comply with applicable laws, or any failure of third parties to provide services more generally, could have a material impact on us, whether because of the loss of the ability to receive services from the third parties, our legal liability for the actions or inactions of third parties, or otherwise. In addition, third parties to whom we outsource certain services or functions may process personal data, or other confidential information belonging to us. A breach or attack affecting these third parties could also harm our business, results of operations and reputation.

***Our business operations and reputation may be materially impaired if we do not comply with privacy laws or information security policies.***

We collect, generate, process or maintain sensitive information, such as patient data and other personal information. If we do not use or adequately safeguard that information in compliance with applicable requirements under federal, state and international laws, or if it were disclosed to persons or entities that should not have access to it, our business could be materially impaired, our reputation could suffer and we could be subject to fines, penalties and litigation. In the event of a data security breach, we may be subject to notification obligations, litigation and governmental investigation or sanctions, and may suffer reputational damage, which could have an adverse impact on our business. For example, in 2021, there were two HIPAA breaches that were reported to the U.S. Department Health and Human Services, concerning our JFK International Airport and Salt Lake City International Airport XpresCheck locations, after which the team reinforced HIPAA training and counseled the responsible individuals.

We are subject to laws and regulations regarding protecting the security and privacy of certain healthcare and personal information, including: (a) at the federal level, HIPAA and the regulations thereunder, which establish (i) a complex regulatory framework including requirements for safeguarding protected health information and (ii) comprehensive federal standards regarding the uses and disclosures of protected health information; and (b) state laws, including the California Consumer Privacy Act.

***Hardware and software failures or delays in our information technology systems, including failures resulting from our systems conversions or otherwise, could disrupt our operations and cause the loss of confidential information, customers and business opportunities or otherwise adversely impact our business.***

IT systems are used extensively in virtually all aspects of our business, including clinical testing, test reporting, billing, customer service, logistics and management of medical data. Our success depends, in part, on the continued and uninterrupted performance of our IT systems. A failure or delay in our IT systems could impede our ability to serve our customers and patients and protect their confidential personal data. Despite redundancy and backup measures and precautions that we have implemented, our IT systems may be vulnerable to damage, disruptions and shutdown from a variety of sources, including telecommunications or network failures, system conversion or standardization initiatives, human acts and natural disasters. These issues can also arise as a result from failures by third parties with whom we do business and for which we have limited control. Any disruption or failure of our IT systems could have a material impact on our ability to serve our customers and patients, including negatively affecting our reputation in the marketplace.

***We must comply with complex and overlapping laws protecting the privacy and security of health information and personal data.***

There are a number of state, federal and international laws protecting the privacy and security of health information and personal data. Under the administrative simplification provisions of HIPAA, the U.S. Department of Health and Human Services has issued regulations which establish uniform standards governing the conduct of certain electronic healthcare

transactions and protecting the privacy and security of PHI used or disclosed by healthcare providers and other covered entities.

The privacy regulations regulate the use and disclosure of PHI by healthcare providers engaging in certain electronic transactions or “standard transactions.” They also set forth certain rights that an individual has with respect to his or her PHI maintained by a covered healthcare provider, including the right to access or amend certain records containing PHI or to request restrictions on the use or disclosure of PHI. The HIPAA security regulations establish administrative, physical, and technical standards for maintaining the integrity and availability of PHI in electronic form. These standards apply to covered healthcare providers and also to “business associates” or third parties providing services involving the use or disclosure of PHI. The HIPAA privacy and security regulations establish a uniform federal “floor” and do not supersede state laws that are more stringent or provide individuals with greater rights with respect to the privacy or security of, and access to, their records containing PHI. As a result, we may be required to comply with both HIPAA privacy regulations and varying state privacy and data security laws.

Moreover, HITECH, among other things, established certain health information security breach notification requirements. In the event of a breach of unsecured PHI, a covered entity must notify each individual whose PHI is breached, federal regulators and in some cases, must publicize the breach in local or national media. Breaches affecting 500 individuals or more are publicized by federal regulators who publicly identify the breaching entity, the circumstances of the breach and the number of individuals affected.

These laws contain significant fines and other penalties for wrongful use or disclosure of PHI. Given the complexity of HIPAA and HITECH and their overlap with state privacy and security laws, and the fact that these laws are rapidly evolving and are subject to changing and potentially conflicting interpretation, our ability to comply with the HIPAA, HITECH and state privacy requirements is uncertain and the costs of compliance are significant. Adding to the complexity is that our operations are currently evolving and the requirements of these laws will apply differently depending on such things as whether or not we bill electronically for our services, or provide services involving the use or disclosure of PHI and incur compliance obligations as a business associate. The costs of complying with any changes to HIPAA, HITECH and state privacy restrictions may have a negative impact on our operations. Noncompliance could subject us to criminal penalties, civil sanctions and significant monetary penalties as well as reputational damage.

We also are required to collect and maintain personal information about our employees as well as receive and transfer certain payment information, to accept payments from our customers, including credit card information. Most states have adopted laws requiring notification of affected individuals and state regulators in the event of a breach of personal information, which is a broader class of information than the health information protected by HIPAA. Many state laws impose significant data security requirements, such as encryption or mandatory contractual terms to ensure ongoing protection of personal information. Activities outside of the United States implicate local and national data protection standards, impose additional compliance requirements, and generate additional risks of enforcement for non-compliance. The collection and use of such information may be subject to contractual obligations as well. If the security and information systems that we or our outsourced third-party providers use to store or process such information are compromised or if we, or such third parties, otherwise fail to comply with these laws, regulations, and contractual obligations, we could face litigation and the imposition of penalties that could adversely affect our financial performance.

We must comply with all applicable privacy and data security laws in order to operate our business and may be required to expend significant capital and other resources to ensure ongoing compliance, to protect against security breaches and hackers or to alleviate problems caused by such breaches. Breaches of health information and/or personal data may be extremely expensive to remediate, may prompt federal or state investigation, fines, civil and/or criminal sanctions and significant reputational damage.

***Our capital expenditures in the Treat locations may not generate a positive return and we will incur significant additional costs.***

Our capital expenditures may not generate a positive return. Significant capital expenditures will be required to construct new Treat wellness centers or renovate our existing spa facilities to accommodate our proposed new business model. No assurance can be given that our future capital expenditures will generate a positive return or that we will have adequate

capital available to finance such construction or renovations. If we are unable to, or elect not to, pay for costs associated with such construction or renovations, our competitive position could be harmed. These developments, and others that are difficult or impossible to predict, could materially impact our business, financial results, cash flows, and financial position.

***We rely on international and domestic airplane travel, and the time that airline passengers spend in United States airports post-security. A decrease in the desire of customers to buy spa services and products, or decreased time spent in airports would negatively impact our operations.***

We depend upon a large number of airplane travelers with the propensity for health and wellness, and in particular spa treatments and products, spending significant time post-security clearance check points.

The number of airline travelers has been extremely volatile since the onset of COVID-19 in March 2020. If the time that these travelers spend post-security decreases, and/or if travelers' ability or willingness to pay for our products and services diminishes, this could have an adverse effect on our growth, business activities, cash flow, financial condition and results of operations. Some reasons for these events could include:

- the impact of a public health epidemic or pandemic, including COVID-19, which has interfered and may continue to interfere with our ability, or the ability of our employees, workers, contractors, suppliers and other business partners to perform our and their respective responsibilities and obligations relative to the conduct of our business. A public health epidemic or pandemic, including COVID-19, poses the risk of disruptions from the temporary closure of third-party suppliers and manufacturers, restrictions on the shipment of our products, restrictions on our employees' and other service providers' ability to travel, the decreased willingness or ability of our customers to travel or to utilize our services and shutdowns that may be requested or mandated by governmental authorities. The extent to which COVID-19 will continue to impact our results will depend on future developments related to the virus and its spread, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity of the coronavirus and the actions to contain the coronavirus or treat its impact, among others;
- terrorist activities (including cyber-attacks) impacting either domestic or international travel through airports where we operate, causing fear of flying, flight cancellations, or an economic downturn, fears of war or actual conflicts, such as the Russian invasion of Ukraine, civil unrest, terrorism or violence or any other events of a similar nature, even if not directly affecting the airline industry, may lead to a significant reduction in the number of airline passengers;
- a decrease in business spending that impacts business travel, such as a recession;
- a decrease in consumer spending that impacts leisure travel, such as a recession or a stock market downturn or a change in consumer lending regulations impacting available credit for leisure travel;
- an increase in airfare prices that impacts the willingness of air travelers to fly, such as an increase in oil prices or heightened taxation from federal or other aviation authorities;
- severe weather, ash clouds, airport closures, natural disasters, strikes or accidents (airplane or otherwise), causing travelers to decrease the amount that they fly and any of these events, or any other event of a similar nature, even if not directly affecting the airline industry, may lead to a significant reduction in the number of airline passengers;
- as to our spa business, scientific studies that malign the use of spa services or the products used in spa services, such as the impact of certain chemicals and procedures on health and wellness; or
- streamlined security screening checkpoints, which could decrease the wait time at checkpoints and therefore the time air travelers budget for spending time at the airport.

Further, any disruption to, or suspension of services provided by airlines and the travel industry as a result of financial difficulties, labor disputes, construction work, increased security, changes to regulations governing airlines, mergers and acquisitions in the airline industry, higher fuel prices and challenging economic conditions causing airlines to reduce flight schedules or increase the price of airline tickets could negatively affect the number of airline passengers.

Additionally, the threat of terrorism and governmental measures in response thereto, such as increased security measures, recent executive orders in the United States impacting entry into the United States and changing attitudes towards the environmental impacts of air travel may in each case reduce demand for air travel and, as a result, decrease airline passenger traffic at airports.

Furthermore, the exit of an airline from a market or the bankruptcy of an airline could reduce the number of airline passengers in a terminal or airport where we operate and have a material adverse impact on our business, financial condition and results of operations.

The effect that these factors would have on our business depends on their magnitude and duration, and a reduction in airline passenger numbers will result in a decrease in our sales and may have a materially adverse impact on our business, financial condition and results of operations.

***We rely on a limited number of distributors and suppliers for certain of our products, and events outside our control may disrupt our supply chain, which could result in an inability to perform our obligations under our concession agreements and ultimately cause us to lose our concessions.***

We rely on a small number of suppliers for our products. As a result, these suppliers may have increased bargaining power and we may be required to accept less favorable purchasing terms. In the event of a dispute with a supplier, the delivery of a significant amount of merchandise may be delayed or cancelled, or we may be forced to purchase merchandise from other suppliers on less favorable terms. Such events could cause turnover to fall or costs to increase, adversely affecting our business, financial condition and results of operations. In particular, we have publicized our sale of certain brands of products in our stores – our failure to sell these brands may adversely affect our business.

Further, damage or disruption to our supply chain due to any of the following could impair our ability to sell our products: adverse weather conditions or natural disaster, government action, fire, terrorism, cyber-attacks, the outbreak or escalation of armed hostilities (such as the Russian invasion of Ukraine), pandemics, industrial accidents or other occupational health and safety issues, strikes and other labor disputes, customs or import restrictions or other reasons beyond our control or the control of our suppliers and business partners. Failure to take adequate steps to mitigate the likelihood or potential impact of such events, or to effectively manage such events if they occur, could adversely affect our business, financial condition and results of operations, as well as require additional resources to restore our supply chain.

***Our operating results may fluctuate significantly due to certain factors, some of which are beyond our control.***

Our operating results may fluctuate from period to period significantly because of numerous factors, including:

- the timing and size of new unit openings, particularly the launch of new terminals;
- passenger traffic and seasonality of air travel;
- changes in the price and availability of supplies;
- macroeconomic conditions, nationally locally and internationally;
- changes in consumer preferences and competitive conditions;
- expansion to new markets and new locations; and

- increases in infrastructure costs, including those costs associated with the build-out of new concession locations and renovating existing concession locations.

Our operating results may fluctuate significantly as a result of the factors discussed above. Accordingly, results for any period are not necessarily indicative of results to be expected for any other period or for any year.

***Our expansion into new airports or off-airport locations, and to the online marketplace, may present increased risks due to its unfamiliarity with those areas.***

Our growth strategy depends upon transitioning to our travel health and wellness concept, which will expanding into markets (including an online presence) where have little or no meaningful operating experience. Those markets and locations may have demographic characteristics, consumer tastes and discretionary spending patterns that are different from those in the markets where our existing spa and testing operations are located. As a result, new airport terminal and/or off-airport operations may be less successful than existing concession locations in current airport terminals. We may find it more difficult in new markets to hire, motivate and keep qualified employees who can project its vision, passion and culture. We may also be unfamiliar with local laws, regulations and administrative procedures, including the procurement of spa services retail licenses, in new markets which could delay the build-out of new concession locations and prevent it from achieving its target revenues on a timely basis. Operations in new markets may also have lower average revenues or enplanements than in the markets where we currently operates. Operations in new markets may also take longer to ramp up and reach expected sales and profit levels, and may never do so, thereby negatively affecting our results of operations.

***Our growth strategy is dependent in part on our ability to successfully identify and open new locations.***

Implementing the part of our strategy relating to our travel health and wellness concept depends on our ability to successfully identify new locations. We will also need to assess and mitigate the risk of any new locations, to open the location on favorable terms and to successfully integrate their operations with ours. We may not be able to successfully identify opportunities that meet these criteria, or, if we do, we may not be able to successfully negotiate and open new locations on a timely basis. If we are unable to identify and open new locations in accordance with its operating plan, our revenue growth rate and financial performance may fall short of our expectations.

***Our profitability relating to our operations depends on the number of airline passengers in the terminals in which we have concessions. Changes by airport authorities or airlines that lower the number of airline passengers in any of these terminals could affect our business, financial condition and results of operations.***

The number of airline passengers that visit the terminals in which we have concessions is dependent in part on decisions made by airlines and airport authorities relating to flight arrivals and departures. A decrease in the number of flights and resulting decrease in airline passengers could result in fewer sales, which could lower our profitability and negatively impact our business, financial condition and results of operations. Concession agreements generally provide for a minimum annual guaranteed payment (“MAG”) payable to the airport authority or landlord regardless of the amount of sales at the concession. Currently, the majority of our concession agreements provide for a MAG that is either a fixed dollar amount or an amount that is variable based upon the number of travelers using the airport or other location, retail space used, estimated sales, past results or other metrics. If there are fewer airline passengers than expected or if there is a decline in the sales per airline passenger at these facilities, we will nonetheless be required to pay the MAG or fixed rent and our business, financial condition and results of operations may be materially adversely affected.

Furthermore, the exit of an airline from a market or the bankruptcy of an airline could reduce the number of airline passengers in a terminal or airport where we operate and have a material adverse impact on our business, financial condition and results of operations.

***We may not be able to execute our growth strategy to expand and integrate new concessions, our recently acquired entity or future acquisitions into our business or remodel existing concessions. Any new concessions, future acquisitions or remodeling of existing concessions may divert management resources, result in unanticipated costs, or dilute the ownership of our stockholders.***

Part of our growth strategy is to expand and remodel our existing facilities and to seek new concessions through tenders, direct negotiations or other acquisition opportunities. In this regard, our future growth will depend upon a number of factors, such as our ability to identify any such opportunities, structure a competitive proposal and obtain required financing and consummate an offer. Our growth strategy will also depend on factors that may not be within our control, such as the timing of any concession or acquisition opportunity.

We must also strategically identify which airport terminals and concession agreements to target based on numerous factors, such as airline passenger numbers, airport size, the type, location and quality of available concession space, level of anticipated competition within the terminal, potential future growth within the airport and terminal, rental structure, financial return and regulatory requirements. We cannot provide assurance that this strategy will be successful.

In addition, we may encounter difficulties integrating expanded or new concessions or any acquisitions. Such expanded or new concessions or acquisitions, may not achieve anticipated turnover and earnings growth or synergies and cost savings. Delays in the commencement of new projects and the refurbishment of concessions can also affect our business. In addition, we will expend resources to remodel our concessions and may not be able to recoup these investments. A failure to grow successfully may materially adversely affect our business, financial condition and results of operations.

In particular, new concessions and acquisitions, our recent acquisition of HyperPointe, and in some cases future expansions and remodeling of existing concessions, could pose numerous risks to our operations, including that we may:

- have difficulty integrating operations or personnel; for example, HyperPointe has a number of contractual arrangements with pharmaceutical companies; however, we historically do not have experience in that business line.;
- incur substantial unanticipated integration costs;
- experience unexpected construction and development costs and project delays;
- face difficulties associated with securing required governmental approvals, permits and licenses (including construction permits) in a timely manner and responding effectively to any changes in federal, state or local laws and regulations that adversely affect our costs or ability to open new concessions;
- have challenges identifying and engaging local business partners to meet ACDBE requirements in concession agreements;
- not be able to obtain construction materials or labor at acceptable costs;
- face engineering or environmental problems associated with our new and existing facilities;
- experience significant diversion of management attention and financial resources from our existing operations in order to integrate expanded, new or acquired businesses, which could disrupt our ongoing business;
- lose key employees, particularly with respect to acquired or new operations;
- have difficulty retaining or developing acquired or new business customers;
- impair our existing business relationships with suppliers or other third parties as a result of acquisitions;



- fail to realize the potential cost savings or other financial benefits and/or the strategic benefits of acquisitions, new concessions or remodeling; and
- incur liabilities from the acquired businesses and we may not be successful in seeking indemnification for such liabilities.

In connection with acquisitions or other similar investments, we could incur debt or amortization expenses related to intangible assets, suffer asset impairments, assume liabilities or issue stock that would dilute the percentage of ownership of our then-current stockholders. We may not be able to complete acquisitions or integrate the operations, products, technologies or personnel gained through any such acquisition, which may have a materially adverse impact on our business, financial condition and results of operations.

***If the estimates and assumptions we use to determine the size of our market are inaccurate, our future growth rate may be impacted.***

Market opportunity estimates and growth forecasts are subject to uncertainty and are based on assumptions and estimates that may not prove to be accurate. The estimates and forecasts in this Annual Report on Form 10-K relating to the size and expected reemergence of the travel retail market may prove to be inaccurate. Even if the market in which we compete meets our size estimates and rate of return to normalized travel activity, our business could fail to reemerge or grow at similar rates, if at all. The principal assumptions relating to our market opportunity include projected reemergence and growth in the travel retail market and our share of the market. If these assumptions prove inaccurate, our business, financial condition and results of operations could be adversely affected.

***We currently rely on a skilled, licensed labor force to provide our services, and the supply of this labor force is finite. If we cannot hire adequate staff for our locations, we will not be able to operate.***

As of March 24, 2023, we had approximately 382 full-time and 101 part-time employees in its locations. Excluding some dedicated retail staff, the majority of these employees are licensed to perform spa services, and hold such licenses as masseuses, nail technicians, and aestheticians. The demand for these licensed technicians has been increasing as more consumers gravitate to health and wellness treatments such as spa services. We compete not only with other airport-based spa companies but with spa companies outside of the airport for this skilled labor force. In addition, all staff hired by us must pass the background checks and security clearances necessary to work in airport locations. If we are unable to attract and retain qualified staff to work in our airport locations, its ability to operate will be impacted negatively.

***Our business is subject to various laws and regulations, and changes in such laws and regulations, or failure to comply with existing or future laws and regulations, could adversely affect us.***

We are subject to various laws and regulations in the United States, Netherlands, Turkey, and United Arab Emirates that affect the operation of our concessions. The impact of current laws and regulations, the effect of changes in laws or regulations that impose additional requirements and the consequences of litigation relating to current or future laws and regulations, or our inability to respond effectively to significant regulatory or public policy issues, could increase our compliance and other costs of doing business and, therefore, have an adverse impact on our results of operations.

Failure to comply with the laws and regulatory requirements of governmental authorities could result in, among other things, revocation of required licenses, administrative enforcement actions, fines and civil and criminal liability. In addition, certain laws may require us to expend significant funds to make modifications to our concessions in order to comply with applicable standards. Compliance with such laws and regulations can be costly and can increase our exposure to litigation or governmental investigations or proceedings.

***Our labor force could unionize, putting upward pressure on labor costs.***

Major players in labor organization, and in particular “Unite Here!” which represents approximately 45,000 employees in the airport concessions and airline catering industries, could target our locations for its unionization efforts. In the event



of the successful unionization of all of our labor force, we would likely incur additional costs in the form of higher wages, more benefits such as vacation and sick leave, and potentially also higher health care insurance costs.

***We compete for new locations in airports and may not be able to secure new locations.***

We participate in the highly competitive and lucrative airport concessions industry, and as a result compete for retail leases with a variety of larger, better capitalized concessions companies as well as smaller, mid-tier and single unit operators. Frequently, an airport includes only one similar travel health and wellness concept per terminal within its retail offering and, in those instances, we compete primarily with these other concessionaires.

***We may not be able to predict accurately or fulfill customer preferences or demands.***

We derive a significant amount of our revenue from the sale of massage, cosmetic and luxury products which are subject to rapidly changing customer tastes. The availability of new products and changes in customer preferences has made it more difficult to predict sales demand for these types of products accurately. Our success depends in part on our ability to predict and respond to quickly changing consumer demands and preferences, and to translate market trends into appropriate merchandise offerings. Additionally, due to our limited sales space relative to other retailers, the proper selection of salable merchandise is an important factor in revenue generation. We cannot provide assurance that our merchandise selection will correspond to actual sales demand. If we are unable to predict or rapidly respond to sales demand or to changing styles or trends, or if we experience inventory shortfalls on popular merchandise, our revenue may be lower, which could have a materially adverse impact on our business, financial condition and results of operations.

***Our leases may be terminated, either for convenience by the landlord or as a result of a XpresSpa or Treat default.***

We have store locations and kiosks in a number of airports in which the landlord, with prior written notice to us, can terminate our lease, including for convenience or as necessary for airport purposes or operations. If a landlord elects to terminate a lease at an airport, we may have to shut down one or more store locations at that airport. In addition, we have received rent concessions from landlords on a majority of our airport location leases relating to our temporary closures in response to the COVID-19 pandemic, allowing for the relief of minimum guaranteed payments in exchange for percentage-of-revenue rent or providing relief from rent through payment deferrals.

Additionally, our leases have numerous provisions governing the operation of our stores. Violation of one or more of these provisions, even unintentionally, may result in the landlord finding that we are in default of the lease. Violation of lease provisions may result in fines and, in some cases, termination of a lease.

***Our ability to operate depends on the traffic patterns of the terminals in which we operate, and the cessation or disruption of air traveler traffic in these terminals would negatively impact XpresSpa's and Treat's addressable market.***

We depend on a high volume of air travelers in its terminals. It is possible that a terminal in which we operate could become subject to a lower volume of air travelers, which would significantly impact traffic near and around our locations and therefore its total addressable market. Lower volume in a terminal could be caused by:

- terminal construction that results in the temporary or permanent closure of a unit, or adversely impacts the volume or pattern of traffic flows within an airport;
- an airline utilizing an airport in which we operate could abandon that airport or an individual terminal in favor of other airports or terminals, or because it is contracting operations; or
- adverse weather conditions could cause damage to the terminal or airport in which we operate, resulting in the temporary or permanent closure of a unit.

***We are dependent on our local partners.***

Our local partners, including our ACDBE partners, maintain ownership interests in certain of our locations. Our participation in these operating entities differs from market to market. While the precise terms of each relationship vary, our local partners may have control over certain portions of the operations of these concessions. The stores are operated pursuant to the applicable joint venture agreement governing the relationship between us and our local partner. Generally, these agreements also provide that strategic decisions are to be made by a committee comprised of us and our local partner. These concessions involve risks that are different from the risks involved in operating a concession independently, and include the possibility that our local partners:

- are in a position to take action contrary to our instructions, our requests, our policies, our objectives or applicable laws;
- take actions that reduce our return on investment;
- go bankrupt or are otherwise unable to meet their capital contribution obligations;
- have economic or business interests or goals that are or become inconsistent with our business interests or goals; or
- take actions that harm our reputation or restrict our ability to run our business.

***Failure to comply with minimum airport concession disadvantaged business enterprise participation goals and requirements could lead to lost business opportunities or the loss of existing business.***

Pursuant to ACDBE participation requirements, we are often required to meet, or use good faith efforts to meet, certain minimum ACDBE participation requirements when bidding on or submitting proposals for new concession contracts. If we are unable to find and/or partner with an appropriate ACDBE, we may lose opportunities to open new locations. In addition, a number of our existing leases contain minimum ACDBE participation requirements which require the ACDBE to own a significant portion of the business being operated under those leases. The level of ACDBE participation requirements may affect our profitability and/or its ability to meet financial forecasts.

Further, if we fail to comply with the minimum ACDBE participation requirements, we may be held responsible for a breach of contract, which could result in the termination of a lease and impairment of our ability to bid on or obtain future concession contracts. To the extent that our leases are terminated and we are required to shut down one or more store locations, there could be a material adverse impact to our business and results of operations.

***Continued minimum wage increases could negatively impact our cost of labor.***

An increase in the minimum wage could increase our cost of labor and have an adverse impact on our business, financial condition and results of operations.

***Information technology systems failure or disruption, or changes to information technology related to payment systems, could impact our day-to-day operations.***

Our information technology systems are used to record and process transactions at our point-of-sale interfaces and to manage our operations. These systems provide information regarding most aspects of our financial and operational performance, statistical data about our customers, our sales transactions and our inventory management. Fire, natural disasters, power-loss, telecommunications failure, break-ins, terrorist attacks (including cyber-attacks), computer viruses, electronic intrusion attempts from both external and internal sources and similar events or disruptions may damage or impact our information technology systems at any time. These events could cause system interruption, delays or loss of critical data and could disrupt our acceptance and fulfillment of customer orders, as well as disrupt our operations and management. For example, although our point-of-sales systems are programmed to operate and process customer orders independently from the availability of our central data systems and even of the network, if a problem were to disable electronic payment systems in our stores, credit card payments would need to be processed manually, which could result in fewer transactions. Significant disruption to systems could have a material adverse impact on our business, financial condition and results of operations.

We also continually enhance or modify the technology used for our operations. We cannot be sure that any enhancements or other modifications we make to our operations will achieve the intended results or otherwise be of value to our customers. Future enhancements and modifications to our technology could consume considerable resources. We may be required to enhance our payment systems with new technology, which could require significant expenditures. If we are unable to maintain and enhance our technology to process transactions, we may experience a materially adverse impact on our business, financial condition and results of operations.

***If we are unable to protect our customers' credit card data and other personal information, we could be exposed to data loss, litigation and liability, and our reputation could be significantly harmed.***

Privacy protection is increasingly demanding, and the use of electronic payment methods and collection of other personal information, including order history, travel history and other preferences, exposes us to increased risk of privacy and/or security breaches as well as other risks. Our sales are by credit or debit cards. Additionally, we collect and store personal information from individuals, including our customers and employees.

In the future, we may experience security breaches in which credit and debit card information or other personal information is stolen. Although we use secure private networks to transmit confidential information, third parties may have the technology or know-how to breach the security of the customer information transmitted in connection with credit and debit card sales, and its security measures and those of technology vendors may not effectively prohibit others from obtaining improper access to this information. The techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently and are often difficult to detect for long periods of time, which may cause a breach to go undetected for an extensive period of time. Advances in computer and software capabilities, new tools, and other developments may increase the risk of such a breach. Further, the systems currently used for transmission and approval of electronic payment transactions, and the technology utilized in electronic payments themselves, all of which can put electronic payment at risk, are determined and controlled by the payment card industry, not by us. In addition, contractors, or third parties with whom we do business or to whom we outsource business operations may attempt to circumvent its security measures in order to misappropriate such information and may purposefully or inadvertently cause a breach involving such information. If a person is able to circumvent our security measures or those of third parties, he or she could destroy or steal valuable information or disrupt our operations. We may become subject to claims for purportedly fraudulent transactions arising out of the actual or alleged theft of credit or debit card information, and we may also be subject to lawsuits or other proceedings relating to these types of incidents. Any such claim or proceeding could cause us to incur significant unplanned expenses, which could have an adverse effect on its business or results of operations. Further, adverse publicity resulting from these allegations could significantly harm its reputation and may have a material adverse effect on it. Although we carry cyber liability insurance to protect against these risks, there can be no assurance that such insurance will provide adequate levels of coverage against all potential claims.

***Negative social media regarding XWELL, XpresSpa, Treat, XpresCheck or Hyperpointe could result in decreased revenues and impact our ability to recruit workers.***

Our affinity among consumers is highly dependent on their positive feelings about our brands, our customer service and the range and quality of services and products that we offer. A negative customer experience that is posted to social media outlets and is distributed virally could tarnish XpresSpa's, Treat's, XpresCheck's, or Hyperpointe's brand and our customers may opt to no longer engage with that brand.

***We employ people in multiple different jurisdictions, and the employment laws of those jurisdictions are subject to change. In addition, our services are regulated through government-issued operating licenses. Noncompliance with applicable laws could result in employee lawsuits or legal action taken by government authorities.***

We must comply with a variety of employment and business practices laws across the United States, Netherlands, Turkey, and United Arab Emirates. We monitor the laws governing our activities, but in the event we do not become aware of a new regulation or fail to comply with a regulation, we could be subject to disciplinary action by governing bodies and potentially employee lawsuits.

***We source, develop and sell products that may result in product liability defense costs and product liability payments.***

Our products contain ingredients that are deemed to be safe by the United States Federal Drug Administration and the Federal Food, Drug and Cosmetics Act. However, there is no guarantee that these ingredients will not cause adverse health effects to some consumers given the wide range of ingredients and allergies amongst the general population. We may face substantial product liability exposure for products we sell to the general public or that we use in our services. Product liability claims, regardless of their merits, could be costly and divert management's attention, and adversely affect our reputation and the demand for our products and services. XWELL to date has not been named as a defendant in any product liability action.

***We and our subsidiaries have been, are, and may again become involved in litigation that could divert management's attention and harm our businesses.***

Litigation often is expensive and diverts management's attention and resources, which could adversely affect our businesses. We may be exposed to claims against us even if no wrongdoing has occurred. Responding to such claims, regardless of their merit, can be time consuming, costly to defend, disruptive to our management's attention and to our resources, damaging to our reputation and brand, and may cause us to incur significant expenses. Even if we have the right to be indemnified against such costs, the indemnifying party may be unable to uphold its contractual obligations.

***New legislation, regulations or court rulings related to enforcing patents could harm our business and operating results.***

Intellectual property is the subject of intense scrutiny by the courts, legislatures and executive branches of governments around the world. Various patent offices, governments or intergovernmental bodies may implement new legislation, regulations or rulings that impact the patent enforcement process, or the rights of patent holders and such changes could negatively affect licensing efforts and/or litigations. For example, limitations on the ability to bring patent enforcement claims, limitations on potential liability for patent infringement, lower evidentiary standards for invalidating patents, increases in the cost to resolve patent disputes and other similar developments could negatively affect our ability to assert our patent or other intellectual property rights.

It is impossible to determine the extent of the impact of any new laws, regulations or initiatives that may be proposed, or whether any of the proposals will become enacted as laws. Compliance with any new or existing laws or regulations could be difficult and expensive, affect the manner in which we conduct our business and negatively impact our business, prospects, financial condition and results of operations.

***Our failure or inability to protect the trademarks or other proprietary rights we use or claims of infringement by us of rights of third parties, could adversely affect our competitive position or the value of our brands.***

We believe that our trademarks and other proprietary rights are important to our success and our competitive position. However, any actions that we take to protect the intellectual property we use may not prevent unauthorized use or imitation by others, which could have an adverse impact on our image, brand or competitive position. If we commence litigation to protect our interests or enforce our rights, we could incur significant legal fees. We also cannot provide assurance that third parties will not claim infringement by us of their proprietary rights. Any such claim, whether or not it has merit, could be time consuming and distracting for our management, result in costly litigation, cause changes to existing retail concepts or delays in introducing retail concepts, or require us to enter into royalty or licensing agreements. As a result, any such claim could have a material adverse impact on our business, financial condition and results of operations.

***Any future acquisitions or business opportunities, could involve unknown risks that could harm our business and adversely affect our financial condition and results of operations.***

We have in the past, and may in the future, acquire businesses or make investments, directly or indirectly through our subsidiaries, that involve unknown risks, some of which will be particular to the industry in which the investment or acquisition targets operate, including risks in industries with which we are not familiar or experienced. Although we intend to conduct appropriate business, financial and legal due diligence in connection with the evaluation of future investment or acquisition opportunities, our due diligence investigations may not identify every matter that could have a material adverse effect on us. We may be unable to adequately address the financial, legal and operational risks raised by such investments or acquisitions, especially if we are unfamiliar with the relevant industry. The realization of any unknown risks could expose us to unanticipated costs and liabilities and prevent or limit us from realizing the projected benefits of the investments or acquisitions, which could adversely affect our financial condition, liquidity, results of operations, and trading price.

***Laws regulating the corporate practice of medicine could restrict the manner in which we are permitted to conduct our XpresCheck and Treat businesses, and the failure to comply with such laws could subject us to penalties or require a restructuring of our business.***

In operating our XpresCheck and Treat businesses, we have medical service agreements (“MSAs”) with state licensed physicians and nurse practitioners, under which we administer COVID-19 testing options, in three locations operating in three airports. Some of the states in which we currently operate this business have laws that prohibit business entities from directly owning physician practices, practicing medicine, employing physicians to practice medicine, exercising control over medical decisions by physicians or engaging in certain arrangements, such as fee-splitting, with physicians (such activities are generally referred to as the “corporate practice of medicine”). In some states these prohibitions are expressly stated in a statute or regulation, while in other states the prohibition is a matter of judicial or regulatory interpretation. Other states in which we may operate in the future may also generally prohibit the corporate practice of medicine. While we endeavor to comply with state corporate practice of medicine laws and regulations as we interpret them in the operation of our XpresCheck and Treat businesses, the laws and regulations in these areas are complex, changing, and often subject to varying interpretations. The interpretation and enforcement of these laws vary significantly from state to state. Penalties for violations of the corporate practice of medicine vary by state and may result in physicians being subject to disciplinary action, as well as to forfeiture of revenue from payors for services rendered. For business entities such as us, violations may also bring both civil and, in more extreme cases, criminal liability for engaging in medical practice without a license.

Some of the relevant laws, regulations and agency interpretations in states with corporate practice of medicine restrictions have been subject to limited judicial and regulatory interpretation, and state laws and regulations are subject to change. Regulatory authorities and other parties in some states may assert that our MSAs mean that, through our XpresCheck and Treat businesses, we are engaged in the prohibited corporate practice of medicine. If this were to occur, we could be subject to civil and/or criminal penalties, our MSAs with physicians could be found legally invalid and unenforceable (in whole or in part) or we could be required to restructure our arrangements with physicians, in each case in one or more of the jurisdictions in which we operate. Any of these outcomes may have a material adverse effect on our business, results of operations, financial condition, cash flows in our XpresCheck and Treat businesses and our reputation overall.

### **Risks Related to our Capital Stock**

***Stock prices can be volatile, and this volatility may depress the price of our common stock.***

The stock market has experienced significant price and volume fluctuations, which have affected the market price of many companies in ways that may have been unrelated to those companies' operating performance. Furthermore, we believe that our stock price may reflect certain future growth and profitability expectations. If we fail to meet these expectations, then our stock price may significantly decline, which could have an adverse impact on investor confidence. We believe that various factors may cause the market price of our common stock to fluctuate, perhaps substantially, including, among others, the following:

- additions to or departures of our key personnel, or our overall ability to retain key personnel;
- announcements of innovations by us or our competitors;
- announcements by us or our competitors of significant contracts, acquisitions, strategic partnerships, capital commitments, or new technologies;
- new regulatory pronouncements and changes in regulatory guidelines;
- developments or disputes concerning intellectual property rights generally;
- lawsuits, claims, and investigations that may be filed against us, and other events that may adversely affect our reputation;
- changes in financial estimates or recommendations by securities analysts;
- general and industry-specific economic conditions;
- our ability to develop and introduce new products and services;
- our ability to raise additional capital to fund our operations and business plan and the effects that such financing may have on the value of the equity instruments held by our stockholders;
- our ability to hire a skilled labor force and the costs associated;
- our ability to secure new retail locations, maintain existing ones, and ensure continued customer traffic at those locations;
- the loss of one or more of our significant suppliers;
- unexpected trends in the health and wellness and travel industries and potential technology and service obsolescence; and
- market acceptance, quality, pricing, availability and useful life of our products and/or services, as well as the mix of our products and services sold.

***We have no current plans to pay dividends on our common stock, and our investors may not receive funds without selling their stock.***

We have not declared or paid any cash dividends on our common stock, nor do we expect to pay any cash dividends on our common stock for the foreseeable future. Investors seeking cash dividends should not invest in our common stock for that purpose. We currently intend to retain any additional future earnings to finance our operations and growth and, therefore, we have no plans to pay cash dividends on our common stock at this time. Any future determination to pay cash dividends on our common stock will be at the discretion of our Board of Directors and will be dependent on our earnings, financial condition, operating results, capital requirements, any contractual restrictions, and other factors that our Board of Directors deems relevant.

Accordingly, our investors may have to sell some or all of their common stock in order to generate cash from their investment. You may not receive a gain on your investment when you sell our common stock and may lose the entire amount of your investment.

***Our failure to meet the continued listing requirements of The Nasdaq Capital Market (“Nasdaq”) could result in a delisting of our common stock.***

The continued listing standards of Nasdaq provide, among other things, that a company may be delisted if the bid price of its stock drops below \$1.00 for a period of 30 consecutive business days or if stockholders’ equity is less than \$2,500,000. On October 28, 2022, we received a deficiency letter from Nasdaq which indicated that we were not in compliance with the minimum bid price requirement. Although in previous instances of minimum bid price noncompliance we were able to regain compliance by the applicable deadline, we may be unable to regain compliance prior to the April 26, 2023 deadline, or in the future if our stock price again falls below the minimum bid price. Additionally, if we fail to comply with any other continued listing standards of Nasdaq, our common stock would also be subject to delisting. If that were to occur, our common stock would be subject to rules that impose additional sales practice requirements on broker-dealers who sell our securities. The additional burdens imposed upon broker-dealers by these requirements could discourage broker-dealers from effecting transactions in our common stock. This would significantly and negatively affect the ability of investors to trade our securities and would significantly and negatively affect the value and liquidity of our common stock. These factors could contribute to lower prices and larger spreads in the bid and ask prices for our common stock. Delisting of our common stock also would likely have a negative effect on the price of our common stock and would impair your ability to sell or purchase our common stock when you wish to do so. Further, if we were to be delisted from Nasdaq, our common stock would cease to be recognized as covered securities and we would be subject to regulation in each state in which we offer our securities. If we seek to implement a reverse stock split in order to remain listed on Nasdaq, the announcement and/or implementation of a reverse stock split could significantly negatively affect the price of our common stock.

Delisting from Nasdaq could adversely affect our ability to raise additional financing through the public or private sale of equity securities, would significantly affect the ability of investors to trade our securities and would negatively affect the value and liquidity of our common stock. Delisting could also have other negative results, including the potential loss of confidence by employees, the loss of institutional investor interest and fewer business development opportunities.

***Our common stock has historically traded in low volumes. We cannot predict whether an active trading market for our common stock will ever develop. Even if an active trading market develops, the market price of our common stock may be significantly volatile.***

Historically, our common stock has experienced a lack of consistent trading liquidity. In the absence of an active trading market you may have difficulty buying and selling our common stock at all or at the price you consider reasonable; and market visibility for shares of our common stock may be limited, which may have a depressive effect on the market price for shares of our common stock and on our ability to raise capital or make acquisitions by issuing our common stock.

***Anti-takeover provisions of Delaware law, provisions in our charter and bylaws, and our stockholder rights plan could prevent or frustrate attempts by stockholders to change our Board of Directors or current management and could delay, discourage or make more difficult a third-party acquisition of control of us.***

We are a Delaware corporation and, as such, certain provisions of Delaware law could prevent or frustrate attempts by stockholders to change the Board of Directors or current management, or could delay, discourage or make more difficult a third-party acquisition of control of us, even if the change in control would be beneficial to stockholders or the stockholders regard it as such. We are subject to the provisions of Section 203 of the Delaware General Corporation Law (“DGCL”), which prohibits certain “business combination” transactions (as defined in Section 203) with an “interested stockholder” (defined in Section 203 as a 15% or greater stockholder) for a period of three years after a stockholder becomes an “interested stockholder,” unless the attaining of “interested stockholder” status or the transaction is pre-approved by our Board of Directors, the transaction results in the attainment of at least an 85% ownership level by an acquirer or the transaction is later approved by our Board of Directors and by our stockholders by at least a 66<sup>2</sup>/<sub>3</sub> percent vote of our stockholders other than the “interested stockholder,” each as specifically provided in Section 203.

Our certificate of incorporation and our bylaws, each as currently in effect, also contain certain provisions that may delay, discourage or make more difficult a third-party acquisition of control of us. Such provisions include a provision that any vacancies on our Board of Directors may only be filled by a majority of the directors then serving, although not a quorum, and not by the stockholders and the ability of our Board of Directors to issue preferred stock, without stockholder approval, that could dilute the stock ownership of a potential unsolicited acquirer and hinder an acquisition of control of us that is not approved by our Board of Directors, including through the use of preferred stock in connection with a stockholder rights plan.

We have also adopted a stockholder rights plan in the form of a Section 382 Rights Plan, designed to help protect and preserve our substantial tax attributes primarily associated with our NOLs under Section 382 of the Internal Revenue Code and research tax credits under Sections 382 and 383 of the Internal Revenue Code and related United States Treasury regulations, which was approved by our stockholders in December 2016 and expires in March 2022. Although this is not its purpose, the Section 382 Rights Plan could have the effect of making it uneconomical for a third party to acquire us on a hostile basis.

These provisions of the DGCL, our certificate of incorporation and bylaws, and our Section 382 Rights Plan may delay, discourage or make more difficult certain types of transactions in which our stockholders might otherwise receive a premium for their shares over the current market price, and might limit the ability of our stockholders to approve transactions that they think may be in their best interest.

***Having availed ourselves of scaled disclosure available to smaller reporting companies, we cannot be certain if such reduced disclosure will make our common stock less attractive to investors.***

Under Section 12b-2 of the Exchange Act, a “smaller reporting company” is a company that is not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent company that is not a smaller reporting company, and has a public float of less than \$250 million and annual revenues of less than \$100 million during the most recently completed fiscal year. Similar to emerging growth companies, smaller reporting companies are permitted to provide simplified executive compensation disclosure in their filings; they are exempt from the provisions of Section 404(b) of the Sarbanes-Oxley Act requiring that independent registered public accounting firms provide an attestation report on the effectiveness of internal controls over financial reporting; and they have certain other decreased disclosure obligations in their SEC filings, including, among other things, only being required to provide two years of audited financial statements in annual reports. Decreased disclosure in our SEC filings as a result of our having availed ourselves of scaled disclosure may make it harder for investors to analyze our results of operations and financial prospects.



## Other Risk Factors

### ***Our confidential information may be disclosed by other parties.***

We routinely enter into non-disclosure agreements with other parties, including but not limited to vendors, law firms, parties with whom we are engaged in negotiations, and employees. However, there exists a risk that those other parties will not honor their contractual obligations to not disclose our confidential information. This may include parties who breach such obligations in the context of confidential settlement offers and/or negotiations. In addition, there exists a risk that, upon such breach and subsequent dissemination of our confidential information, third parties and potential licensees may seek to use such confidential information to their advantage and/or to our disadvantage including in legal proceedings in which we are involved. Our ability to act against such third parties may be limited, as we may not be in privity of contract with such third parties.

### ***We may fail to meet publicly announced financial guidance or other expectations about our business, which would cause our stock to decline in value.***

From time to time, we provide preliminary financial results or forward-looking financial guidance, to our investors. Such statements are based on our current views, expectations and assumptions that may not prove to be accurate and may vary from actual results and involve known and unknown risks and uncertainties that may cause actual results, performance, achievements or share prices to be materially different from any future results, performance, achievements or share prices expressed or implied by such statements. Such risks and uncertainties include the risk factors contained herein. If we fail to meet our projections and/or other financial guidance for any reason, our stock price could decline.

## ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

## ITEM 2. PROPERTIES

As of December 31, 2022, besides our Global Support Center to 254 West 31<sup>st</sup> Street in New York City, XWELL had 37 spas and wellness centers in 15 airports, in the United States, Netherlands, Turkey, and the United Arab Emirates. All of the locations as of that date were leased, typically with one or two renewal options after the initial term. Economic terms vary by type and location of store and, on average, the lease terms are 5-10 years with several locations operating on a month-to-month basis. We believe that our facility and our leases are adequate to accommodate our business needs.

## ITEM 3. LEGAL PROCEEDINGS

### ***Litigation and legal proceedings***

Certain of our outstanding legal matters include speculative claims for substantial or indeterminate amounts of damages. We regularly evaluate developments in our legal matters that could affect the amount of any potential liability and make adjustments as appropriate. Significant judgment is required to determine both the likelihood of there being any potential liability and the estimated amount of a loss related to our legal matters.

With respect to our outstanding legal matters, based on our current knowledge, our management believes that the amount or range of a potential loss will not, either individually or in the aggregate, have a material adverse effect on our business, consolidated financial position, results of operations or cash flows. However, the outcome of such legal matters is inherently unpredictable and subject to significant uncertainties. We evaluated the outstanding legal matters and assessed the probability and likelihood of the occurrence of liability. Based on management's estimates, we have recorded a liability

of approximately \$0.9 million for all outstanding legal matters as of December 31, 2022 which is included in “*Accrued expenses and other current liabilities*” in the consolidated balance sheet. Related legal fees are recorded in the period in which they are incurred.

*Kyle Collins v. Spa Products Import & Distribution Co., LLC et al*

This is a combined class action and California Private Attorney’s General Act (“PAGA”) action. Plaintiff seeks to recover wages, penalties and PAGA penalties for claims for (1) failure to provide meal periods, (2) failure to provide rest breaks, (3) failure to pay overtime, (4) inaccurate wage statements, (5) waiting time penalties, and (6) PAGA penalties of \$100 per employee per pay period per violation. There are approximately 240 current and former employees in the litigation class.

The parties agreed to mediation on May 26, 2020, however, due to COVID-19 the parties subsequently stayed all proceedings. The mediation session occurred on March 18, 2021 and the parties reached a settlement which was approved on September 20, 2022. Funding of the settlement amount occurred on January 26, 2023.

*OTG Management PHL B v. XpresSpa Philadelphia Terminal B et al.*

On May 9, 2022, a lawsuit was filed in the Philadelphia Court of Common Pleas by OTG Management at Philadelphia International Airport, claiming that XWELL improperly backed out of its sublease for space at Terminal B and now owes between \$865 and \$2,250 in accelerated rent for the 12-year contract. They claim that by refusing to complete the project, failing to commence and maintain operations, refusing to pay rent and improperly purporting to terminate the lease (among other acts and omissions), XWELL breached the lease. OTG Management has agreed to extend XWELL’s time to respond to May 6, 2023.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

## **PART II**

### **ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

#### **Market Information**

Our common stock, par value \$0.01 per share, has been listed under the trading symbol "XWEL" since October 25, 2022, and was previously listed under the trading symbol "XSPA" since January 8, 2018.

#### **Stockholders**

As of April 14, 2023, we had 98 stockholders of record of the 83,418,535 outstanding shares of our common stock. This does not reflect persons or entities that hold their stock in nominee or "street" name through various brokerage firms.

#### **Dividend Policy**

We have never declared or paid any cash dividends on our capital stock, and do not anticipate paying any cash dividends on our capital stock in the foreseeable future. We currently intend to retain future earnings, if any, to finance our operations and to expand our business. Any future determination to pay cash dividends will be at the discretion of our Board of Directors and will be dependent upon our financial condition, operating results, capital requirements and other factors that our Board of Directors considers appropriate.

#### **Issuer Purchases of Equity Securities**

The Company did not repurchase any shares under its previously announced stock repurchase program during the fourth quarter of 2022. Under this program, management has discretion in determining the conditions under which up to 25 million shares may be purchased from time to time. The program does not require the Company to repurchase any specific number of shares, and may be modified, suspended or terminated at any time without prior notice.

As of December 31, 2022, the Company was permitted to repurchase an additional 0.8 million shares under this program, repurchasing and retiring 19.5 million shares at an average cost of \$1.22 per share, for a total of \$23.8 million.

#### **Unregistered Sales of Equity Securities**

None.

### **ITEM 6. [RESERVED]**

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*Unless otherwise stated, dollar amounts are provided in thousands, except share and per share data.*

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with, and is qualified in its entirety by, our consolidated financial statements (including notes to the consolidated financial statements) and the other consolidated financial information appearing elsewhere in this Annual Report on Form 10-K. In addition to historical financial information, the following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Some of the information contained in this discussion and analysis, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. Actual results and timing of events could differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.*

### **Overview**

On October 25, 2022, we changed our name to XWELL, Inc. (formerly known as XpresSpa Group, Inc.) (“XWELL” or the “Company”) from XpresSpa Group, Inc. Our common stock, par value \$0.01 per share, which had previously been listed under the trading symbol “XSPA” on the Nasdaq Capital Market, now trades under the trading symbol “XWEL” since the opening of the trading market on October 25, 2022. Rebranding to XWELL, Inc. aligned our corporate strategy to build a pure-play health and wellness services company, both in the airport and off-airport marketplaces.

XWELL’s subsidiary, XpresSpa Holdings, LLC (“XpresSpa”) has been a global airport retailer of spa services through its XpresSpa spa locations, offering travelers premium spa services, including massage, nail and skin care, as well as spa and travel products.

Following a non-essential closure of all spas during the COVID-19 pandemic, XpresSpa reopened 25 domestic locations and operated nine international locations as of December 31, 2022 as described under “Recent Developments - XpresSpa Spa Services” below.

Following the temporary closure of all global XpresSpa locations due to the categorization by local jurisdictions of the spa locations as “non-essential services” in connection with the outbreak of COVID-19, we launched our XpresCheck<sup>®</sup> segment through XWELL’s subsidiary XpresTest, Inc. (“XpresCheck” or “XpresTest”). The XpresCheck Wellness Centers offered COVID-19 and other medical diagnostic testing services to the traveling public, as well as airline, airport and concessionaire employees, and TSA and U.S. Customs and Border Protection agents during the pandemic.

At one point, XpresCheck had 15 locations open in 12 airports across the United States. Following the relaxation of testing requirements by the US and other countries in 2022, XpresCheck locations began to close. As of March 31, 2023, all XpresCheck locations have been closed except for one location serving our military forces being stationed overseas and flying out of Seattle, WA.

Treat, which is operating through XWELL’s subsidiary Treat, Inc. (“Treat”) launched in 2021 as our travel, health and wellness brand transforming the way we provide care to our customers through a suite of health and wellness services supported by an integrated digital platform and a relevant retail offering to the traveling public.

Treat’s on-site centers (currently located in JFK International Airport, and in Salt Lake City International Airport) provide access to health and wellness services for travelers. Our teams provide travel-related diagnostic testing for virus, cold, flu and other illnesses as well as hydration therapy, IV drips, and vitamin injections. Travelers can purchase time blocks to use our wellness rooms to engage in interactive services like self-guided yoga, meditation and low impact weight exercises or to relax and unplug from the hectic pace of the airport and renew themselves before or after their trip.

Treat offers a website (www.treat.com) and mobile app to complement the offering with relevant health and wellness content designed to help people on the go with information that could impact their travel. The platform provides travelers

access to a comprehensive online marketplace of services including global illness tracker tools such as the COVID-19 Requirements Map and a scheduler to arrange for direct care at one of our on-site locations.

XWELL's subsidiary, gcg Connect, LLC, operating as HyperPointe segment, which was acquired in January 2022, provides direct to business marketing support across a number of health and health-related channels. From the creation of marketing campaigns for the pharmaceutical industry, to learning management systems to website and health related content creation, HyperPointe is a complementary service provider to XWELL's health-focused brands as well as providing the majority of services to the external community.

Although we recognize four segments of business, our strategy for the future is to create and leverage a fully integrated set of products and services that are both profitable and scalable across our portfolio of brands. Additionally, we are expanding our retail strategy, not only adding more products for sale but aligning those products more efficiently to our service offerings. This product strategy includes, for example, adding muscle relaxation patches to a neck or back massage to continue treatment after the delivery of the service.

We also plan to build our capability for delivering health and wellness services outside of the airport. We believe operating outside of the airport complements our offering and represents the fastest way to scale the XWELL family of brands.

We will be looking to further expand internationally. With international travel slowly returning to pre-pandemic levels, we continue to be opportunistic in our approach, by taking advantage of the current market to growth. We believe a strategy for international expansion further advances our ability to expand our other brands including biosurveillance outside of the US.

These strategic imperatives will be accomplished through development of an infrastructure specifically focused on enabling scalable and efficient growth.

## **Recent Developments**

### **XpresSpa Spa Services**

There are currently 25 operating XpresSpa domestic locations. During 2022, we sold one location in Austin-Bergstrom International Airport to its franchisee which now operates both locations at this airport. As we continue to monitor fluctuating airport volumes, we will also continue to review operating hours to optimize revenue opportunity.

There are also 10 international locations operating, including 2 XpresSpa locations in Dubai International Airport in the United Arab Emirates, 3 XpresSpa locations in Schiphol Amsterdam Airport in the Netherlands and 5 XpresSpa locations in Istanbul Airport in Turkey. The Company had signed for 5 locations at Istanbul Airport in Turkey of which 4 opened during the fourth quarter of 2022, with the remaining one location opening in January 2023.

We have received rent concessions from landlords on a majority of our leases, allowing for the relief of minimum guaranteed payments in exchange for percentage-of-revenue rent or providing relief from rent through payment deferrals. The periods of relief from these payments, which began in March 2020, ranged from three to twenty-eight months enabling us to receive minimum guaranteed payment concessions of approximately \$431 and \$2,078 during 2022 and 2021, respectively.

### **XpresCheck Wellness Centers**

XpresTest's business has management services agreements with state licensed physicians and nurse practitioners, under which we administer a COVID-19 rapid PCR test.

During 2022, as countries continued to relax their testing requirements resulting in rapid decline of testing volumes at our XpresCheck locations, we closed all but one XpresCheck Wellness Centers. Therefore, as of the date of this report, there is only one operating XpresCheck location operating in one airport.

During 2021, XpresTest initiated a \$2,001, eight-week pilot program with the CDC in collaboration with Concentric by Ginkgo Bioworks (NYSE: DNA). Under this program, XpresTest conducted biosurveillance monitoring at four major U.S. airports (JFK International Airport, Newark Liberty International Airport, San Francisco International Airport, and Hartsfield-Jackson Atlanta International Airport) aimed at identifying existing and new SARS-CoV-2 variants. On January 31, 2022, we announced the extension of the program, bringing the total contract to \$5,534. Approximately \$4,166 and \$1,368 of the full \$5,534 amount was recognized during 2022 and the fourth quarter of 2021, respectively.

During the third quarter of 2022, XpresTest, in partnership with Ginkgo Bioworks in continuation of their support to the CDC's traveler-based SARS-CoV-2 genomic surveillance program were awarded a new two-year contract. The partnership is expected to support public health and biosecurity services totaling approximately \$16,000 (for the first year), with an overall potential to exceed \$61,000 based on CDC program options and public health priorities. As COVID-19 sub variants and other biological threats continue to emerge, the partners plan to expand the program footprint and incorporate innovative modalities and offerings, such as monitoring of wastewater from aircraft lavatories. The current contract with Ginkgo Bioworks related to the above partnership contains fixed pricing for which we are entitled to \$6,761 for the sample collection (passenger and aircraft wastewater) and \$570 for the traveler enrollment initiatives, which represents the amount of consideration to which we are entitled in the first year. We recognize revenue over time for both sample collection performance obligations, using the input method based on time elapsed to measure progress towards satisfying each of the performance obligations. We recognize revenue ratably (straight line basis) over the term of the contract (annual increments). We will recognize revenue over time for the traveler enrollment initiative performance obligation based on the amount for which we have the right to invoice. We recorded \$2,617 in revenue during 2022.

### **Treat**

Throughout 2022, our Treat brand opened new locations in Phoenix Sky Harbor (pre-security) and Salt Lake City International Airport. With respect to these locations in Phoenix and Salt Lake City, agreements had already been executed with the airports and the decision was made to convert these locations to Treat.

By the third quarter of 2022, it became clear that the Treat business was underperforming and as a result, we began to retool the offerings within the Treat locations by providing additional retail as part of our retail strategy expansion as well as lay the foundation to bring more spa-like services into the Treat location in an attempt to unify our core offering.

By the fourth quarter of 2022, the decision was made to close the pre-security Treat location at Phoenix Sky Harbor Airport. As of March 31, 2023, the Treat brand operates 2 locations (JFK International Airport and Salt Lake City International Airport). These remaining Treat locations offer a full retail product offering and a suite of wellness and spa services.

### **HyperPointe Acquisition**

In January 2022, we acquired gcg Connect, LLC d/b/a HyperPointe. HyperPointe is a leading digital healthcare and data analytics relationship marketing agency servicing the global healthcare and pharmaceutical industry. HyperPointe has significant experience in patient and healthcare professional marketing and deep technological experience with CXM (customer experience management) and data analytics. Since June 2020, HyperPointe's management team and suite of services and technology have been used to develop and deploy the technological infrastructure needed to scale the growth of our XpresTest business. HyperPointe's experience in this space continues to serve the XpresTest business and it plays a critical role in the expansion of our on-going biosurveillance collaboration with the CDC.

The purchase price in the transaction consisted of \$7,121 in cash and \$906 in common stock, offset by the settlement of intercompany accounts payable of \$770 as well as potential additional earn-out payments of up to \$7,500 over a three-year timeframe based upon future performance; these earn-out payments may be satisfied in cash or common stock or a combination thereof subject to various terms and conditions.

HyperPointe currently operates as a segment within XWELL's corporate structure. Ezra Ernst, who was the chief executive officer of HyperPointe before our acquisition, continues to serve as the chief executive officer of HyperPointe, as well as the chief executive officer of XpresTest, reporting to Scott Milford, XWELL CEO.

## Our Strategy and Outlook

We believe that our company is well positioned to benefit from consumers' growing interest and pent-up demand in travel health and wellness and increasing demand for health and wellness related services and products. Our go-forward plan includes the expansion and integration of products and services across our four brands; the right-sizing of our existing airport portfolio to a leaner and more profitable business; the execution of an 'off-airport' strategy through acquisition to deliver more products and services, which will serve as a catalyst for our future growth; the implementation of an international expansion plan; and ensuring we can scale our growth in a responsible way that drives shareholder value.

Through right-sizing our existing business, optimizing our cost structure and making acquisitions that further leverage the strength of our brand portfolio, XWELL is positioning itself for both financial and operational growth now and in the future.

### Year ended December 31, 2022 compared to the year ended December 31, 2021

#### Revenue

	Year ended December 31,		
	2022	2021	Inc/(Dec)
Total revenue	\$ 55,939	\$ 73,729	\$ (17,790)

During the year ended December 31, 2022, total revenues decreased \$17,790, or 24%. The decrease in revenue was primarily due to reduction in patient service revenue triggered by the rapid decline of the XpresTest segment as countries continued to relax their testing requirements and decreased testing volumes at our XpresCheck locations as we progressed through 2022. We saw an increase in revenue associated with the XpresSpa and Treat locations that opened during and after the third quarter of 2021.

#### Cost of sales

	Year ended December 31,		
	2022	2021	Inc/(Dec)
Cost of sales	\$ 43,891	\$ 41,385	\$ 2,506

We had 33 open XpresSpa locations as of December 31, 2022, and 22 open XpresSpa locations as of December 31, 2021. The largest components in the cost of sales are costs of testing kits and labor costs at the location-level, cost of sales also includes rent and related occupancy costs, which primarily includes rent based on percentage of sales, other product costs directly associated with the procurement of retail inventory, and other operating costs.

#### Depreciation and amortization

	Year ended December 31,		
	2022	2021	Inc/(Dec)
Depreciation and amortization	\$ 5,429	\$ 3,201	\$ 2,228

During the year ended December 31, 2022, depreciation and amortization expense increased \$2,228, or 69.6%, compared to the depreciation and amortization expense recorded during the year ended December 31, 2021. The increase was primarily due to depreciation and amortization related to our newly added Hyperpointe and Treat segments.

**Impairment/disposal of assets**

	Year ended December 31,		
	2022	2021	Inc/(Dec)
Impairment/Loss on disposal of assets	\$ 6,613	\$ 837	\$ 5,776

We completed an assessment of our property and equipment, intangible assets and right of use lease assets for impairment both as of December 31, 2022 and 2021. Based upon the results of the impairment test, we recorded an impairment of property and equipment, intangible assets, and right of use lease assets of approximately \$4,559, \$110, and \$1,110, respectively in the year ended December 31, 2022. We recorded an impairment of property and equipment and right of use lease assets of approximately \$68 and \$747, respectively, in the year ended December 31, 2021. During 2022, the impairment was primarily related to the impairment of leasehold improvements made to our Treat locations and its related operating lease right of use assets where management determined that the locations discounted future cash flows were not sufficient to recover the carrying value of these assets over the remaining lease term. During 2021, the expense was primarily related to the impairment of leasehold improvements made to certain XpresSpa locations and right of use lease assets where as a result of the COVID-19 pandemic, management determined that the location's discounted future cash flow was not enough to support the carrying value of the leasehold improvements and right of use lease assets over the remaining lease term.

During 2022, as countries continued to relax their testing requirements resulting in rapid decline of testing volumes at Company's XpresCheck locations, the Company closed all but one XpresCheck Wellness Centers. These closures primarily triggered the loss of \$834 on disposal of assets.

**General and administrative**

	Year ended December 31,		
	2022	2021	Inc/(Dec)
General and administrative	\$ 31,169	\$ 24,199	\$ 6,970

During the year ended December 31, 2022, general and administrative expenses increased by \$6,970 or 28.8%, primarily due to functional costs associated with the operations of XpresCheck and Treat Wellness Centers, XpresSpa locations, and the newly acquired HyperPointe segment.

**Interest income, net**

	Year ended December 31,		
	2022	2021	Inc/(Dec)
Interest income, net	\$ 384	\$ 43	\$ 341

Interest income increased by \$341 as a result of increased interest rates and elimination of interest expense since the beginning of May 2022.

**Non-operating expense, net**

	Year ended December 31,		
	2022	2021	Inc/(Dec)
Non-operating expense, net	\$ (1,795)	\$ (1,201)	\$ (594)



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The following is a summary of the transactions included in non-operating income (expense), net for the years ended December 31, 2022 and 2021:

	Year ended December 31,	
	2022	2021
Loss on equity investments	\$ (618)	\$ (1,045)
Foreign exchange loss	(664)	(18)
Bank fees and financing charges	(462)	(121)
Other	(51)	(17)
Total	<u>\$ (1,795)</u>	<u>\$ (1,201)</u>

As of December 31, 2022, the equity investment in Route1 had a readily determinable fair value of \$104. We recorded an unrealized loss of \$618 in connection with the remeasurement of the shares of our common stock and warrants of Route 1 obtained in the 2018 sale of Group Mobile to Route 1. Foreign exchange loss primarily pertains to remeasurement of our operating leases in our XpresSpa locations in Turkey.

Non-operating expense will be affected by the adjustments to the fair value of our equity investment, which could fluctuate materially from period to period. Fair value of these instruments depends on a variety of assumptions.

### **Income Taxes**

As of December 31, 2022, our estimated aggregate total NOLs were \$150,926 for U.S. federal purposes, expiring 20 years from the respective tax years to which they relate, and \$75,045 for U.S. federal purposes with an indefinite life due to new regulations in the Tax Act of 2017. The NOL amounts are presented before Internal Revenue Code, Section 382 limitations. The Tax Reform Act of 1986 imposed substantial restrictions on the utilization of NOL and tax credits in the event of an ownership change of a corporation. Thus, our ability to utilize all such NOL and credit carryforwards may be limited. The CARES Act was enacted on March 27, 2020 and provides favorable changes to tax laws for businesses impacted by COVID-19. However, we do not anticipate the income tax law changes will materially benefit us.

We did not have any material unrecognized tax benefits as of December 31, 2022. We do not expect to record any additional material provisions for unrecognized tax benefits within the next year.

### **Liquidity and Capital Resources**

As of December 31, 2022, we had approximately \$19,038 of cash and cash equivalents, \$23,153 in marketable securities, and total current assets of approximately \$47,332. Our total current liabilities balance, which includes accounts payable, deferred revenue, accrued expenses, and operating lease liabilities was approximately \$10,956 as of December 31, 2022. The working capital surplus was \$36,376 as of December 31, 2022, compared to a working capital surplus of \$89,152 as of December 31, 2021.

During 2021, holders of our December 2020 Investor Warrants, December 2020 Placement Agent Warrants and December 2020 Placement Agent Tail Fee Warrants exercised a total of 11,273,529 warrants for common shares. We received gross proceeds of approximately \$19,245. In accordance with the placement agent agreements with H.C. Wainwright & Co., LLC and Palladium, we paid cash fees of \$2,162 and issued 846,588 warrants to H.C. Wainwright & Co., LLC at an exercise price of \$2.125 per share and 325,500 warrants to Palladium at an exercise price of \$1.70 per share.

Also, during 2021, we executed on our share repurchase program, repurchasing and retiring 4,702,072 shares at an average cost of \$1.66 per share, for a total of \$7,825.

During 2022, the Company continued to execute on its share repurchase program, repurchasing and retiring 19,526,706 shares at an average cost of \$1.22 per share, for a total of \$23,789.

Our primary liquidity and capital requirements are for the maintenance of our current XpresSpa and Treat locations and brand, as well as the expansion outside the airports. During the year ended December 31, 2022, we used \$24,188 in operations.

### **Cash flows**

	Year ended December 31,		
	2022	2021	Change
Net cash (used in) provided by operating activities	\$ (24,188)	\$ 14,561	\$ (38,749)
Net cash used in investing activities	\$ (34,843)	\$ (5,156)	\$ (29,687)
Net cash (used in) provided by financing activities	\$ (27,377)	\$ 6,350	\$ (33,727)

### **Operating activities**

During the year ended December 31, 2022, net cash used in operating activities was \$24,188 compared to net cash provided by operating activities during the year ended December 31, 2021 of \$14,561. The decrease in net cash used in operating activities was primarily due to the operations of our new Treat brand and rapid decline of our XpresCheck business.

### **Investing activities**

During the year ended December 31, 2022, net cash used in investing activities totaled \$34,843 compared to net cash used in investing activities during the year ended December 31, 2021 of \$5,156. Cash in 2022 was used primarily to invest our cash in marketable securities of approximately \$23,153, to acquire leasehold improvements for new openings of Treat locations of approximately \$6,464, and the acquisition of our Hyperpointe segment of approximately \$4,853.

### **Financing activities.**

Cash provided by financing activities decreased \$33,727 primarily due to repurchase of common stock and repayment of Paycheck Protection Program loan.

### **Off-Balance Sheet Arrangements**

We have no obligations, assets or liabilities that would be considered off-balance sheet arrangements. We do not participate in transactions that create relationships with unconsolidated entities or financial partnerships, often referred to as variable interest entities, which would have been established for the purpose of facilitating off-balance sheet arrangements.

### **Critical Accounting Estimates**

We believe the following accounting estimates to be the most critical estimates we used in preparing our consolidated financial statements for the year ended December 31, 2022.

### **Variable Interest Entities**

The Company evaluates its ownership, contractual, pecuniary, and other interests in entities to determine if it has any variable interest in a variable interest entity ("VIE"). These evaluations are complex and involve judgment. If the Company determines that an entity in which it holds a contractual or ownership interest is a VIE and that the Company is the primary beneficiary, the Company consolidates such entity in its consolidated financial statements. The primary beneficiary of a VIE is the party that meets both of the following criteria: (i) has the power to make decisions that most significantly affect the economic performance of the VIE; and (ii) has the obligation to absorb losses or the right to receive benefits that in either case could potentially be significant to the VIE. Management performs ongoing reassessments of whether changes in the facts and circumstances regarding the Company's involvement with a VIE will cause the consolidation conclusion to change. Changes in consolidation status are applied prospectively.

### ***Impairment of Long-Lived Assets***

Long-lived assets are tested for impairment at the lowest level at which there are identifiable operating cash flows, which is at the individual airport location for the Treat, XpresSpa and XpresCheck businesses. The Company's long-lived assets consist primarily of leasehold improvements and right to use lease assets for each of its locations (considered the asset group). The Company reviews its long-lived assets for recoverability yearly or sooner if events or changes in circumstances indicate that the carrying value of long-lived assets may not be recoverable. If indicators are present, the Company performs a recoverability test by comparing the sum of the estimated undiscounted future cash flows attributable to the asset group in question to its carrying amount. An impairment loss is recognized if it is determined that the long-lived asset group is not recoverable and is calculated based on the excess of the carrying amount of the long-lived asset group over the long-lived asset groups fair value. The Company estimates the fair value of long-lived assets using the present value income approach. Future cash flow was calculated based on forecasts over the estimated remaining useful life of the asset group, which for each of the Company's locations, is the remaining term of the operating lease. The Company estimates its weighted average cost of capital as the discount rate since it expects that this rate incorporates not only the time value of money but also the expectations regarding future cash flows and an appropriate risk premium.

The estimates used to calculate future cash flows are subjective in nature and involve uncertainties and matters of significant judgments and therefore cannot be determined with precision. Changes in assumptions could significantly affect the estimated fair value of each asset group. The Company will calculate the future cash flow using what it believes to be the most predictable of several scenarios. Typically, the changes in assumptions run under different business scenarios would not result in a material change in the assessment of the potential impairment or the impairment amount of a locations long-lived asset group. But if these estimates or related assumptions were to change materially, the Company may be required to record an impairment charge.

### ***Intangible assets***

Intangible assets include customer relationships, trade names, and technology, which were primarily acquired as part of the acquisition of XpresSpa in December 2016 and Hyperpointe in 2022 and were recorded based on the estimated fair value in purchase price allocation. In addition, intangible assets include software and website development costs that were capitalized as part of the Company's development of a mobile application and website for the treat brand. The Company accounts for these costs in accordance with ASC 350-40, Internal-Use Software. The intangible assets are amortized over their estimated useful lives, which are periodically evaluated for reasonableness.

The Company's intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The fair value is then compared to the carrying value and an impairment charge is recognized by the amount in which the carrying value exceeds the fair value of the asset. In assessing the recoverability of the Company's intangible assets, the Company must make estimates and assumptions regarding future cash flows and other factors to determine the fair value of the respective assets. These estimates and assumptions could have a significant impact on whether an impairment charge is recognized and also the magnitude of any such charge. Fair value estimates are made at a specific point in time, based on relevant information. During the years ended December 31, 2022 and 2021, the Company recognized impairment of \$110 and \$0.

### ***Fair value measurements***

The Company's financial instruments consist principally of cash and cash equivalents, receivables, and equity investments. The fair value of a financial instrument is the amount that would be received in an asset sale or paid to transfer a liability in an orderly transaction between unaffiliated market participants. Assets and liabilities measured at fair value are categorized based on whether the inputs are observable in the market and the degree that the inputs are observable. The categorization of financial instruments within the valuation hierarchy is based on the lowest level of input that is significant to the fair value measurement. The hierarchy is prioritized into three levels (with Level 3 being the lowest) defined as follows:

**Level 1:** Quoted prices in active markets for identical assets or liabilities that the entity has the ability to access.

**Level 2:** Observable inputs other than prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated with observable market data.

**Level 3:** Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets and liabilities. This includes certain pricing models, discounted cash flow methodologies, and similar techniques that use significant unobservable inputs.

There have been no changes in Level 1, Level 2, and Level 3 and no changes in valuation techniques for these assets or liabilities for the years ended December 31, 2022 and 2021.

Investments in public companies are carried at fair value based on quoted market prices. Investments in equity securities of nonpublic entities without readily determinable fair values are carried at cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions for the identical or a similar investment of the same issuer. The Company reviews its equity securities without readily determinable fair values on a regular basis to determine if the investment is impaired. For purposes of this assessment, the Company considers the investee's cash position, earnings and revenue outlook, liquidity and management ownership, among other factors, in its review. If management's assessment indicates that an impairment exists, the Company estimates the fair value of the equity investment and recognizes in current earnings an impairment loss that is equal to the difference between the fair value of the equity investment and its carrying amount. Equity investments are recorded in other assets on the accompanying consolidated balance sheets.

***Recently adopted accounting pronouncements***

Please refer Note 2 to Consolidated Financial Statements in Item 8 of this Annual Report on Form 10-K.

***Recently issued accounting pronouncements***

Please refer Note 2 to Consolidated Financial Statements in Item 8 of this Annual Report on Form 10-K.

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Not required as we are a smaller reporting company.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

Our consolidated financial statements required by this Item are set forth in Item 15 beginning on page F-1 of this Annual Report on Form 10-K.

**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**

We maintain disclosure controls and procedures (as defined in Rule 13a-15(e) promulgated under the Exchange Act that are designed to ensure that information required to be disclosed in Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer (Principal Executive Officer) and Interim Chief Financial Officer (Principal Financial and Accounting Officer), as appropriate, to allow timely decisions regarding required disclosure.

As of December 31, 2022, the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. This type of evaluation is performed on a quarterly basis so that conclusions of management, including our Chief Executive Officer and the Interim Chief Financial Officer, concerning the effectiveness of the disclosure controls can be reported in our periodic reports on Form 10-Q and Form 10-K. The overall goals of these evaluation activities are to monitor our disclosure controls and to modify them as necessary. We intend to maintain the disclosure controls as dynamic systems that we adjust as circumstances merit. Based on the foregoing, our Chief Executive Officer and the Interim Chief Financial Officer concluded that our disclosure controls and procedures were not effective as of December 31, 2022, due to the material weaknesses described below.

### **Report of Management on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) promulgated under the Exchange Act as a process designed by, or under the supervision of, our principal executive officer and principal financial and accounting officer and effected by our Board of Directors, management, and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on the financial statements.

Because of our inherent limitations, our internal control over financial reporting may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2022. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control – Integrated Framework (2013 Framework). Based on this evaluation, management has concluded controls were not effective as of December 31, 2022, due to identified material weaknesses in internal control over financial reporting. A material weakness is a control deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. The material weaknesses identified are disclosed below:

- 1) The Company did not properly design, implement, and consistently operate effective controls over the completeness and accuracy of its accounting for leases under ASC 842.
- 2) The Company did not properly design or maintain effective entity level monitoring controls over the financial close and reporting process.
- 3) The Company's controls surrounding the review of financial statements and key reconciliations were not properly designed and did not operate at a level of precision that would prevent or detect a material misstatement.

- 4) The Company did not design or maintain effective controls over its service organizations and IT vendors. More specifically, the Company did not have controls in place to review the applicable complementary user entity controls described in the service organizations' reports for their potential impact on the Company's financial reporting.
- 5) The Company did not design, implement, and consistently operate effective controls over the revenue process. The Company's controls surrounding the revenue reports and reconciliations were not designed and did not operate at a level of precision that would prevent or detect a material misstatement.

*Remediation Plan for Material Weakness in Internal Control over Financial Reporting*

Management is committed to the remediation of the material weaknesses described above, as well as the continued improvement of the Company's internal control over financial reporting. Management has implemented, and continues to implement, the actions described below to remediate the underlying causes of the control deficiencies that gave rise to the material weaknesses. Until the remediation efforts described below, including any additional measures management identifies as necessary, are completed, the material weaknesses described above will continue to exist. We cannot provide any assurance that the below remediation efforts will be successful or that our internal control over financial reporting will be effective as a result of these efforts. Management has commenced the following actions and will continue to assess additional opportunities for remediation on an ongoing basis:

- 1) The Company has turned on the multi-currency features related to its cloud based accounting systems.
- 2) The Company has engaged outside service providers to assist with the valuation, accounting, and recording of key reporting areas such as leases, revenue recognition and stock compensation expense.
- 3) The Company has contracted an independent consulting firm to assist with the preparation of the Financial Statements and U.S. GAAP accounting research.
- 4) The Company has engaged outside service providers to review the applicable complementary user entity controls described in the service organizations' reports for their potential impact on the Company's financial reporting.

**Changes in Internal Control over Financial Reporting**

Based on our evaluation, management concluded that our internal control over financial reporting was not effective as of December 31, 2022 due to a material weaknesses in our internal control over financial reporting

Other than as set forth in the foregoing paragraph, there have been no changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION**

[Not Applicable]

**ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS**

Not Applicable

**PART III**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

Information called for by this Item will be included in an amendment to this Annual Report on Form 10-K to be filed with the SEC and is incorporated by reference in this Item 10.

**ITEM 11. EXECUTIVE COMPENSATION**

Information called for by this Item will be included in an amendment to this Annual Report on Form 10-K to be filed with the SEC and is incorporated by reference in this Item 11.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

Information called for by this Item will be included in an amendment to this Annual Report on Form 10-K to be filed with the SEC and is incorporated by reference in this Item 12.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

Information called for by this Item will be included in an amendment to this Annual Report on Form 10-K to be filed with the SEC and is incorporated by reference in this Item 13.

**ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

Information called for by this Item will be included in an amendment to this Annual Report on Form 10-K to be filed with the SEC and is incorporated by reference in this Item 14.

## PART IV

### ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(1) *Consolidated Financial Statements.* For the financial statements included in this Annual Report on Form 10-K, see “Index to the Financial Statements” on page F-1.

(a)(2) *Consolidated Financial Statement Schedules.* All schedules are omitted because they are not applicable or because the required information is included in the financial statements or notes thereto.

(a)(3) *Exhibits.* The following exhibits are filed as part of, or incorporated by reference into, this Annual Report on Form 10-K.

#### Exhibits Index

Exhibit No.	Description
2.1	<a href="#">Agreement and Plan of Merger by and among FORM Holdings Corp., FHXMS, LLC, XpresSpa Holdings, LLC, the unitholders of XpresSpa who are parties thereto and Mistral XH Representative, LLC, as representative of the unitholders, dated as of August 8, 2016 (incorporated by reference to Exhibit 2.1 to our Current Report on Form 8-K filed with the SEC on August 8, 2016)</a>
2.2	<a href="#">Amendment No. 1 to Agreement and Plan of Merger by and among FORM Holdings Corp., FHXMS, LLC, XpresSpa Holdings, LLC and Mistral XH Representative, LLC, as representative of the unitholders, dated September 8, 2016 (incorporated by reference to Exhibit 2.1 to our Current Report on Form 8-K filed with the SEC on September 9, 2016)</a>
2.3	<a href="#">Amendment No. 2 to Agreement and Plan of Merger by and among FORM Holdings Corp., FHXMS, LLC, XpresSpa Holdings, LLC and Mistral XH Representative, LLC, as representative of the unitholders, dated October 25, 2016 (incorporated by reference to Exhibit 2.1 to our Current Report on Form 8-K filed with the SEC on October 25, 2016)</a>
3.1	<a href="#">Certificate of Elimination of Series A Convertible Preferred Stock, Series D Convertible Preferred Stock, Series E Convertible Preferred Stock and Series F Convertible Preferred Stock, as filed with Secretary of State of Delaware, effective on October 24, 2022 (incorporated by reference to Exhibit 3.1 to our Current Report on Form 8-K filed with the SEC on October 24, 2022).</a>
3.2	<a href="#">Amended and Restated Certificate of Incorporation of XWELL, Inc., effective on October 25, 2022 (incorporated by reference to Exhibit 3.2 to our Current Report on Form 8-K filed with the SEC on October 24, 2022).</a>
3.3	<a href="#">Fourth Amended and Restated Bylaws of the Company, effective as of October 25, 2022 (incorporated by reference to Exhibit 3.3 to our Current Report on Form 8-K filed with the SEC on October 24, 2022).</a>
4.1	<a href="#">Section 382 Rights Agreement, dated as of March 18, 2016, between Vringo, Inc. and American Stock Transfer &amp; Trust Company, LLC, which includes the Form of Certificate of Designation of Series C Junior Participating Preferred Stock as Exhibit A, the Form of Right Certificate as Exhibit B and the Summary of Rights to Purchase Preferred Stock as Exhibit C (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on March 21, 2016)</a>



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<b>Exhibit No.</b>	<b>Description</b>
4.2	<a href="#">Amendment to Section 382 Rights Agreement, dated March 18, 2019, between the Company and American Stock Transfer &amp; Trust Company, LLC (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on March 22, 2019)</a>
4.3	<a href="#">Form of Warrant to Purchase Shares of Common Stock of FORM Holdings Corp. (incorporated by reference from Annex F to our Registration Statement on Form S-4 filed with the SEC on October 26, 2016)</a>
4.4	<a href="#">Form of Secured Convertible Note (incorporated by reference from Exhibit 4.1 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018)</a>
4.5	<a href="#">Amendment to Secured Convertible Note (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on June 27, 2019)</a>
4.6	<a href="#">Second Amended and Restated Convertible Promissory Note, dated as of July 8, 2019 (incorporated by reference from Exhibit 4.3 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)</a>
4.7	<a href="#">Third Amended and Restated Convertible Promissory Note, dated as of January 9, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on January 14, 2020)</a>
4.8	<a href="#">Fourth Amended and Restated Convertible Promissory Note, dated as of March 6, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on March 6, 2020)</a>
4.9	<a href="#">Unsecured Convertible Note due May 31, 2022 (incorporated by reference to Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)</a>
4.10	<a href="#">Warrant to Purchase Common Stock in favor of Calm.com, Inc., dated as of July 8, 2019 (incorporated by reference to Exhibit 4.2 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)</a>
4.11	<a href="#">Form of Pre-Funded Warrant to Purchase Common Stock, dated March 19, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on March 19, 2020)</a>
4.12	<a href="#">Form of Pre-Funded Warrant to Purchase Common Stock, dated March 25, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on March 25, 2020)</a>
4.13	<a href="#">Form of Pre-Funded Warrant to Purchase Common Stock, dated March 27, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on March 27, 2020)</a>
4.14	<a href="#">Form of Pre-Funded Warrant to Purchase Common Stock, dated April 6, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on April 7, 2020)</a>
4.15	<a href="#">Description of the Registrant's Securities (incorporated by reference from Exhibit 4.22 to our Annual Report on Form 10-K filed with the SEC on April 20, 2020)</a>
4.16	<a href="#">Amended and Restated Calm Note, dated as of April 17, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on April 17, 2020).</a>
4.17	<a href="#">Amended and Restated Calm Note, dated as of April 22, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on April 24, 2020)</a>
4.18	<a href="#">Form of Warrant to Purchase Common Stock, dated June 17, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on June 17, 2020)</a>

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<b>Exhibit No.</b>	<b>Description</b>
4.19	<a href="#">Form of Placement Agent Warrant to Purchase Common Stock, dated June 17, 2020 (incorporated by reference from Exhibit 4.2 to our Current Report on Form 8-K filed with the SEC on June 17, 2020)</a>
4.20	<a href="#">Form of Warrant to Purchase Common Stock, dated August 25, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on August 28, 2020)</a>
4.21	<a href="#">Form of Pre-Funded Warrant to Purchase Common Stock, dated August 25, 2020 (incorporated by reference from Exhibit 4.2 to our Current Report on Form 8-K filed with the SEC on August 28, 2020)</a>
4.22	<a href="#">Form of Placement Agent Warrant to Purchase Common Stock, dated August 25, 2020 (incorporated by reference from Exhibit 4.3 to our Current Report on Form 8-K filed with the SEC on August 28, 2020)</a>
4.23	<a href="#">Form of Warrant to Purchase Common Stock, dated December 17, 2020 (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K filed with the SEC on December 21, 2020)</a>
4.24	<a href="#">Form of Placement Agent Warrant to Purchase Common Stock, dated December 17, 2020 (incorporated by reference from Exhibit 4.2 to our Current Report on Form 8-K filed with the SEC on December 21, 2020)</a>
10.1†	<a href="#">Vringo, Inc. 2012 Employee, Director and Consultant Equity Incentive Plan, as amended (incorporated by reference from Appendix C of our Proxy Statement on Schedule 14A (DEF 14A) filed with the SEC on September 25, 2015)</a>
10.2†	<a href="#">Form of Management Option Agreement (incorporated by reference from our Registration Statement on Form S-1 filed on March 29, 2010)</a>
10.3†	<a href="#">Form of Stock Option Agreement (incorporated by reference from our Registration Statement on Form S-8 filed on July 26, 2012)</a>
10.4†	<a href="#">Form of Restricted Stock Unit Agreement (incorporated by reference from our Registration Statement on Form S-8 filed on July 26, 2012)</a>
10.5	<a href="#">Form of Indemnification Agreement, dated January 31, 2013, by and between Vringo, Inc. and each of its Directors and Executive Officer (incorporated by reference from our Annual Report on Form 10-K for the period ended December 31, 2012 filed on March 21, 2013)</a>
10.6†	<a href="#">FORM Holdings Corp. 2012 Employee, Director and Consultant Equity Incentive Plan, as amended (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on November 28, 2016)</a>
10.19	<a href="#">Form of Registration Rights Agreement, dated May 15, 2018, by and among the Company and the Investors (incorporated by reference from Exhibit 10.9 to our Quarterly Report on Form 10-Q filed with the SEC on May 15, 2018)</a>
10.20	<a href="#">Amendment to Securities Purchase Agreement and Class A Warrants and Class B Warrants, dated as of July 8, 2019, by and between the Company and the purchasers party thereto (incorporated by reference from Exhibit 10.5 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)</a>
10.21	<a href="#">Product Sale and Marketing Agreement, dated November 12, 2018, by and between the Company and Calm.com, Inc. (incorporated by reference to Exhibit 10.28 to our Annual Report on Form 10-K filed with the SEC on April 1, 2019)</a>

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<b>Exhibit No.</b>	<b>Description</b>
10.22	<a href="#">Amendment to Amended and Restated Product Sale and Marketing, dated as of October 30, 2019, by and between the Company and Calm.com, Inc. (incorporated by reference from Exhibit 10.8 to our Quarterly Report on Form 10-Q filed with the SEC on November 14, 2019)</a>
10.25	<a href="#">Securities Purchase Agreement, dated as of July 8, 2019, by and between the Company and Calm.com, Inc. (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)</a>
10.26	<a href="#">Registration Rights Agreement, dated as of July 8, 2019, by and between the Company and Calm.com, Inc. (incorporated by reference from Exhibit 10.2 to our Current Report on Form 8-K filed with the SEC on July 8, 2019)</a>
10.27	<a href="#">Amendment No. 3 to Agreement and Plan of Merger, dated as of October 1, 2019, by and between the Company, XpresSpa Holdings, LLC, and Mistral XH Representative, LLC, as representative of the unitholders of the Company (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K filed with the SEC on October 3, 2019)</a>
10.29	<a href="#">Securities Purchase Agreement, dated as of March 19, 2020, by and between the Company and the purchasers party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on March 19, 2020)</a>
10.30	<a href="#">Form of Exchange Agreement, dated as of March 19, 2020 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the SEC on March 19, 2020)</a>
10.31	<a href="#">Voting Agreement, dated as of March 19, 2020, by and between the Company and Mistral Spa Holdings LLC (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the SEC on March 19, 2020)</a>
10.32	<a href="#">Securities Purchase Agreement, dated as of March 25, 2020, by and between the Company and the purchasers party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on March 25, 2020)</a>
10.33	<a href="#">Securities Purchase Agreement, dated as of March 27, 2020, by and between the Company and the purchasers party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on March 27, 2020)</a>
10.34	<a href="#">Securities Purchase Agreement, dated as of April 6, 2020, by and between the Company and the purchasers party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on April 7, 2020)</a>
10.35†	<a href="#">Stock Option Grant under the XpresSpa Group Inc. 2020 Equity Incentive Plan (incorporated by reference to Exhibit 10.35 to the Company's Annual Report on Form 10-K filed with the SEC on March 31, 2021)</a>
10.36†	<a href="#">Notice of Restricted Stock Unit Award under the XpresSpa Group Inc. 2020 Equity Incentive Plan (incorporated by reference to Exhibit 10.36 to the Company's Annual Report on Form 10-K filed with the SEC on March 31, 2021)</a>
10.37	<a href="#">Form of Exchange Agreement, dated June 4, 2020 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on June 4, 2020)</a>
10.38	<a href="#">Form of Securities Purchase Agreement, dated as of June 17, 2020 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on June 17, 2020)</a>

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<b>Exhibit No.</b>	<b>Description</b>
10.39	<a href="#">Form of Securities Purchase Agreement, dated as of August 25, 2020 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on August 28, 2020).</a>
10.40†	<a href="#">XpresTest, Inc. 2020 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on September 28, 2020).</a>
10.41†	<a href="#">XpresSpa Group, Inc. 2020 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on October 30, 2020).</a>
10.42	<a href="#">Form of Securities Purchase Agreement, dated as of December 17, 2020 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the SEC on December 21, 2020).</a>
10.43†	<a href="#">Form of XpresTest, Inc. Restricted Stock Award Agreement (incorporated by reference to Exhibit 10.45 to the Company's Amendment No. 1 to Annual Report on Form 10-K/A filed with the SEC on April 30, 2021).</a>
10.44†*	<a href="#">Executive Employment Agreement dated January 9, 2022, between the Company and Ezra T. Ernst (incorporated by reference from Exhibit 10.2 to our Quarterly Report on Form 10-Q filed with the SEC on November 14, 2022).</a>
10.45†*	<a href="#">Stock Option Agreement between XpresSpa Group, Inc. and Ezra Ernst dated January 14, 2022 (incorporated by reference from Exhibit 10.1 to our Registration Statement on Form S-8 filed on March 31, 2022).</a>
10.46†*	<a href="#">Executive Employment Agreement dated March 28, 2022, between the Company and Scott Milford. (incorporated by reference from Exhibit 10.48 to our Annual Report on Form 10-K filed with the SEC on March 31, 2022).</a>
10.47†*	<a href="#">XWELL, Inc. (formerly known as XpresSpa Group, Inc.) 2020 Equity Incentive Plan, as amended October 4, 2022 (incorporated by reference to Exhibit 10.1 to our Registration Statement on Form S-8 filed with the SEC on October 25, 2022).</a>
23.1*	<a href="#">Consent of Marcum LLP, independent registered public accounting firm</a>
23.2*	<a href="#">Consent of Friedman LLP, independent registered public accounting firm</a>
31.1*	<a href="#">Certification of Principal Executive Officer pursuant to Exchange Act, Rules 13a – 14(a) and 15d – 14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
31.2*	<a href="#">Certification of Principal Financial Officer pursuant to Exchange Act, Rules 13a – 14(a) and 15d – 14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
32*	<a href="#">Certifications of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
101.INS	Inline XBRL Instance Document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document

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<b>Exhibit No.</b>	<b>Description</b>
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL documents)

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\* Filed herewith.

\*\* Furnished herewith.

† Management contract or compensatory plan or arrangement.

†† Certain portions have been omitted pursuant to a confidential treatment request. Omitted information has been filed separately with the SEC.

**ITEM 16. FORM 10-K SUMMARY**

None.

**Exhibit XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries  
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

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## **Report of Independent Registered Public Accounting Firm**

To the Shareholders and Board of Directors of  
XWELL, Inc.

### **Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheet of XWELL, Inc. (formerly known as XpresSpa Group, Inc.) (the "Company") and Subsidiaries as of December 31, 2022, the related consolidated statements of operations, and comprehensive income (loss), stockholders' equity (deficit), and cash flows for the year ended December 31, 2022, 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, 2022, and the results of its operations and its cash flows for the year ended December 31, 2022, 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 audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit 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 audit 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 audit 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 audit 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 audit provides a reasonable basis for our opinion.

### **Critical Audit Matters**

Critical audit matters 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 two critical audit matters. The critical audit matters communicated below 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. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

*Valuation of Long-Lived Assets*

As described in Note 2 to the financial statements, the Company evaluates long-lived assets for recoverability if events or changes in circumstances indicate that the carrying value of long-lived assets may not be recoverable. If indicators are present, the Company performs a recoverability test by comparing the sum of the estimated undiscounted future cash flows attributable to the asset group in question to its carrying amount. An impairment loss is recognized if it is determined that the long-lived asset group is not recoverable and is calculated based on the excess of the carrying amount of the long-lived asset group over the long-lived asset group fair value. The impairment tests require management to make assumptions when estimating the fair value of the asset groups, including financial projections.

We identified the valuation of long-lived assets as a critical audit matter because of certain significant assumptions management makes in determining the fair value of the asset groups, including projections. The significant judgments made by management resulted in a high degree of auditor judgment and an increased audit effort in performing procedures.

Our audit procedures related to the Company's valuation of long-lived assets included the following, among others, (i) obtaining an understanding of management's process for determining fair value estimates; (ii) evaluating the reasonableness of the significant assumptions used by management related to financial performance and discount rates. Evaluating management's assumptions related to financial performance involved evaluating whether the assumptions were reasonable considering (i) current and historical trends of the underlying assets; and (ii) engaging in discussions with management to evaluate the Company's plans to develop an asset or dispose of an asset before the end of its estimated useful life. Professionals with specialized skill and knowledge were used to assist in evaluating the reasonableness of the significant assumptions related to the discount rate.

*Valuation of Goodwill*

As described in Note 2 to the financial statements, goodwill is not amortized and is reviewed for impairment annually, or more frequently, if facts and circumstances indicate that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, including goodwill. If it is more likely than not that the fair value of a reporting unit is less than its carrying amount, the Company performs a quantitative test to identify and measure the amount of goodwill impairment loss. The Company compares the fair value of the reporting unit with its carrying amount. If the carrying amount exceeds fair value, goodwill of the reporting unit is considered impaired, and the excess is recognized as goodwill impairment loss.

We identified the assessment of goodwill impairment as a critical audit matter because of certain significant assumptions management makes in determining the fair value of its reporting units. The significant judgments made by management resulted in a high degree of auditor judgment and an increased audit effort in performing procedures.

Our audit procedures related to the Company's valuation of goodwill included the following, among others, (i) obtain an understanding of management's process for estimating the fair value of the reporting units; (ii) evaluating the appropriateness of the valuation model; (iii) testing the reasonableness of significant assumptions, including income projections and discount rates. Professionals with specialized skill and knowledge were used to assist in evaluating the reasonableness of certain significant assumptions, including the discount rates.

/s/ Marcum LLP

Marcum LLP

We have served as the Company's auditor since 2020 (such date takes into account the acquisition of certain assets of Friedman LLP by Marcum LLP effective September 1, 2022)

East Hanover, New Jersey

April 17, 2023



## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders  
XWELL, Inc.

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheet of XWELL, Inc. (formerly known as XpresSpa Group, Inc.) (the "Company") and Subsidiaries as of December 31, 2021, and the related consolidated statements of operations and comprehensive income (loss), changes in stockholders' equity and cash flows for the year ended December 31, 2021, 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, 2021, and the results of its operations and its cash flows for each of the year ended December 31, 2021, 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 audit. 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 audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit 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 audit 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 audit 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 audit 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 audit provides a reasonable basis for our opinion.

/s/ Friedman LLP

We have served as the Company's auditor from 2020 to 2022

East Hanover, New Jersey  
March 31, 2022

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands, except share and per share data)

	December 31, 2022	December 31, 2021
<b>Current assets</b>		
Cash and cash equivalents	\$ 19,038	\$ 105,506
Marketable Securities	23,153	-
Accounts receivable	2,858	615
Inventory	1,161	1,763
Other current assets	1,122	1,095
<b>Total current assets</b>	<b>47,332</b>	<b>108,979</b>
Restricted cash	751	751
Property and equipment, net	3,666	6,658
Intangible assets, net	4,008	3,732
Operating lease right of use assets, net	8,276	4,336
Goodwill	4,024	-
Other assets	2,369	2,810
<b>Total assets</b>	<b>\$ 70,426</b>	<b>\$ 127,266</b>
<b>Current liabilities</b>		
Accounts payable	\$ 2,312	\$ 5,535
Accrued expenses and other current liabilities	5,719	7,423
Current portion of operating lease liabilities	2,586	2,736
Deferred revenue	339	549
Current portion of promissory note, unsecured	-	3,584
<b>Total current liabilities</b>	<b>10,956</b>	<b>19,827</b>
<b>Long-term liabilities</b>		
Operating lease liabilities	11,521	7,504
<b>Total liabilities</b>	<b>22,477</b>	<b>27,331</b>
<b>Commitments and contingencies (see Note 19)</b>		
<b>Equity</b>		
Common Stock, \$0.01 par value per share, 150,000,000 shares authorized; 83,232,262 and 101,269,349 shares issued and outstanding as of December 31, 2022 and December 31, 2021, respectively	832	1,013
Additional paid-in capital	467,740	487,306
Accumulated deficit	(428,112)	(395,275)
Accumulated other comprehensive loss	(534)	(312)
<b>Total equity attributable to XWELL, Inc.</b>	<b>39,926</b>	<b>92,732</b>
Noncontrolling interests	8,023	7,203
Total equity	47,949	99,935
<b>Total liabilities and equity</b>	<b>\$ 70,426</b>	<b>\$ 127,266</b>

The accompanying notes form an integral part of these consolidated financial statements

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)**  
(In thousands, except share and per share data)

	Year ended December 31,	
	2022	2021
<b>Revenue, net</b>		
Managed services fees	\$ -	\$ 16,843
Patient services revenue	32,776	50,689
Services	18,883	5,420
Products	1,930	763
Hyperpointe Services	2,344	-
Other	6	14
<b>Total revenue, net</b>	<u>55,939</u>	<u>73,729</u>
<b>Cost of sales</b>		
Labor	21,437	13,421
Occupancy	4,138	2,505
Products and other operating costs	18,316	25,459
<b>Total cost of sales</b>	<u>43,891</u>	<u>41,385</u>
<b>Gross Profit</b>	12,048	32,344
Depreciation and amortization	5,429	3,201
Impairment of long-lived assets	4,669	68
Loss on disposal of assets, net	834	22
Impairment of operating lease right-of-use assets	1,110	747
General and administrative	31,169	24,199
<b>Total operating expenses</b>	<u>43,211</u>	<u>28,237</u>
<b>Operating (loss) income</b>	(31,163)	4,107
Interest income, net	384	43
Foreign exchange loss	(664)	(18)
Other non-operating expense, net	(1,131)	(1,183)
<b>(Loss) income before income taxes</b>	<u>(32,574)</u>	<u>2,949</u>
Income tax expense	(55)	(56)
<b>Net (loss) income</b>	<u>(32,629)</u>	<u>2,893</u>
Net (loss) income attributable to noncontrolling interests	(208)	456
<b>Net (loss) income attributable to XWELL, Inc.</b>	<u>\$ (32,837)</u>	<u>\$ 3,349</u>
<b>Net (loss) income</b>	\$ (32,629)	\$ 2,893
Other comprehensive loss from operations	(222)	(92)
<b>Comprehensive (loss) income</b>	<u>\$ (32,851)</u>	<u>\$ 2,801</u>
<b>(Loss) income per share</b>		
<b>Basic and diluted (loss) income per share</b>	<u>\$ (0.35)</u>	<u>\$ 0.03</u>
<b>Weighted-average number of shares outstanding during the period</b>		
Basic	<u>93,655,331</u>	<u>104,306,173</u>
Diluted	<u>93,655,331</u>	<u>105,076,758</u>

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

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY(DEFICIT)**  
(In thousands, except share data)

	Common stock		Treasury stock		Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Total Company equity	Non-controlling interests	Total equity
	Shares	Amount	Shares	Amount						
<b>January 1, 2021</b>	94,058,853	\$ 941	—	—	\$ 475,709	\$ (398,624)	\$ (220)	\$ 77,806	\$ 2,565	\$ 80,371
Warrant exercises, net of costs	11,273,529	113	—	—	16,972	—	—	17,085	—	17,085
Issuance of Common Stock for services	232,637	2	—	—	377	—	—	379	—	379
Issuance of restricted stock	398,068	4	—	—	(4)	—	—	—	—	—
Stock-based compensation	—	—	—	—	2,017	—	—	2,017	839	2,856
Net income for the period	—	—	—	—	—	3,349	—	3,349	(456)	2,893
Foreign currency translation	—	—	—	—	—	—	(92)	(92)	—	(92)
Contributions from noncontrolling interests	—	—	—	—	—	—	—	—	818	818
Redemptions of certain noncontrolling interests	—	—	—	—	—	—	—	—	(502)	(502)
Consolidation of Variable Interest Entities	—	—	—	—	—	—	—	—	5,109	5,109
Repurchase and retirement of common stock	(4,702,072)	(47)	—	—	(7,778)	—	—	(7,825)	—	(7,825)
Distributions to noncontrolling interests	—	—	—	—	—	—	—	—	(1,170)	(1,170)
Stock option exercises	8,334	—	—	—	13	—	—	13	—	13
<b>December 31, 2021</b>	<u>101,269,349</u>	<u>\$ 1,013</u>	<u>—</u>	<u>\$ —</u>	<u>\$ 487,306</u>	<u>\$ (395,275)</u>	<u>\$ (312)</u>	<u>\$ 92,732</u>	<u>\$ 7,203</u>	<u>\$ 99,935</u>

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

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)**  
(In thousands, except share data)

	Common stock		Treasury stock		Additional paid-in capital	Accumulated deficit	Accumulated other comprehensive loss	Total Company equity	Non-controlling interests	Total equity
	Shares	Amount	Shares	Amount						
<b>January 1, 2022</b>	101,269,349	\$ 1,013	—	\$ —	\$ 487,306	\$ (395,275)	\$ (312)	\$ 92,732	\$ 7,203	\$ 99,935
Issuance of Common Stock for acquisition	552,487	5	—	—	901	—	—	906	—	906
Vesting of restricted stock units	937,132	9	—	—	(9)	—	—	—	—	—
Value of Shares Withheld to fund payroll taxes	—	—	—	—	(73)	—	—	(73)	—	(73)
Stock-based compensation	—	—	—	—	3,106	—	—	3,106	664	3,770
Net loss for the period	—	—	—	—	—	(32,837)	—	(32,837)	208	(32,629)
Repurchase and retirement of common stock	(19,526,706)	(195)	—	—	(23,594)	—	—	(23,789)	—	(23,789)
Foreign currency translation	—	—	—	—	—	—	(222)	(222)	(121)	(343)
Distributions to noncontrolling interests	—	—	—	—	—	—	—	—	(956)	(956)
Contributions from noncontrolling interests	—	—	—	—	—	—	—	—	1,025	1,025
Grant of stock options for services	—	—	—	—	103	—	—	103	—	103
<b>December 31, 2022</b>	<u>83,232,262</u>	<u>\$ 832</u>	<u>—</u>	<u>—</u>	<u>\$ 467,740</u>	<u>\$ (428,112)</u>	<u>\$ (534)</u>	<u>\$ 39,926</u>	<u>\$ 8,023</u>	<u>\$ 47,949</u>

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

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

	Year ended December 31,	
	2022	2021
<b>Cash flows from operating activities</b>		
Net (loss) income	\$ (32,629)	\$ 2,893
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	5,429	3,201
Impairment of fixed assets	4,559	68
Impairment of intangible assets	110	—
Impairment of operating lease right-of-use assets	1,110	747
Loss on disposal of assets, net	834	22
Amortization of operating lease right of use asset	1,844	1,719
Issuance of shares of Common Stock for services	103	379
Stock-based compensation	3,770	2,856
Loss on equity investment	618	1,046
<b>Changes in assets and liabilities:</b>		
Decrease (increase) in inventory	592	(1,106)
Increase in accounts receivable	(1,835)	(1,124)
Decrease in deferred revenue	(933)	(365)
Other assets, current and non-current	(457)	(1,251)
Other liabilities, current and non-current	(4,056)	(1,211)
(Decrease) increase in accounts payable	(3,247)	6,687
<b>Net cash (used in) provided by operating activities</b>	<b>(24,188)</b>	<b>14,561</b>
<b>Cash flows from investing activities</b>		
Acquisition of property and equipment	(6,464)	(4,282)
Investment in marketable securities	(23,153)	—
Cash acquired on consolidation of certain Variable Interest Entities	—	2,434
Acquisition of HyperPointe net of cash assumed	(4,853)	—
Acquisition of software	(373)	(3,308)
<b>Net cash used in investing activities</b>	<b>(34,843)</b>	<b>(5,156)</b>
<b>Cash flows from financing activities</b>		
Proceeds from direct offerings of Common Stock and warrants exercises, net of costs	—	17,085
Redemption of non-controlling interests	—	(502)
Repurchase of Common Stock	(23,789)	(7,825)
Contributions from noncontrolling interests	1,025	818
Proceeds from stock option exercises	—	13
Payments for shares withheld on vesting	(73)	—
Repayment of Paycheck Protection Program	(3,584)	(2,069)
Distributions to noncontrolling interests	(956)	(1,170)
<b>Net cash (used in) provided by financing activities</b>	<b>(27,377)</b>	<b>6,350</b>
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(60)	0
(Decrease)/ Increase in cash, cash equivalents and restricted cash	(86,468)	15,755
Cash, cash equivalents, and restricted cash at beginning of the period	106,257	90,502
Cash, cash equivalents, and restricted cash at end of the period	<b>\$ 19,789</b>	<b>\$ 106,257</b>
<b>Cash paid for</b>		
Interest	\$ 10	\$ 11
Income taxes	55	—
<b>Non-cash investing and financing transactions</b>		
Capital expenditures included in Accounts payable, accrued expenses and other current liabilities	\$ 544	\$ 1,081
Issuance of Common Stock on acquisition of gcg Connect, LLC, d/b/a HyperPointe	\$ 906	\$ —

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

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(In thousands, except for share and per share data)**

**Note 1. General**

**Overview**

On October 25, 2022, the Company changed its name to XWELL, Inc. (“XWELL” or the “Company”) from XpresSpa Group, Inc. The Company’s common stock, par value \$0.01 per share, which had previously been listed under the trading symbol “XSPA” on the Nasdaq Capital Market, now trades under the trading symbol “XWEL” since the opening of the trading market on October 25, 2022. In pursuance, the Company amended and restated its certificate of incorporation filed with the Delaware Secretary of State on October 24, 2022 (the “Amended and Restated Certificate”). Rebranding to XWELL aligned the Company’s corporate strategy to build a pure-play health and wellness services company, both in the airport and off airport marketplaces.

In addition, prior to filing the Amended and Restated Certificate, the Company filed a Certificate of Elimination (the “Certificate of Elimination”) with respect to its Series A Convertible Preferred Stock, par value \$0.01 per share, Series D Convertible Preferred Stock, par value \$0.01 per share, Series E Convertible Preferred Stock, par value \$0.01 per share, and Series F Convertible Preferred Stock, par value \$0.01 per share (collectively, the “Eliminated Preferred Stock”) with the Delaware Secretary of State, becoming effective as of at 11:59 p.m., Eastern Time on October 24, 2022.

The Certificate of Elimination (i) eliminated the previous designation of 6,968 shares of Series A Convertible Preferred Stock, none of which were outstanding at the time of filing, (ii) eliminated the previous designation of 500,000 shares of Series D Convertible Preferred Stock, none of which were outstanding at the time of filing, (iii) eliminated the previous designation of 2,397,060 shares of Series E Convertible Preferred Stock, none of which were outstanding at the time of filing, (iv) eliminated the previous designation of 9,000 shares of Series F Convertible Preferred Stock, none of which were outstanding at the time of filing, (v) caused such shares of Eliminated Preferred Stock to resume the status of authorized but unissued shares of preferred stock of the Company and (vi) eliminated all reference to the Eliminated Preferred Stock from the Company’s Certificate of Incorporation filed with the Secretary of State of the State of Delaware and effective prior to the effective time of the Amended and Restated Certificate.

XWELL is a global travel health and wellness services holding company. XWELL currently has four reportable operating segments: XpresSpa<sup>®</sup>, XpresTest, Treat<sup>™</sup>, and HyperPointe which was acquired in January 2022.

XWELL’s subsidiary, XpresSpa Holdings, LLC (“XpresSpa”) has been a global airport retailer of spa services through its XpresSpa spa locations, offering travelers premium spa services, including massage, nail and skin care, as well as spa and travel products. Most of XpresSpa spa locations were closed between March 2020 and September 2021, largely due to the airport traffic remaining at insufficient levels to support operations at a unit level.

During the period between March 2020 and September 2021, when the Company was unable to reopen its spa locations for normal operations, the Company in partnership with certain COVID-19 testing partners, successfully launched its XpresCheck Wellness Centers through its XpresTest, Inc. subsidiary (“XpresTest”), offering testing services, also in airports. XpresTest offers COVID-19 and other medical diagnostic testing services to the traveling public, as well as airline, airport and concessionaire employees, and TSA and U.S. Customs and Border Protection agents. XpresTest has entered into managed services agreements (“MSAs”) with professional medical services companies that provide health care services to patients. The medical services companies pay XpresTest a monthly fee to operate in the XpresCheck Wellness Centers. Under the terms of the MSAs, XpresTest provides office space, equipment, supplies, non-licensed staff, and management services in return for a management fee. Effective July 1, 2021, the Company determined that the medical service companies are variable interest entities (“VIEs”) due to their equity holders having sufficient capital at risk; and the Company having a variable interest in and being a primary beneficiary of the medical service companies. During 2022, as countries continued to relax their testing requirements resulting in rapid decline of testing volumes at Company’s

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(In thousands, except for share and per share data)**

XpresCheck locations, the Company closed all but one XpresCheck Wellness Centers. Therefore, as of the date of this report, there is only one operating XpresCheck location operating in one airport.

The Treat segment, which is operating through XWELL's subsidiary Treat, Inc. ("Treat") is a travel health and wellness brand that provides access to health and wellness services for travelers at on-site centers (currently located in JFK International Airport and in Salt Lake City International Airport).

By the third quarter of 2022, it became clear that the Treat business was underperforming and as a result, we began to retool the offerings within the Treat locations by providing additional retail as part of our retail strategy expansion as well as lay the foundation to bring more spa-like services into the Treat location in an attempt to unify our core offering.

By the fourth quarter of 2022, the decision was made to close the pre-security Treat location at Phoenix Sky Harbor Airport. As of March 31, 2023, the Treat brand operates 2 locations (JFK International Airport and Salt Lake City International Airport). These remaining Treat locations offer a full retail product offering and a suite of wellness and spa services.

The Company's HyperPointe segment, which the Company acquired in January 2022 (see Note 10. Acquisition of HyperPointe), provides a broad range of service and support options for our customers, including technical support services and advanced services.

***Basis of Presentation and Principles of Consolidation***

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). The consolidated financial statements include the accounts of the Company, all entities that are wholly owned by the Company, and all entities in which the Company has a controlling financial interest. All significant intercompany balances and transactions have been eliminated in consolidation.

***HyperPointe Acquisition***

In January 2022, the Company announced and closed on the acquisition of gcg Connect, LLC d/b/a HyperPointe.

The purchase price in the transaction consisted of \$7,121 in cash and \$906 in common stock, offset by the settlement of intercompany accounts payable of \$770 as well as potential additional earn-out payments of up to \$7,500 over a three-year timeframe based upon future performance; these earn-out payments may be satisfied in cash or common stock or a combination thereof subject to various terms and conditions. As of the acquisition date, and as of December 31, 2022, the Company believes that the fair value of the potential earnout payment is \$0.

HyperPointe currently operates as a new operating segment within XWELL. The chief executive officer of HyperPointe before the Company's acquisition, continues to serve as the chief executive officer of HyperPointe, as well as serving as the chief executive officer of XpresCheck. See Note 10. Acquisition of HyperPointe for related discussion.

***Liquidity and Financial Condition***

As of December 31, 2022, the Company had approximately \$19,038 of cash and cash equivalents, \$23,153 in marketable securities, and total current assets of approximately \$47,332. The Company's total current liabilities balance, which includes accounts payable, deferred revenue, accrued expenses, and operating lease liabilities was approximately \$10,956 as of December 31, 2022. The working capital surplus was \$36,376 as of December 31, 2022, compared to a working capital surplus of \$89,152 as of December 31, 2021.



**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(In thousands, except for share and per share data)**

The Company has significantly reduced operating and overhead expenses in the second half of 2022, while it continues to focus on returning to overall profitability.

The Company has taken actions to improve its overall cash position and access to liquidity through equity offerings and debt retirements, by exploring valuable strategic partnerships, right sizing its corporate structure and streamlining its operations.

**Note 2. Accounting and Reporting Policies**

***(a) Basis of presentation and principles of consolidation***

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. The consolidated financial statements include the accounts of the Company, all entities that are wholly owned by the Company, and all entities in which the Company has a controlling financial interest. All significant intercompany balances and transactions have been eliminated in consolidation.

***(b) Use of estimates***

The preparation of the accompanying consolidated financial statements in conformity with U.S. GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the consolidated financial statements and the reported amounts of revenues and expenses for the periods presented. Actual results may differ from such estimates. Significant items subject to such estimates and assumptions include the Company's long-lived assets, intangibles assets, the useful lives of the Company's intangible assets, the valuation of stock-based compensation, deferred tax assets and liabilities, income tax uncertainties, and other contingencies.

***(c) Translation into United States dollars***

The Company conducts certain transactions in foreign currencies, which are recorded at the exchange rate as of the transaction date. All exchange gains and losses occurring from the remeasurement of monetary balance sheet items denominated in non-dollar currencies are deemed non-operating income in the consolidated statements of operations and comprehensive loss. During 2022 and 2021, the Company recorded \$664 and \$18, respectively, in exchange gains and losses occurring from the remeasurement of monetary balance sheet items denominated in non-dollar currencies.

Accounts of the foreign subsidiaries of XpresSpa are translated into United States dollars. Assets and liabilities have been translated primarily at year end exchange rates and revenues and expenses have been translated at average monthly rates for the year. The translation adjustments arising from the use of different exchange rates are included as foreign currency translation within the consolidated statements of operations and comprehensive income (loss) and consolidated statements of changes in stockholders' equity.

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***(d) Cash and cash equivalents***

The Company maintains cash in checking and money market accounts with financial institutions. The Company has established guidelines relating to diversification and maturities of its investments in order to minimize credit risk and maintain high liquidity of funds. The Company considers all highly liquid investments purchased with an original maturity of three months or less from the time they are acquired to be cash equivalents. The Company had \$1,885 of such investments as of December 31, 2022 and \$0 as of December 31, 2021.

***(e) Accounts Receivables***

Accounts Receivables are stated at their carrying values, net of a reserve for doubtful accounts, and primarily emanate from our contracts with customers.

***(f) Inventory***

All inventory is valued at the lower of cost or net realizable value. Cost is determined using a weighted-average cost method.

***(g) Intangible assets***

Intangible assets include trade names, customer relationships, and technology, which were primarily acquired as part of the acquisition of XpresSpa in December 2016 and Hyperpointe in 2022, and were recorded based on the estimated fair value in purchase price allocation. In addition, intangible assets include software and website development costs that were capitalized as part of the Company's development of a mobile application and website for the treat brand. The Company accounts for these costs in accordance with ASC 350-40, Internal-Use Software. The intangible assets are amortized over their estimated useful lives, which are periodically evaluated for reasonableness. Newly acquired or developed software has an estimated life of approximately 3 years whereas the intangibles obtained as a result of the Hyperpointe acquisition have an estimated life of 5 to 12 years.

The Company's intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The fair value is then compared to the carrying value and an impairment charge is recognized by the amount in which the carrying value exceeds the fair value of the asset. In assessing the recoverability of the Company's intangible assets, the Company must make estimates and assumptions regarding future cash flows and other factors to determine the fair value of the respective assets. These estimates and assumptions could have a significant impact on whether an impairment charge is recognized and also the magnitude of any such charge. Fair value estimates are made at a specific point in time, based on relevant information. During the years ended December 31, 2022 and 2021, the Company recognized impairment of \$110 and \$0, respectively.

***(h) Property and Equipment***

Property and equipment are recorded at historical cost and primarily consists of leasehold improvements, furniture and fixtures, and other operating equipment. Depreciation is calculated on a straight-line basis over the estimated useful lives of the assets. Leasehold improvements are depreciated over the lesser of the lease term or economic useful life. Maintenance and repairs are charged to expense, and renovations or improvements that extend the service lives of the Company's assets are capitalized over the lesser of the extension period or life of the improvement.

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**(i) Impairment of long-lived assets**

Long-lived assets are tested for impairment at the lowest level at which there are identifiable operating cash flows, which is at the individual airport location for the XpresSpa and XpresCheck businesses. The Company's long-lived assets consist primarily of leasehold improvements and right to use lease assets for each of its airport locations (considered the asset group). The Company reviews its long-lived assets for recoverability yearly or sooner if events or changes in circumstances indicate that the carrying value of long-lived assets may not be recoverable. If indicators are present, the Company performs a recoverability test by comparing the sum of the estimated undiscounted future cash flows attributable to the asset group in question to its carrying amount. An impairment loss is recognized if it is determined that the long-lived asset group is not recoverable and is calculated based on the excess of the carrying amount of the long-lived asset group over the long-lived asset groups fair value. The Company estimates the fair value of long-lived assets using present value income approach. Future cash flow was calculated based on forecasts over the estimated remaining useful life of the asset group, which for each of the Company's airport locations, is the remaining term of the operating lease.

The Company completed an assessment of our property and equipment, operating lease right of use assets and intangible assets for impairment as of December 31, 2022. Based upon the results of the impairment test, the Company recorded an impairment expense related to property and equipment, intangible assets, and operating lease right of use assets of \$4,559, \$110 and \$1,110, respectively, during the year ended December 31, 2022, which is included in *Impairment of long-lived assets and Impairment of operating lease right-of-use assets* in the Company's consolidated statements of operations and comprehensive income (loss). The expense was primarily related to the impairment of leasehold improvements made to the Company's Treat, XpresCheck and Spa locations and its operating lease right of use assets where management determined that the locations discounted future cash flows were not sufficient to recover the carrying value of these assets over the remaining lease term. The Company also impaired intangible assets pertaining to its Treat and XpresTest segments.

In 2021 the Company recorded an impairment expense of approximately \$68 and \$747 related to property and equipment, and operating lease right of use assets, respectively, which is included in *Impairment of long-lived assets and Impairment of operating lease right-of-use assets* in the Company's consolidated statements of operations and comprehensive loss as of December 31, 2021. This expense was related to the impairment of the XpresSpa trademarks, where management determined that in light of the effect of the COVID-19 pandemic, the XpresSpa brand's discounted future cash flows were not sufficient to recover the carrying value of these assets.

**(j) Leases**

The right of use asset ("ROU") on the Company's consolidated balance sheet represents a lessee's right to use an asset over the life of a lease. Operating lease ROU assets and lease liabilities are recognized at commencement date based on the present value of lease payments over the lease term, plus any lease payments made to the lessor before the lease commencement date, plus any initial direct costs incurred, minus any lease incentives received. The amortization period for the right of use asset is from the lease commencement date to the earlier of the end of the lease term or the end of the useful life of the asset. Our lease terms may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. Lease expense for lease payments is recognized on a straight-line basis over the lease term. The Company has elected to exclude all short-term leases (i.e, leases with term of 12 months or less) from recognition on the balance sheet.

The Company's lease liabilities are determined by calculating the present value of all future lease payments using the rate implicit in the lease if it can be readily determined, or the lessee's incremental borrowing rate. The Company uses its incremental borrowing rate at the inception of the lease to determine the present value of future lease payments as the rate implicit in its leases could not be readily determined.

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Certain leases provide for contingent rents that are not measurable at inception. These contingent rents are primarily based on a percentage of sales that are in excess of a predetermined level, an increase based on a change in the consumer price index or fair market value. These amounts are excluded from the calculation of the right of use asset and lease liability under ASC 842. Minimum rent under these leases is included in the determination of rent expense when it is probable that the expense has been incurred and the amount can be reasonably estimated.

The Financial Accounting Standards Board (“FASB”) issued a Q&A in March 2020 that focused on the application of lease guidance in ASC 842 for lease concessions related to the effects of COVID-19. The FASB staff has said that entities can elect to not evaluate whether concessions granted by lessors related to COVID-19 are lease modifications. Entities that make this election can then apply the lease modification guidance in ASC 842 or account for the concession as if it were contemplated as part of the existing contract. The Company has elected to not treat the concessions as lease modifications and will instead account for the lease concessions as if they were contemplated as part of the existing leases. The Company has recorded negative variable lease expense and adjusted lease liabilities at the point in which the rent concession has become accruable.

**(k) Restricted cash**

Restricted cash, which is listed as a separate line item in the consolidated balance sheets, represents balances at financial institutions to secure bonds and letters of credit as required by the Company’s various lease agreements.

**(l) Equity investments**

Equity investments are carried at fair value with the changes in fair value recorded in the consolidated statement of operations and other comprehensive income (loss) in accordance with ASU 2016-01. The Company will perform a qualitative assessment on an annual basis and recognize impairment if there are sufficient indicators that the fair value of the investment is less than the carrying value.

**(m) Revenue recognition**

*XpresSpa*

The Company recognizes revenue from the sale of XpresSpa products and services when the services are rendered at XpresSpa stores and from the sale of products at the time products are purchased at the Company’s stores or online usually by credit card, net of discounts and applicable sales taxes. Accordingly, the Company recognizes revenue for the Company’s single performance obligation related to both in-store and online sales at the point at which the service has been performed or the control of the merchandise has passed to the customer. Revenues from the XpresSpa retail and e-commerce businesses are recorded at the time goods are shipped.

The Company has also entered into collaborative agreements with marketing partners whereby it sells certain of its partners’ products in the Company’s XpresSpa spas. The Company acts as an agent for revenue recognition purposes and therefore records revenue net of the revenue share payable to the partners. Upon receipt of the non-recurring, non-refundable initial collaboration fee, management records a deferred revenue liability and recognizes revenue on a straight-line basis over the life of the collaboration agreement.

*XpresCheck*

Through its XpresCheck Wellness Centers and under the terms of the Managed Services Agreement (“MSA”) with PLLCs that in turn contract with physicians and Nurse Practitioners, the Company offers testing services to airline employees, contractors, concessionaire employees, TSA officers and U.S. Customs and Border Protection agents, as well as the

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traveling public. The Company has entered into MSAs with PLLCs that provide healthcare services to patients. Under the terms of the MSAs which may be modified for commercial reasonableness and fair market value, XpresTest provides office space, equipment, supplies, non-licensed staff, and management services to be used for the purpose of COVID-19 and other medical diagnostic testing in return for a management fee which was deemed a performance obligation for recognizing revenue prior to July 1, 2021. However, as a result of uncertainties around the cash flows of the XpresCheck Wellness Centers, the Company concluded in 2020 that the collectability criteria to qualify as a contract under ASC 606 was not met, and therefore, revenue associated with the monthly management fee would not be recognized until a subsequent reassessment resulted in the MSAs meeting the collectability criteria. XpresTest recognized revenue of \$16,843 (including a cumulative catch-up adjustment of \$3,186) during the six months ended June 30, 2021, under the MSAs, pursuant to reassessments in 2021, of the MSAs executed in 2020 and amended in 2021, and assessments and reassessments of MSAs executed and amended in 2021 until June 30, 2021, resulting in management's conclusion that they met the collectability criteria. Any revenue collected not meeting the collectability criteria was recorded as deferred revenue.

Effective, July 1, 2021 (see Note 4), the Company determined that the PLLCs are variable interest entities due to its equity holder having insufficient capital at risk, and the Company having a variable interest in the PLLCs. In pursuance, the total revenue of \$50,689 for the six months period ended December 31, 2021 were designated as revenue for the company. The performance obligation for this revenue was the PLLCs administering COVID-19 tests to airline employees, contractors, concessionaire employees, TSA officers and U.S. Customs and Border Protection agents, as well as the traveling public, with revenue being recognized at the point in time at which the service is performed.

During 2021, XpresCheck initiated a \$2,001, eight-week pilot program with the Centers for Disease Control and Prevention (CDC) in collaboration with Concentric by Ginkgo. Under this program, XpresCheck is conducting biosurveillance monitoring at four major U.S. airports (JFK International Airport, Newark Liberty International Airport, San Francisco International Airport, and Hartsfield-Jackson Atlanta International Airport) aimed at identifying existing and new SARS-CoV-2 variants. On January 31, 2022, the Company announced the extension of the program, bringing the total contract to \$5,534. Approximately \$4,166 and \$1,368 of the full \$5,534 amount was recognized during 2022 and 2021, respectively.

During the third quarter of 2022, XpresTest, in partnership with Ginkgo Bioworks in continuation of their support to the CDC's traveler-based SARS-CoV-2 genomic surveillance program were awarded a new contract. The partnership is expected to support public health and biosecurity services totaling approximately \$16,000, with an overall potential to exceed \$61,000 based on CDC program options and public health priorities. As COVID-19 sub-variants and other biological threats continue to emerge, the partners plan to expand the program footprint and incorporate innovative modalities and offerings, such as monitoring of wastewater from aircraft lavatories. The current contract with Ginkgo Bioworks related to the above partnership contains fixed pricing for which we are entitled to \$6,761 for the sample collection (passenger and aircraft wastewater) and \$570 for the traveler enrollment initiatives, which represents the amount of consideration that we are entitled. We recognize revenue over time for both sample collection performance obligations, using the input method based on time elapsed to measure progress towards satisfying each of the performance obligations. We recognize revenue ratably (straight line basis) over the term of the contract (one year). We will recognize revenue over time for the traveler enrollment initiative performance obligation based on the amount for which we have the right to invoice. We recorded \$2,617 in revenue during 2022 related to sample collection performance obligations because the Company's efforts towards satisfying each of the performance obligations are expended evenly throughout the period of performance.

*HyperPointe*

Our HyperPointe segment which we acquired in January 2022 (see Note 10 Acquisition of HyperPointe) provides broad range of service and support options for our customers, including technical support services and advanced services. Technical support services represent the majority of these offerings which are distinct performance obligations that are

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satisfied over time with revenue recognized ratably over the contract term. Advanced services are distinct performance obligations that are satisfied over time with revenue recognized as services are delivered. Revenue billed in advance are treated as deferred revenue which was \$322 as of December 31, 2022.

The Company excludes all sales taxes assessed to our customers from revenue. Sales taxes assessed on revenues are included in *Accrued expenses and other current liabilities* on the Company's consolidated balance sheets until remitted to state agencies.

**(n) Gift cards and customer rewards program**

XpresSpa offers no-fee, non-expiring gift cards to its customers. No revenue is recognized upon issuance of a gift card and a liability is established for the gift card's cash value. The liability is relieved, and revenue is recognized upon redemption by the customer. As the gift cards have no expiration date, there is no provision for reduction in the value of unused card balances.

In addition, XpresSpa maintains a rewards program in which customers earn loyalty points, which can be redeemed for future services. Loyalty points are rewarded upon joining the loyalty program, for customer birthdays, and based upon customer spending. When a customer redeems loyalty points, the Company recognizes revenue for the redeemed cash value and reduces the related loyalty program liability. On June 1, 2018, the Company adopted a formal expiration policy whereby any loyalty members with inactivity for an 18-month period will forfeit any unused loyalty rewards. Upon closure of the spa locations in March 2020, the Company temporarily suspended the expiration policy.

The costs associated with gift cards and reward points are accrued as the rewards are earned by the cardholder and are included in *Accrued expenses and other current liabilities* in the consolidated balance sheets until used.

**(o) Segment reporting**

ASC 280, *Segment Reporting*, establishes standards for reporting information about operating segments. Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company's chief operating decision maker is the Chief Executive Officer, who reviews the financial performance and the results of operations of the segments prepared in accordance with U.S. GAAP when making decisions about allocating resources and assessing performance of the Company. The Company currently has four reportable operating segments: XpresSpa, XpresTest, Treat, and Hyperpointe. See Note 16. Segment Information.

There are currently no intersegment revenues. Asset information by operating segment is presented below since the chief operating decision maker reviews this information by segment. The reporting segments follow the same accounting policies used in the preparation of the Company's audited consolidated financial statements.

**(p) Pre-opening costs**

Pre-opening and start-up activity costs, which include rent and occupancy, supplies, advertising, and other direct expenses incurred prior to the opening of a new store, are expensed in the period in which they are incurred.

**(q) Cost of sales**

Cost of sales consists of spa and clinic operating costs. These costs include all costs that are directly attributable to the location's operations and include:

- payroll and related benefits for the location's operations and management;

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- rent, percentage rent and occupancy costs;
- the cost of merchandise and testing supplies;
- freight, shipping and handling costs;
- production costs;
- inventory shortage and valuation adjustments; and
- costs associated with sourcing operations.

***(r) Stock-based compensation***

Stock-based compensation is recognized as an expense in the consolidated statements of operations and comprehensive loss and such cost is measured at the grant-date fair value of the equity-settled award. The fair value of stock options is estimated as of the date of grant using the Black-Scholes-Merton (“Black-Scholes”) option-pricing model. The fair value of Restricted Stock Units (“RSUs”) is calculated as of the date of grant using the grant date closing share price multiplied by the number of RSUs granted. The expense is recognized on a straight-line basis, over the requisite service period. The Company uses the simplified method to estimate the expected term of options due to insufficient history and high turnover in the past. Expected volatility is estimated based on a weighted average historical volatility of the Company. The risk-free rate for the expected term of the option is based on the United States Treasury yield curve as of the date of grant. The Company recognizes forfeitures as they occur. The Company issues new stock to deliver shares under its Equity Plan.

***(s) Income taxes***

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years 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 income in the period that includes the enactment date. A valuation allowance is provided for the amount of deferred tax assets that, based on available evidence, are not more likely than not to be realized. Tax benefits related to excess deductions on stock-based compensation arrangements are recognized when they reduce taxes payable.

In assessing the need for a valuation allowance, the Company looks at cumulative losses in recent years, estimates of future taxable earnings, feasibility of tax planning strategies, the ability to realize tax benefit carryforwards, and other relevant information. Valuation allowances related to deferred tax assets can be impacted by changes to tax laws, changes to statutory tax rates and future taxable earnings. Ultimately, the actual tax benefits to be realized will be based upon future taxable earnings levels, which are very difficult to predict. In the event that actual results differ from these estimates in future periods, the Company will be required to adjust the valuation allowance.

The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained. Recognized income tax positions are measured at the largest amount that is greater than 50% of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. The Company had no uncertain tax positions as of December 31, 2022 and 2021.

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***(t) Noncontrolling interests***

Noncontrolling interests represent the noncontrolling holders' percentage share of earnings or losses from; i) the subsidiaries, in which the Company holds a majority, but less than 100%, ownership interest, ii) Variable Interest Entities, where the Company is a primary beneficiary (See sub note (w) below, and the results of which are included in the Company's consolidated statements of operations and comprehensive income (loss). Net loss attributable to noncontrolling interests represents the proportionate share of the noncontrolling holders' ownership in certain subsidiaries of XpresSpa and of XpresTest.

***(u) Net income/(loss) per common share***

Basic net income (loss) per share is computed by dividing the net income (loss) attributable to common shareholders for the period by the weighted-average number of shares of Common Stock outstanding during the period. Diluted net income (loss) per share is computed by dividing the net loss attributable to the Company for the period by the weighted-average number of shares of Common Stock plus dilutive potential Common Stock considered outstanding during the period.

***(v) Commitments and contingencies***

Certain conditions may exist as of the date the financial statements are issued, which may result in a loss to the Company, but which will only be resolved when one or more future events occur or fail to occur.

The Company assesses such contingent liabilities, and such assessment inherently involves an exercise of judgment. In assessing loss contingencies related to legal proceedings that are pending against the Company or un-asserted claims that may result in such proceedings, the Company evaluates the perceived merits of any legal proceedings or un-asserted claims as well as the perceived merits of the amount of relief sought or expected to be sought therein.

If the assessment of a contingency indicates that it is probable that a material loss has been incurred and the amount of the liability can be estimated, then the estimated liability would be accrued in the Company's financial statements. If the assessment indicates that a potentially material loss contingency is not probable but is reasonably possible, or is probable but cannot be estimated, then the nature of the contingent liability, and an estimate of the range of possible losses, if determinable and material, would be disclosed. Loss contingencies considered remote are generally not disclosed unless they involve guarantees, in which case the guarantees would be disclosed. Legal costs expected to be incurred in connection with a loss contingency are expensed as incurred.

***(w) Variable Interest Entities***

The Company evaluates its ownership, contractual, pecuniary, and other interests in entities to determine if it has any variable interest in a variable interest entity ("VIE"). These evaluations are complex and involve judgment. If the Company determines that an entity in which it holds a contractual or ownership interest is a VIE and that the Company is the primary beneficiary, the Company consolidates such entity in its consolidated financial statements. The primary beneficiary of a VIE is the party that meets both of the following criteria: (i) has the power to make decisions that most significantly affect the economic performance of the VIE; and (ii) has the obligation to absorb losses or the right to receive benefits that in either case could potentially be significant to the VIE. Management performs ongoing reassessments of whether changes in the facts and circumstances regarding the Company's involvement with a VIE will cause the consolidation conclusion to change. Changes in consolidation status are applied prospectively.



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**(x) Business Combinations**

The Company uses the provisions of ASC Topic 805, Business Combinations (“ASC 805”) in the accounting for acquisitions of businesses. ASC 805 requires the Company to use the acquisition method of accounting by recognizing the identifiable tangible and intangible assets acquired and liabilities assumed, and any non-controlling interest in the acquired business, measured at their acquisition date fair values. Goodwill as of the acquisition date is measured as the excess of consideration transferred over the aforementioned amounts.

While the Company uses its best estimates and assumptions to accurately apply preliminary values to assets acquired and liabilities assumed at the acquisition date, these estimates are inherently uncertain and subject to refinement. As a result, during the measurement period, which may be up to one year from the acquisition date, the Company may record adjustments to the assets acquired and liabilities assumed with the corresponding offset to goodwill. Upon the conclusion of the measurement period or final determination of the values of the assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments are recorded in the consolidated statements of operations.

Accounting for business combinations requires management to make significant estimates and assumptions, especially at the acquisition date, including estimates for intangible assets. Although the Company believes the assumptions and estimates that have been made are reasonable and appropriate, they are based in part on historical experience and information obtained from the acquired companies and are inherently uncertain. Critical estimates in valuing certain of the intangible assets the Company has acquired include future expected cash flows, and discount rates.

**(y) Goodwill**

Goodwill represents the cost of a business acquisition in excess of the fair value of the net assets acquired. Goodwill is not amortized and is reviewed for impairment annually, or more frequently if facts and circumstances indicate that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, including goodwill. If it is more likely than not that the fair value of a reporting unit is less than its carrying amount, the company performs a quantitative test to identify and measure the amount of goodwill impairment loss. The Company compares the fair value of the reporting unit with its carrying amount. If the carrying amount exceeds fair value, goodwill of the reporting unit is considered impaired, and that excess is recognized as a goodwill impairment loss.

**(z) Advertising Costs**

Advertising costs are expensed as incurred. Advertising expenses amounted to approximately \$4,645 and \$2,817 for the years ended December 31, 2022 and 2021, respectively.

**(aa) Fair value measurements**

The Company measures fair value in accordance with ASC 820-10, Fair Value Measurements and Disclosures. ASC 820-10 clarifies that fair value is an exit price, representing the amount that would be received by selling an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability. As a basis for considering such assumptions, ASC 820-10 establishes a three-tier value hierarchy, which prioritizes the inputs used in the valuation methodologies in measuring fair value:

**Level 1:** Unadjusted quoted prices in active markets for identical assets or liabilities accessible to the reporting entity at the measurement date.

**Level 2:** Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.

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**Level 3:** Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

***(bb) Reclassification***

Certain balances in the 2021 consolidated financial statements have been reclassified to conform to the presentation in the 2022 consolidated financial statements, primarily the separate classification and presentation of accounts payable, gross profits, impairments and loss on disposal of assets. Such reclassifications did not have a material impact on the consolidated financial statements.

***(cc) Recently adopted accounting pronouncements***

Accounting Standards Update No. 2020-06—Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity’s Own Equity (Subtopic 815-40)

Issued in August 2020, this update is intended to reduce the unnecessary complexity of the current guidance thus resulting in more accurate accounting for convertible instruments and consistent treatment from one entity to the next. Under current GAAP, there are five accounting models for convertible debt instruments. Except for the traditional convertible debt model that recognizes a convertible debt instrument as a single debt instrument, the other four models, with their different measurement guidance, require that a convertible debt instrument be separated (using different separation approaches) into a debt component and an equity or a derivative component. Convertible preferred stock also is required to be assessed under similar models. The Financial Accounting Standard Board (“FASB”) decided to simplify the accounting for convertible instruments by removing certain separation models currently included in other accounting guidance that were being applied to current accounting for convertible instruments. Under the amendments in this update, an embedded conversion feature no longer needs to be separated from the host contract for convertible instruments with conversion features that are not required to be accounted for as derivatives. Consequently, a convertible debt instrument will be accounted for as a single liability measured at its amortized cost and a convertible preferred stock will be accounted for as a single equity instrument measured at its historical cost, as long as no other features require bifurcation and recognition as derivatives. The FASB also decided to add additional disclosure requirements in an attempt to improve the usefulness and relevance of the information being provided. The new standard is effective for fiscal years beginning after December 15, 2021, and interim periods within those fiscal years. The Company adopted ASU 2020-06 as of the reporting period beginning January 1, 2022. The adoption of this update did not have a material impact on the Company’s condensed consolidated financial statements.

*ASU 2021-04: Issuer’s Accounting for Certain Modifications or Exchanges of Freestanding Equity Classified Written Call Options*

In May 2021, the FASB issued ASU 2021-04, "Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity Classified Written Call Options" ("ASU 2021-04"), which introduces a new way for companies to account for warrants either as stock compensation or derivatives. Under the new guidance, if the modification does not change the instrument's classification as equity, the company accounts for the modification as an exchange of the original instrument for a new instrument. In general, if the fair value of the "new" instrument is greater than the fair value of the "original" instrument, the excess is recognized based on the substance of the transaction, as if the issuer has paid cash. The effective date of the standard is for interim and annual reporting periods beginning after December 15,

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2021 for all entities. The Company adopted ASU 2021-04 as of the reporting period beginning January 1, 2022. The adoption of this update did not have a material impact on the Company's condensed consolidated financial statements.

***(dd) Recently Issued Accounting Standards***

In June 2016, the FASB issued ASU 2016-13, Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments ("ASU 2016-13"). ASU 2016-13's main goal is to improve financial reporting by requiring earlier recognition of credit losses on financing receivables and other financial assets in scope. The guidance is effective for annual periods beginning after December 15, 2022, including interim periods within those fiscal years. The ASU is not expected to have material impact on the Company's financial statements.

In October 2021, the FASB issued ASU 2021-08, Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers ("ASU 2021-08"). ASU 2021-08 requires contract assets and contract liabilities acquired in a business acquisition to be recognized and measured in accordance with ASC Topic 606, Revenues from Contracts with Customers, which the Company generally expects will result in the recognition and measurement of contract assets and contract liabilities in a manner that is consistent with the acquiree. For the Company, the amendments are effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The materiality of the application of ASU 2021-08 depends on the recognition and measurement of acquired assets and liabilities associated with future acquisitions.

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**Note 3. Net earnings/(loss) per Share of Common Stock**

The table below presents the computation of basic and diluted (losses)/net earnings per common share:

	Year ended December 31,	
	2022	2021
<b>Basic numerator:</b>		
Net (loss) income attributable to XWELL, Inc.	\$ (32,837)	\$ 3,349
Net (loss) income attributable to common shareholders	<u>\$ (32,837)</u>	<u>\$ 3,349</u>
<b>Basic denominator:</b>		
Basic weighted average shares outstanding	93,655,331	104,306,173
Basic (loss) earnings per share	<u>\$ (0.35)</u>	<u>\$ 0.03</u>
<b>Diluted numerator:</b>		
(Loss) earnings attributable to common shareholders	<u>\$ (32,837)</u>	<u>\$ 3,349</u>
<b>Diluted denominator:</b>		
Diluted weighted average shares outstanding	93,655,331	105,076,758
Diluted (loss) earnings per share	<u>\$ (0.35)</u>	<u>\$ 0.03</u>

**Net (loss) income per share data presented above excludes from the calculation of diluted net (loss) income, the following potentially dilutive securities, having an anti-dilutive impact, in case of net loss**

Both vested and unvested options to purchase an equal number of shares of Common Stock	4,830,029	2,614,766
Unvested RSUs to issue an equal number of shares of Common Stock	281,250	521,049
Warrants to purchase an equal number of shares of Common Stock	<u>1,172,088</u>	<u>37,338,164</u>
<b>Total number of potentially dilutive securities excluded from the calculation of earnings/(loss) per share attributable to common shareholders</b>	<u>6,283,367</u>	<u>40,473,979</u>

**Note 4. Variable Interest Entities**

Through its XpresCheck Wellness Centers, the Company provides services pursuant to contracts with PLLCs which in turn contracts with physicians and other medical professional providers to render COVID-19 and other medical diagnostic testing services to airline employees, contractors, concessionaire employees, TSA officers and U.S. Customs and Border Protection agents, and the traveling public. The PLLCs collectively represent the Company's affiliated medical group. The PLLCs were designed and structured to comply with the relevant laws and regulations governing professional medical practice, which generally prohibits the practice of medicine by lay persons or entities. All of the issued and outstanding equity interests of the PLLCs are owned by a licensed medical professional nominated by the Company (the "Nominee Shareholder"). Upon formation of the PLLCs, and initial issuance of equity interests, the Nominee Shareholder contributes a nominal amount of capital in exchange for their interest in the PLLC. The Company then executes with each PLLC a MSA, which provide for various administrative services, management services and day-to-day activities of the practice to be rendered by the Company through its XpresCheck Wellness Centers.

The Company also has exclusive responsibility for the provision of all nonmedical services including contracting with customers who access the PLLCs for a medical visit, handling all financial transactions and day-to-day operations of each

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PLLC, overseeing the establishment of COVID-19 and other medical diagnostic testing services policies, and making recommendations to the PLLC in establishing the guidelines for the employment and compensation of the physicians and other employees of the PLLCs. Until June 30, 2021, MSA Fees were commensurate with the expected level of activity required to be billed by XpresCheck Wellness Centers. Therefore, these PLLCs were assessed not to be variable interest entities prior to July 1, 2021.

Effective July 1, 2021, contractual arrangements between the company, the company's affiliated medical group and nominated shareholder were modified in a manner that changes the characteristics or adequacy of the nominee shareholders equity investment at risk and residual returns. Therefore, due to reassessment triggered by the development on July 1, 2021, the Company determined that the PLLCs are now variable interest entities. Notwithstanding their legal form of ownership of equity interests in the PLLC, the primary beneficiary of the affiliated medical group is the Company as it meets both of the following criteria: (i) has the power to make decisions that most significantly affect the economic performance of the affiliated medical group; and (ii) has the obligation to absorb losses or the right to receive benefits that in either case could potentially be significant to the affiliated medical group. The Company consolidated the PLLCs under the VIE model since the Company has the power to direct activities that most significantly impact the PLLCs economic performance and the right to receive benefits or the obligation to absorb losses that could potentially be significant to the PLLCs.

The aggregate carrying value of total assets and total liabilities included on the consolidated balance sheets for the PLLCs after elimination of intercompany transactions were \$275, included in Cash and Cash Equivalents, and \$146, included in *Accrued expenses and other current liabilities*, respectively, as of December 31, 2022. The aggregate carrying value of total assets and total liabilities included on the consolidated balance sheets for the PLLCs after elimination of intercompany transactions were \$3,033, included in Cash and Cash Equivalents, and \$683, included in *Accrued expenses and other current liabilities*, respectively, as of December 31, 2021. The total revenue included on the consolidated statements of operations and comprehensive income (loss) for the PLLCs after elimination of intercompany transactions was \$32,960 and \$50,689 for the twelve months ended December 31, 2022 and December 31, 2021, respectively.

**Note 5. Cash, Cash Equivalents, and Restricted Cash**

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Cash denominated in United States dollars	\$ 16,344	\$ 102,560
Cash denominated in currency other than United States dollars	2,562	2,133
Restricted cash	751	751
Credit and debit card receivables	132	813
<b>Total cash, cash equivalents and restricted cash</b>	<b>\$ 19,789</b>	<b>\$ 106,257</b>

The Company places its cash and temporary cash investments with credit quality institutions. At times, such cash denominated in United States dollars may be in excess of the Federal Deposit Insurance Corporation ("FDIC") insurance limit. At December 31, 2022 and 2021, deposits in excess of FDIC limits were \$16,069 and \$103,339. As of December 31, 2022 and 2021, the Company held cash balances in overseas accounts, totaling \$2,562 and \$2,113, respectively, which are not insured by the FDIC. If the Company were to distribute the amounts held overseas, the Company would need to follow an approval and distribution process as defined in its operating and partnership agreements, which may delay and/or reduce the availability of that cash to the Company.

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**Note 6. Other Current Assets**

As of December 31, 2022, and 2021, the Company's other current assets were comprised of the following:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Prepaid expenses	\$ 1,074	\$ 1,047
Other	48	48
<b>Total other current assets</b>	<b>\$ 1,122</b>	<b>\$ 1,095</b>

Prepaid expenses are predominantly comprised of financed and prepaid insurance policies which have terms of one year or less.

**Note 7. Property and Equipment**

Property and equipment are comprised of three categories: leasehold improvements, furniture and fixtures, and other operating equipment as of December 31, 2022 and 2021 as follows:

	<b>December 31,</b>		<b>Useful Life</b>
	<b>2022</b>	<b>2021</b>	
Leasehold improvements	\$ 8,692	\$ 11,225	Average 5-8 years
Furniture and fixtures	1,214	1,146	3-4 years
Other operating equipment	760	1,027	Maximum 5 years
	10,666	13,398	
Accumulated depreciation	(7,000)	(6,740)	
<b>Total property and equipment, net</b>	<b>\$ 3,666</b>	<b>\$ 6,658</b>	

Depreciation is computed using the straight-line method over the estimated useful lives of the related assets. Leasehold improvements are depreciated over the shorter of remaining lease term or economic useful life (which is on average 5-8 years).

The Company performed assessments of its property and equipment for impairment for the years ended December 31, 2022 and 2021 and based upon the results of the impairment tests, the Company recorded impairment expenses of approximately \$4,559 and \$68, respectively, which is included in "Impairment of long-lived assets" in the consolidated statements of operations and comprehensive loss. The increase in impairment expense is related to the closure of the XpresCheck locations throughout 2022, the underperformance of our Treat locations at JFK International airport and Phoenix Sky Harbor airport, and the impairment of certain XpresSpa stores.

During the years ended December 31, 2022 and 2021, the Company recorded \$3,663 and \$2,754, respectively, of depreciation expense.

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**Note 8. Other Assets**

Other assets in the consolidated balance sheets are comprised of the following as of December 31, 2022 and 2021:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Equity investments	\$ 104	\$ 722
Lease deposits	1,973	2,030
Other	292	58
Other assets	<u>\$ 2,369</u>	<u>\$ 2,810</u>

As of December 31, 2022 and 2021, the equity investment in Route1 had a readily determinable fair value of \$104 and \$722, respectively. The Company recorded an unrealized loss of \$618 in 2022 and an unrealized loss of \$1,046 in 2021, in connection with the remeasurement of the shares of our common stock of Route 1 it obtained in the 2018 sale of Group Mobile to Route 1. The loss/gain is included in *Other non-operating income (expense), net* on the consolidated statement of operations and comprehensive income (loss) for the years ended December 31, 2022 and 2021.

Also included in “*Other assets*” as of December 31, 2022 and 2021 were \$1,973 and \$2,030, respectively, of security deposits made pursuant to various lease agreements, which will be returned to the Company at the end of the leases.

**Note 9. Intangible Assets**

The following table provides information regarding the Company’s intangible assets, which consist of the following:

	<b>December 31, 2022</b>			<b>December 31, 2021</b>		
	<b>Gross Carrying Amount</b>	<b>Accumulated Amortization</b>	<b>Net Carrying Amount</b>	<b>Gross Carrying Amount</b>	<b>Accumulated Amortization</b>	<b>Net Carrying Amount</b>
Trade names	\$ 302	\$ (24)	\$ 278	\$ 1,339	\$ (1,118)	\$ 221
Customer relationships	1,510	(542)	968	—	—	—
Software	4,485	(1,761)	2,724	3,886	(484)	3,402
Licenses	55	(17)	38	116	(7)	109
Total intangible assets	<u>\$ 6,352</u>	<u>\$ (2,344)</u>	<u>\$ 4,008</u>	<u>\$ 5,341</u>	<u>\$ (1,609)</u>	<u>\$ 3,732</u>

The Company’s trade name relates to the value of the Hyperpointe trade name, software relates to certain capitalized third-party costs related to a new website and a point-of-sale system; and licenses relates to certain capitalized costs of foreign acquisition.

In the year ended December 31, 2022, the Company recorded an impairment of \$110 related to Software which is included in “*Impairment of long-lived assets*” on the Company’s consolidated statement of operations and comprehensive income (loss) for the year ended December 31, 2022. The Company did not record any impairment of intangible assets in 2021. The increase in impairment expense of intangible assets is primarily related to the closure of our XpresCheck locations throughout 2022.

The Company’s intangible assets are amortized over their expected useful lives, which is six years for trade names and five and three years for software, whereas the intangibles obtained as a result of the Hyperpointe acquisition have an estimated life of 5 to 12 years. During the years ended December 31, 2022 and 2021, the Company recorded amortization expense of \$1,766, and \$447, respectively, related to its intangible assets.

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Estimated amortization expense for the Company's intangible assets at December 31, 2022 is as follows:

<b>Calendar Years ending December 31,</b>	<b>Amount</b>
2023	\$ 1,503
2024	1,462
2025	411
2026	317
2027	77
Thereafter	238
<b>Total</b>	<b>\$ 4,008</b>

**Note 10. Acquisition of HyperPointe**

On January 14, 2022, the Company acquired all of the equity interests in gcg Connect, LLC, d/b/a HyperPointe, a New Jersey limited liability company ("HyperPointe"), for an aggregate initial purchase price of approximately \$7,257, which consisted of (i) \$7,121 in cash offset by settlement of intercompany accounts payable of \$770, and (ii) the issuance of 552,487 shares of common stock of the Company to the equity owners of HyperPointe, plus additional consideration in the form of a potential earnout of up to \$7,500 (the "Acquisition"). The portion of the initial consideration for the Acquisition comprising the 552,487 shares of Company common stock was valued at \$906 based upon a closing reference price of \$1.64 as contemplated by the acquisition agreement.

XWELL also agreed pursuant to an earnout provision to issue up to an additional \$7,500 in cash or stock if certain earnout performance targets are met during an earnout period ending on the third anniversary of the date of the acquisition agreement. For purposes of the earnout, the Common Stock will also be valued on a per share basis. The earnout payments may be satisfied in (i) cash, (ii) shares of Common Stock (priced at \$1.81), or (iii) any combination thereof, at the election of the equity owners of HyperPointe, provided that in the event (and to the extent) XWELL does not have sufficient authorized shares of Common Stock that are unissued and not duly reserved for issuance upon options, warrants or other convertible securities, then XWELL shall be permitted to settle any earnout payments in cash. As a result, XWELL may issue up to an additional 4,143,647 shares of Common Stock; however, the actual number of shares that will be issued under the earnout, if any, will depend on (i) the extent of fulfillment of the earnout performance targets at the time of calculation of the earnout and (ii) the elections and conditions described in the previous sentence.

XWELL granted an equity award to the previous Chief Executive Officer of HyperPointe and who was offered employment with the Company in connection with XWELL's acquisition of the equity interests of HyperPointe, as an inducement material to such new employee entering into employment with the Company.

The employee received stock options to purchase 1,000,000 shares of XWELL common stock. The stock options were issued upon the closing of the acquisition of HyperPointe and employee's hire date in connection therewith (the "Grant Date"), and all stock options included within the equity inducement award have an exercise price of \$1.64 per share, resulting in the fair value of \$1,457 which would be recognized in expense on a straight-line basis, over the requisite service period. One-third of the options will vest on each of the first three anniversaries of the Grant Date, subject to the employee's continued employment with XWELL or its subsidiaries on such vesting dates. The stock options have a ten-year term.

The Company has recognized the assets and liabilities based on the acquisition date fair values. Based on an assessment of probability, the Company concluded that the acquisition did not result in the creation of any contingent consideration as of the Acquisition date and as of December 31, 2022.



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Determination of the fair values of the acquired assets and assumed liabilities (and the related determination of estimated lives of depreciable tangible and identifiable intangible assets) requires significant judgment.

The fair value of intangible assets other than Goodwill was determined primarily using income approaches. This included estimated multi-period excess earnings valuation method for Customer relationships and the relief-from-royalty valuation for the tradename.

The following table sets forth the significant assumptions utilized when valuing the Customer Relationships:

Customer relationships Attrition Rate	15.00 %
Existing Customer Growth	3.00 %
Business Development Expense for New Customers	0.50 %
Customer relationships Discount Rate	26.00 %
Estimated Remaining Economic Life (Years) (approx.)	5 yrs

The following table sets forth the significant assumptions utilized when valuing the Tradename:

% of Revenue Attributable to Trade Name	100 %
Royalty Rate	1.00 %
Trade Name Discount Rate	24.50 %
Remaining Economic Life (Years)	12 yrs

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The adjustments set forth in the following consolidated Balance Sheet reflect the effect of the consummation of the acquisition:

<b>Consideration paid</b>	<b>\$ 7,257</b>
<b>Fair value of assets acquired and liabilities assumed</b>	
Cash and cash equivalents	\$ 2,269
Accounts receivable	346
Unbilled Receivables	56
Prepaid expenses and other current assets	19
Other long-term assets	16
Property and equipment	68
Customer relationships	1,198
Trade name	302
Software	335
Accounts payable	(653)
Deferred revenue	(723)
	<u>3,233</u>
<b>Goodwill</b>	<b>\$ 4,024</b>

**Note 11. Leases**

The Company leases spa and clinic locations at various domestic and international airports. Additionally, the Company leases its corporate office in New York City. Certain leases entered into by the Company are accounted for in accordance with ASC 842. The Company determines if an arrangement is a lease at inception and if it qualifies under ASC 842. The Company's lease arrangements generally contain fixed payments throughout the term of the lease and most also contain a variable component to determine the lease obligation where a certain percentage of sales is used to calculate the lease payments. The Company enters into leases that expire, are amended and extended, or are extended on a month-to-month basis. Leases are not included in the calculation of the total lease liability and the right of use asset when they are month-to-month.

All qualifying leases held by the Company are classified as operating leases. Operating lease assets represent the Company's right to use an underlying asset for the lease term and lease liabilities represent its obligation to make lease payments arising from the lease. Operating lease assets and liabilities are recognized at commencement date based on the present value of lease payments over the lease term. The Company records its operating lease assets and liabilities based on required guaranteed payments under each lease agreement. The Company uses its incremental borrowing rate, which approximates the rate at which the Company can borrow funds on a secured basis, using the information available at commencement date of the lease in determining the present value of guaranteed lease payments. The interest rate implicit in the lease is generally not determinable in transactions where a company is the lessee.

The Company reviews all of its existing lease agreements to determine whether there were any modifications to lease agreements and to assess if any agreements should be accounted for pursuant to the guidance in ASC 842.

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The following is a summary of the activity in the Company's current and long-term operating lease liabilities for the year ended December 31, 2022 and 2021:

	<b>Year ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ (4,092)	\$ (4,230)
Leased assets obtained in exchange for new and modified operating lease liabilities	\$ 6,891	\$ 3,646
Leased assets surrendered in exchange for termination of operating lease liabilities	\$ —	\$ 9

As of December 31, 2022, future minimum operating leases commitments are as follows:

<b>Calendar Years ending December 31,</b>	<b>Amount</b>
2023	\$ 3,479
2024	3,153
2025	2,676
2026	1,618
2027	1,495
Thereafter	4,389
Total future lease payments	16,810
Less: interest expense at incremental borrowing rate	(2,703)
Net present value of lease liabilities	\$ 14,107

Other assumptions and pertinent information related to the Company's accounting for operating leases are:

Weighted average remaining lease term:	5.98 years
Weighted average discount rate used to determine present value of operating lease liability:	7.69 %

Variable lease payments calculated monthly as a percentage of a product and services revenue were \$1,392 and \$576 for the years ended December 31, 2022 and 2021, respectively.

Rent expense for operating leases for the years ended December 31, 2022 and 2021 were \$3,917 and \$2,069, respectively.

The Company performed assessments of its right of use lease assets for impairment for the years ended December 31, 2022 and 2021. Based upon the results of the impairment tests, the Company recorded impairment expenses of approximately \$1,110 and \$747 which is included in *Impairment of operating lease right-of-use assets* on the consolidated statement of operations and comprehensive income (loss) for the years ended December 31, 2022 and 2021, respectively.

#### **Note 12. Long-term Notes and Convertible Notes**

##### *Paycheck Protection Program*

On May 1, 2020, the Company entered into a U.S. Small Business Administration ("SBA") Paycheck Protection Program ("the PPP") promissory note in the principal amount of \$5,653 payable to Bank of America, NA ("Bank of America") evidencing a PPP loan (the "PPP Loan"). The PPP Loan bore interest at a rate of 1% per annum. No payments were due on the PPP Loan during a six-month deferral period commencing on May 2, 2020. Commencing one month after the

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expiration of the deferral period and continuing on the same day of each month thereafter until the maturity date of the PPP Loan, the Company was obligated to make monthly payments of principal and interest, each in such equal amount required to fully amortize the principal amount outstanding on the PPP Loan by the maturity date, which was May 2, 2022. The PPP loan balance was \$3,584 as of December 31, 2021. The PPP loan was paid off in full on the maturity date of May 2, 2022.

**Note 13. Stockholders' Equity and Warrants**

*Share Repurchase Program*

During 2021, the Company executed on its share repurchase program, repurchasing and retiring 4,702,072 shares at an average cost of \$1.66 per share, for a total of \$7,825.

During 2022, the Company continued to execute on its share repurchase program, repurchasing and retiring 19,526,706 shares at an average cost of \$1.22 per share, for a total of \$23,789

On August 16, 2022, the Inflation Reduction Act of 2022 (the "IR Act") was signed into federal law. The IR Act provides for, among other things, a new U.S. federal 1% excise tax on certain repurchases of stock by publicly traded U.S. domestic corporations and certain U.S. domestic subsidiaries of publicly traded foreign corporations occurring on or after January 1, 2023. The excise tax is imposed on the repurchasing corporation itself, not its shareholders from which shares are repurchased. The amount of the excise tax is generally 1% of the fair market value of the shares repurchased at the time of the repurchase. However, for purposes of calculating the excise tax, repurchasing corporations are permitted to net the fair market value of certain new stock issuances against the fair market value of stock repurchases during the same taxable year. In addition, certain exceptions apply to the excise tax. Exceptions may apply, for example, if the repurchases are less than \$1,000 or issued to employees. The U.S. Department of the Treasury (the "Treasury") has been given authority to provide regulations and other guidance to carry out and prevent the abuse or avoidance of the excise tax.

*Warrants*

The following table represents the activity related to the Company's warrants during the year ended December 31, 2022:

	<b>No. of warrant</b>	<b>Weighted average exercise price</b>	<b>Exercise price range</b>
December 31, 2021	37,817,694	\$ 2.99	\$0.525 - 6.566
Granted	—	\$ —	\$ —
Exercised	—	\$ —	\$ —
Expired	(36,645,606)	\$ 3.02	\$ 1.7 - 6.566
December 31, 2022	<u>1,172,088</u>	\$ 2.00	\$ 1.7 - 2.125

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The Company's outstanding equity warrants as of December 31, 2022 consist of the following:

	<u>No. outstanding</u>	<u>Exercise price</u>	<u>Remaining contractual life</u>	<u>Expiration Date</u>
January 2021 Placement Agent Warrants	510,588	\$ 2.125	0.08 years	January 28, 2023
January 2021 Placement Agent Tail Fee	35,000	\$ 1.7	0.08 years	January 28, 2023
February 2021 Placement Agent Warrants	284,000	\$ 2.125	0.12 years	February 11, 2023
February 2021 Placement Agent Warrants	48,000	\$ 2.125	0.13 years	February 16, 2023
February 2021 Placement Agent Tail Fee	248,500	\$ 1.7	0.12 years	February 11, 2023
February 2021 Placement Agent Tail Fee	42,000	\$ 1.7	0.13 years	February 16, 2023
December 2021 Placement Agent Tail Fee	4,000	\$ 2.125	0.99 years	December 27, 2023
	<u>1,172,088</u>			

During 2021, holders of the Company's December 2020 Investor Warrants, December 2020 Placement Agent Warrants and December 2020 Placement Agent Tail Fee Warrants exercised a total of 11,273,529 warrants for common shares. The Company received gross proceeds of approximately \$19,245. In accordance with the placement agent agreements with H.C. Wainwright & Co., LLC and Palladium, the Company paid cash fees of \$2,162 and issued 846,588 warrants to H.C. Wainwright & Co., LLC at an exercise price of \$2.125 per share and 325,500 warrants to Palladium at an exercise price of \$1.70 per share.

#### **Note 14. Fair Value Measurements**

Fair value is 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. A fair value hierarchy exists, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The three levels of inputs that may be used to measure fair value are:

**Level 1:** Inputs are quoted prices (unadjusted) for identical assets or liabilities in active markets.

**Level 2:** Pricing inputs are other than quoted prices in active markets included in Level 1, which are either directly or indirectly observable as of the reported date.

**Level 3:** Unobservable inputs, that are supported by little or no market activity and are developed based on the best information available in the circumstances. For example, inputs derived through extrapolation or interpolation that cannot be corroborated by observable market data.

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The following table presents the placement in the fair value hierarchy of the Company's assets and liabilities measured at fair value on a recurring and nonrecurring basis as of December 31, 2022 and 2021. Assets and liabilities that are measured at fair value on a nonrecurring basis relate primarily to tangible property and equipment, right-of-use assets, and other intangible assets, which are remeasured when the derived fair value is below carrying value in the consolidated balance sheets. Recoverability is based on estimated undiscounted cash flows or other relevant observable/unobservable measures. For these assets, the Company does not periodically adjust carrying value to fair value except in the event of impairment. If it is determined that impairment has occurred, the carrying value of the asset is reduced to fair value and the difference is included in *Impairment of long-lived assets and Impairment of operating lease right-of-use assets* in the consolidated statements of operations and comprehensive loss.

	Balance	Fair value measurement at reporting date using		
		Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
<b>As of December 31, 2022:</b>				
<b>Recurring fair value measurements</b>				
Equity securities:				
Route1, Inc.	\$ 104	\$ —	\$ 104	\$ —
Total equity securities	104	—	104	—
Total recurring fair value measurements	\$ 104	\$ —	\$ 104	\$ —
<b>Nonrecurring fair value measurements</b>				
Intangible assets	4,008	—	—	4,008
Total nonrecurring fair value measurements	\$ 4,008	\$ —	\$ —	\$ 4,008
<b>As of December 31, 2021</b>				
<b>Recurring fair value measurements</b>				
Equity securities:				
Route1	\$ 722	\$ —	\$ 722	\$ —
Total equity securities	722	—	722	—
Total recurring fair value measurements	\$ 722	\$ —	\$ 722	\$ —

In addition to the above, the Company's financial instruments as of December 31, 2022 and 2021 consisted of cash and cash equivalents, receivables, accounts payable and debt. The carrying amounts of all the aforementioned financial instruments approximate fair value because of the short-term maturities of these instruments.

**Note 15. Stock-based Compensation**

The Company has a stock-based compensation plan available to grant stock options and RSUs to the Company's directors, employees and consultants.

In September 2020, the Board of Directors approved a new stock-based compensation plan available to grant stock options, restricted stock and Restricted Stock Units ("RSU's") aggregating to 5,000,000 shares of Common Stock, to the

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(In thousands, except for share and per share data)**

Company's directors, employees and consultants. Shareholder approval of the plan was subsequently obtained on October 28, 2020. On October 4, 2022, shareholders approved the amendment to the Company's 2020 Equity Incentive Plan to increase the number of shares authorized for issuance under the Plan by 7,500,000 shares of Common Stock to an aggregate of 12,500,000 shares. Under the 2020 Equity Incentive Plan (the "2020 Plan"), a maximum of 7,396,691 shares of Common Stock remained available for issuance as of December 31, 2022.

The Company's previous Employee, Director and Consultant Equity Incentive Plan (the "2012 Plan") was terminated upon receipt of shareholder approval of the 2020 Plan. Awards granted under the 2012 Plan remain in effect pursuant to their terms. Generally, stock options are granted with exercise prices equal to the fair market value on the date of grant, vest in four equal quarterly installments, and expire 10 years from the date of grant. RSU's granted generally vest over a period of one year.

In September 2020, XpresTest created a stock-based compensation plan available to grant stock options, restricted stock and RSU's to the XpresTest's directors, employees and consultants. Under the XpresTest 2020 Equity Incentive Plan (the "XpresTest Plan"), a maximum of 200 shares of XpresTest common stock may be awarded, which would represent 20% of the total number of shares of common stock of XpresTest as of December 31, 2022. Certain named executive officers, consultants, and directors of the Company are eligible to participate in the XpresTest Plan. The XpresTest Plan RSAs vest upon satisfaction of certain service and performance-based conditions. The fair value of the XpresTest Plan RSAs is determined based on the weighted average of (i) Fair Value of XpresTest under the Indirect Valuation Method developing assumptions for XpresSpa Net Market Cap and XpresSpa standalone Fair Value, and (ii) Direct Valuation Method developing assumptions for XpresTest Representative Forecasted Revenue for 2021 and Peer companies Revenue's Multiples.

The fair value of stock options is estimated as of the date of grant using the Black-Scholes-Merton ("Black-Scholes") option-pricing model. The Company uses the simplified method to estimate the expected term of options due to insufficient history and high turnover in the past.

The following variables were used as inputs in the model:

Share price of the Company's Common Stock on the grant date:	\$	0.65 - 1.64
Exercise price:	\$	0.65 - 1.64
Expected volatility:		119.41 - 123.45 %
Expected dividend yield:		0 %
Annual average risk-free rate:		1.62 - 4.14 %
Expected term:		6.41 - 6.43 years

Total stock-based compensation expense for the years ended December 31, 2022 and 2021 was \$3,770 and \$2,856, respectively.

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
(In thousands, except for share and per share data)

The following tables summarize information about stock options and RSU activity during the year ended December 31, 2022:

	RSUs		XpresTest RSAs		Stock options		
	No. of RSUs	Weighted average grant date fair value	No. of RSAs	Weighted average grant date fair value	No. of options	Weighted average exercise price	Exercise price range
Outstanding as of December 31, 2021	600,000	\$ 1.63	—	\$ —	2,826,871	\$ 2.57	\$1.19 - 2,460
Granted	531,250	0.84	15.0	56,890	2,350,338	1.46	0.65 - 1.64
Exercised/Vested	(850,000)	1.46	(10.0)	61,550	—	—	
Forfeited	—	—	—	—	(245,027)	1.55	1.43-3.82
Expired	—	—	—	—	(102,153)	6.05	1.44-2,232
Outstanding as of December 31, 2022	<u>281,250</u>	\$ 0.65	<u>5.0</u>	\$ 47,570	<u>4,830,029</u>	\$ 2.00	\$0.65 - 2,460
Exercisable as of December 31, 2022					<u>2,061,259</u>	\$ 2.56	\$1.19 - 2,460

The following tables summarize information about stock options and RSU activity during the year ended December 31, 2021:

	RSUs		XpresTest RSAs		Stock options		
	No. of RSUs	Weighted average grant date fair value	No. of RSAs	Weighted average grant date fair value	No. of options	Weighted average exercise price	Exercise price range
Outstanding as of December 31, 2020	—	\$ —	28.75	\$ 11,390.35	1,353,888	\$ 3.82	\$1.53 - 2,460.0
Granted	1,349,167	1.58	120.00	5,227.20	1,668,297	1.56	1.19 - 1.61
Exercised/Vested	(749,167)	1.54	(148.75)	6,418.40	(8,334)	1.53	
Forfeited	—	—	—	—	(183,230)	1.61	
Expired	—	—	—	—	(3,750)	50.8	NA
Outstanding as of December 31, 2021	<u>600,000</u>	\$ 1.63	<u>—</u>	\$ —	<u>2,826,871</u>	\$ 2.57	\$1.19 - 2,460.0
Exercisable as of December 31, 2021					<u>1,024,694</u>	\$ 3.81	\$1.19 - 2,460.0

The weighted average remaining contractual term for options outstanding as of December 31, 2022 and 2021 was 7.83 years and 8.71 years, respectively.



**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
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As of December 31, 2022, Aggregate Intrinsic Value of Options Outstanding and Vested was \$0. As of December 31, 2021, Aggregate Intrinsic Value of Options Outstanding and Vested was \$545.

Unrecognized stock-based payment cost related to non-vested stock options as of December 31, 2022 and 2021 were \$2,506 and \$2,088, respectively.

Unrecognized stock-based payment cost related to non-vested RSUs as of December 31, 2022 and 2021 were \$183 and \$978 respectively.

**Note 16. Segment Information**

The Company analyzes the results of the Company's business through the Company's four reportable segments: XpresSpa, XpresTest, Treat and HyperPointe. The XpresSpa segment provides travelers premium spa services, including massage, nail and skin care, as well as spa and travel products. The XpresTest segment provides diagnostic COVID-19 tests at XpresCheck™ Wellness Centers in airports, to airport employees and to the traveling public. The Treat segment provides access to integrated care which can seamlessly fit into a post-pandemic world and is designed to deliver on-demand access to integrated healthcare through technology and personalized services, positioned for a traveler to access health care, records and real-time information all in one place, as well as book appointments in the Company's on-site wellness centers as they reopen. HyperPointe, which we acquired in January 2022, provides a broad range of service and support options for our customers, including technical support services and advanced services. The chief operating decision maker evaluates the operating results and performance of the Company's segments through operating income. Expenses that can be specifically identified with a segment have been included as deductions in determining operating income. Any remaining expenses and other charges are included in Corporate and Other.

The Company currently operates in two geographical regions: United States and all other countries, which include Netherlands, Turkiye and United Arab Emirates. The following table represents the geographical revenue, and total long-lived asset information as of and for the years ended December 31, 2022 and 2021. There were no concentrations of geographical revenue and long-lived assets related to any single foreign country that were material to the Company's consolidated financial statements. Long-lived assets include property and equipment, restricted cash, equity investments, security deposits and right of use lease assets.

	<b>For the years ended</b>	
	<b>December 31,</b>	
	<b>2022</b>	<b>2021</b>
<b>Revenue</b>		
United States	\$ 52,250	\$ 71,114
All other countries	3,689	2,615
<b>Total revenue</b>	<u>\$ 55,939</u>	<u>\$ 73,729</u>
<b>Long-lived assets</b>		
United States	\$ 15,084	\$ 9,698
All other countries	3,710	4,799
<b>Total long-lived assets</b>	<u>\$ 18,794</u>	<u>\$ 14,497</u>

The Company's continuing operating segments are defined as components of an enterprise about which separate financial information is available that is regularly evaluated by the enterprise's CODM in deciding how to allocate resources and in assessing performance.

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
(In thousands, except for share and per share data)

As a result of the Company’s transition to a pure-play health and wellness services company, the Company currently has four reportable operating segments: XpresSpa, XpresTest Treat and HyperPointe.

For 2022, customers A, B, and C comprised approximately 55%, 33%, and 10%, respectively of the Company’s net sales from its Hyperpointe segment.

As of December 31, 2022, Customers A and D comprised approximately 55% and 27%, respectively of the Company’s accounts receivable at its Hyperpointe segment.

Customer E comprised approximately 10% of the Company’s net sales from its XpresTest segment. Customer F comprised approximately 99% of the Company’s accounts receivable at its XpresTest segment and 92% of the Company’s accounts receivable.

	<b>For the twelve months ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
<b>Revenue</b>		
XpresSpa	\$ 13,680	\$ 4,614
XpresTest	38,523	69,078
Treat	1,392	37
HyperPointe	2,344	—
Corporate and other	—	—
<b>Total revenue</b>	<b>\$ 55,939</b>	<b>\$ 73,729</b>

	<b>For the twelve months ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
<b>Operating loss</b>		
XpresSpa	\$ (12,910)	\$ (9,617)
XpresTest	2,403	25,452
Treat	(10,577)	(5,735)
HyperPointe	(1,165)	—
Corporate and other	(8,914)	(5,993)
<b>Total operating (loss) income</b>	<b>\$ (31,163)</b>	<b>\$ 4,107</b>

	<b>2022</b>	<b>2021</b>
	<b>Depreciation &amp; Amortization</b>	
XpresSpa	\$ 1,479	\$ 1,281
XpresTest	1,711	1,858
Treat	1,876	50
HyperPointe	332	—
Corporate and other	31	12
<b>Total depreciation &amp; amortization</b>	<b>\$ 5,429</b>	<b>\$ 3,201</b>

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
(In thousands, except for share and per share data)

	2022	2021
<b>Capital Expenditures</b>		
XpresSpa	\$ 2,134	\$ 908
XpresTest	775	1,723
Treat	3,274	5,904
HyperPointe	—	—
Corporate and other	110	136
<b>Total capital expenditures</b>	<b>\$ 6,293</b>	<b>\$ 8,671</b>

	As of December 31,	
	2022	2021
<b>Long-lived Assets</b>		
XpresSpa	\$ 11,851	8,419
XpresTest	112	2,246
Treat	2,314	2,700
HyperPointe	4,108	—
Corporate and other	409	1,132
<b>Total long-lived Assets</b>	<b>\$ 18,794</b>	<b>\$ 14,497</b>

	2022	2021
<b>Assets</b>		
XpresSpa	\$ 21,135	\$ 12,351
XpresTest	4,285	19,349
Treat	3,186	5,918
HyperPointe	6,913	—
Corporate and other	34,907	89,648
<b>Total assets</b>	<b>\$ 70,426</b>	<b>\$ 127,266</b>

Long-lived assets includes property and equipment, right of use lease assets, security deposits, equity investments and restricted cash.

The Company performed impairment assessments of long-lived assets and operating lease right-of-use asset for the years ended December 31, 2022 and 2021. Based upon the results of the impairment tests, the Company recorded impairment expenses of long-lived assets for approximately \$619, \$677 and \$3,373 for its XpresSpa, XpresTest and Treat segments respectively for the year ended December 31, 2022. Additionally, the Company recorded impairment expenses of lease right-of-use asset for approximately \$936, \$38 and \$136 for its XpresSpa, XpresTest and Treat segments respectively for the year ended December 31, 2022. For the year ended December 31, 2021 the Company recorded impairment expenses of long-lived assets for approximately \$68 and impairment expenses of operating lease right-of-use asset for approximately \$747 only in its XpresSpa segment; the XpresTest and Treat segments were not impaired in 2021.

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
**(In thousands, except for share and per share data)**

**Note 17. Accrued Expenses and Other Current Liabilities**

As of December 31, 2022, and 2021, the Company's accrued expenses and other current liabilities were comprised of the following:

	<b>December 31, 2022</b>	<b>December 31, 2021</b>
Litigation accrual	\$ 963	\$ 845
Accrued compensation	2,008	2,862
Tax-related liabilities	573	603
Common area maintenance accruals	160	—
AP Accruals	754	431
Gift certificates	496	494
Construction accrual	—	930
Credit card processing fees	33	501
Other miscellaneous accruals	732	757
Total accrued expenses and other current liabilities	<u>\$ 5,719</u>	<u>\$ 7,423</u>

**Note 18. Income Taxes**

For the years ended December 31, 2022 and 2021, the income (loss) before income taxes consisted of the following:

	<b>2022</b>	<b>2021</b>
Domestic	\$ (32,445)	\$ 3,137
Foreign	(129)	(188)
	<u>\$ (32,574)</u>	<u>\$ 2,949</u>

Income tax expense for the years ended December 31, 2022 and 2021 consisted of the following:

	<b>For the years ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
Current:		
Federal	\$ —	\$ —
State	41	56
Foreign	14	—
Deferred:		
Federal	—	—
	<u>\$ 55</u>	<u>\$ 56</u>

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
(In thousands, except for share and per share data)

Income tax expense differed from the amounts computed by applying the applicable United States federal income tax rate to loss from continuing operations before taxes on income as a result of the following:

	<b>For the years ended December 31,</b>	
	<b>2022</b>	<b>2021</b>
Income (loss) from operations before income taxes	\$ (32,574)	\$ 2,949
Tax rate	21 %	21 %
Computed "expected" tax benefit	(6,841)	619
State taxes, net of federal income tax benefit	706	1,516
Change in valuation allowance	7,014	(10,946)
Adjustment JV Basis	339	4,445
Nondeductible expenses	341	1,104
Return to Provision Adjustment	(94)	2,403
State Deferred Rate Change	(570)	—
Asset Impairment Adjustment	(810)	—
Other items	(31)	915
Income tax expense	<u>\$ 55</u>	<u>\$ 56</u>

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities as of December 31, 2022 and 2021 are as follows:

	<b>December 31,</b>	
	<b>2022</b>	<b>2021</b>
<b>Deferred income tax assets</b>		
Net operating loss carryforwards	\$ 51,932	\$ 48,556
Stock-based compensation	1,029	507
Intangible assets and other	7,298	4,235
Net deferred income tax assets	<u>60,259</u>	<u>53,298</u>
Less:		
Valuation allowance	<u>(60,259)</u>	<u>(53,298)</u>
<b>Net deferred income tax assets</b>	<u>\$ —</u>	<u>\$ —</u>

The Company assesses the need for a valuation allowance related to its deferred income tax assets by considering whether it is more likely than not that some portion or all of the deferred income tax assets will not be realized. A valuation allowance has been recorded against the Company's deferred income tax assets, as it is in the opinion of management that it is more likely than not that the net operating loss carryforwards ("NOL") will not be utilized in the foreseeable future.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
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The cumulative valuation allowance as of December 31, 2022 is \$60,259 which will be reduced if and when the Company determines that the deferred income tax assets are more likely than not to be realized.

As of January 1, 2021	\$ 64,245
Charged to cost and expenses	(8,544)
Return to provision true-up and other	(2,403)
As of December 31, 2021	53,298
Charged to cost and expenses	6,864
Return to provision true-up and other	97
As of December 31, 2022	<u>\$ 60,259</u>

As of December 31, 2022, the Company's estimated aggregate total NOLs were \$150,926 for U.S. federal purposes, expiring 20 years from the respective tax years to which they relate, and \$75,045 for U.S. federal purposes with an indefinite life due to new regulations in the Tax Cuts and Jobs Act of 2017. The NOL amounts are presented before Internal Revenue Code, Section 382 limitations ("Section 382"). The Tax Reform Act of 1986 imposed substantial restrictions on the utilization of NOL and tax credits in the event of an ownership change of a corporation. Thus, the Company's ability to utilize all such NOL and credit carryforwards may be limited. The Coronavirus Aid, Relief, and Economic Security Act or "CARES Act" was enacted subsequent to the December 31, 2019 period, on March 27, 2020. The CARES act provided for favorable business provisions. However, the Company does not anticipate the income tax provision changes to materially benefit the Company.

The Company files its tax returns in the U.S. federal jurisdiction, as well as in various state and local jurisdictions. The company is not currently under audit in any taxing jurisdictions. The federal statute of limitations for audit consideration is 3 years from the filing date, and generally states implement a statute of limitations between 3 and 5 years.

#### **Note 19. Commitments and Contingencies**

Certain of the Company's outstanding legal matters include speculative claims for substantial or indeterminate amounts of damages. The Company regularly evaluates developments in its legal matters that could affect the amount of any potential liability and makes adjustments as appropriate. Significant judgment is required to determine both the likelihood of there being any potential liability and the estimated amount of a loss related to the Company's legal matters.

With respect to the Company's outstanding legal matters, based on its current knowledge, the Company's management believes that the amount or range of a potential loss will not, either individually or in the aggregate, have a material adverse effect on its business, consolidated financial position, results of operations or cash flows. However, the outcome of such legal matters is inherently unpredictable and subject to significant uncertainties. The Company evaluated the outstanding legal matters and assessed the probability and likelihood of the occurrence of liability. Based on management's estimates, the Company has recorded accruals of \$963 and \$845 as of December 31, 2022 and December 31, 2021, respectively, which is included in *Accrued expenses and other current liabilities* in the consolidated balance sheets.

The Company expenses legal fees in the period in which they are incurred.

#### *Kyle Collins v. Spa Products Import & Distribution Co., LLC et al*

This is a combined class action and California Private Attorney's General Act ("PAGA") action. Plaintiff seeks to recover wages, penalties and PAGA penalties for claims for (1) failure to provide meal periods, (2) failure to provide rest breaks, (3) failure to pay overtime, (4) inaccurate wage statements, (5) waiting time penalties, and (6) PAGA penalties of \$0.1 per employee per pay period per violation. There are approximately 240 current and former employees in the litigation class. The parties agreed to mediation on May 26, 2020, however, due to COVID-19, the parties subsequently stayed all proceedings. The mediation session occurred on March 18, 2021, and the parties reached a settlement which

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**  
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was approved on September 20, 2022 for the amount of \$513 and additional payroll taxes of \$4. Funding of the settlement amount occurred on January 26, 2023. The Company recorded an accrual of \$517 as of December 31, 2022 which is included in *Accrued expenses and other current liabilities* in the consolidated balance sheets.

*OTG Management PHL B v. XpresSpa Philadelphia Terminal B et al.*

On May 9, 2022, a lawsuit was filed in the Philadelphia Court of Common Pleas by OTG Management at Philadelphia International Airport, claiming that XWELL improperly backed out of its sublease for space at Terminal B and now owes between \$864 and \$2,250 in accelerated rent for the 12-year contract. They claim that by refusing to complete the project, failing to commence and maintain operations, refusing to pay rent and improperly purporting to terminate the lease (among other acts and omissions), XWELL breached the lease. OTG Management has agreed to extend XWELL's time to respond to the Complaint to May 6, 2023.

In addition to those matters specifically set forth herein, the Company and its subsidiaries are involved in various other claims and legal actions that arise in the ordinary course of business. The Company does not believe that the ultimate resolution of these actions will have a material adverse effect on the Company's financial position, results of operations, liquidity, or capital resources. However, a significant increase in the number of these claims, or one or more successful claims under which the Company incurs greater liabilities than the Company currently anticipates, could materially adversely affect the Company's business, financial condition, results of operations and cash flows.

In the event that an action is brought against the Company or one of its subsidiaries, the Company will investigate the allegation and vigorously defend itself.

**Concentrations of Supplier Risk**

For the XpresTest segment, substantially all supplies for testing were purchased from one vendor. For the XpresSpa segment, substantially all inventory was also purchased from one vendor.

**Leases**

XpresSpa is contingently liable to a surety company under certain general indemnity agreements required by various airports relating to its lease agreements. XpresSpa agrees to indemnify the surety for any payments made on contracts of suretyship, guaranty, or indemnity. The Company believes that all contingent liabilities will be satisfied by its performance under the specified lease agreements.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Annual Report on Form 10-K to be signed on its behalf by the undersigned thereunto, duly authorized on the 17<sup>th</sup> day of April 2023.

**XWELL, Inc.**

By: /s/ SCOTT R. MILFORD

**Scott R. Milford**  
**Chief Executive Officer**  
**(Principal Executive Officer)**

Pursuant to the requirements of Securities Exchange Act of 1934, this Annual Report on Form 10-K has been signed below by the following persons on behalf of the registrant and in the capacities indicated below and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
<u>/s/ SCOTT R. MILFORD</u> <b>Scott R. Milford</b>	Chief Executive Officer and Director (Principal Executive Officer)	April 17 2023
<u>/s/ Omar A. Haynes</u> <b>Omar A. Haynes</b>	Interim Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	April 17 2023
<u>/s/ BRUCE T. BERNSTEIN</u> <b>Bruce T. Bernstein</b>	Director	April 17 2023
<u>/s/ ROBERT WEINSTEIN</u> <b>Robert Weinstein</b>	Director	April 17, 2023
<u>/s/ MICHAEL LEBOWITZ</u> <b>Michael Lebowitz</b>	Director	April 17, 2023
<u>/s/ DONALD E. STOUT</u> <b>Donald E. Stout</b>	Director	April 17, 2023



**Subsidiaries of XpresSpa Group, Inc.**

<b>Name of Subsidiary</b>	<b>Jurisdiction of Incorporation</b>
GCG Connect, LLC d/b/a HyperPointe	New Jersey
I/P Engine, Inc.	Virginia
Innovate/Protect, Inc.	Delaware
Iron Gate Security, Inc.	Delaware
Quantum Stream Inc.	Delaware
Spa Products Import & Distribution Co., LLC	New York
Vringo Acquisition, Inc.	Delaware
Vringo GmbH	Germany
Vringo Infrastructure, Inc.	Delaware
Vringo Labs, Inc.	Delaware
Vringo Ltd.	Israel
Vringo Mobile, Inc.	Delaware
VRTUAL, Inc.	Delaware
XpresSpa Amsterdam Airport B.V.	Netherlands
XpresSpa at Term. 4 JFK, LLC	New York
XpresSpa Atlanta Terminal A, LLC	New York
XpresSpa Atlanta Terminal C, LLC	New York
XpresSpa Atlanta Terminal D&E, LLC	New York
XpresSpa Austin Airport, LLC	New York
XpresSpa Charlotte Airport, LLC	New York
XpresSpa Denver Airport, LLC	New York
XpresSpa DFW International, LLC	New York
XpresSpa DFW Kiosk, LLC	New York
XpresSpa DFW Terminal A, LLC	New York
XpresSpa Europe B.V.	Netherlands
XpresSpa Franchising, LLC	New York
XpresSpa Franchising USA, LLC	New York
XpresSpa Holdings, LLC	Delaware
XpresSpa Houston Hobby, LLC	New York
XpresSpa Houston Intercontinental Terminal A, LLC	New York
XpresSpa International Holdings, LLC	New York
XpresSpa LaGuardia Airport, LLC	New York
XpresSpa Las Vegas Airport, LLC	New York
XpresSpa LAX Airport, LLC	New York
XpresSpa LAX Tom Bradley, LLC	New York
XpresSpa Miami Airport, LLC	New York
XpresSpa Middle East B.V.	Netherlands
XpresSpa Middle East Limited	British Virgin Islands

<b>Name of Subsidiary</b>	<b>Jurisdiction of Incorporation</b>
XpresSpa Mobile Services, LLC	New York
XpresSpa MSP Airport, LLC	New York
XpresSpa Online Shopping, LLC	New York
XpresSpa Orlando International, LLC	New York
XpresSpa Orlando, LLC	New York
XpresSpa Philadelphia Airport, LLC	New York
XpresSpa Philadelphia Terminal B, LLC	New York
XpresSpa Phoenix Airport, LLC	New York
XpresSpa Pittsburgh A, LLC	New York
XpresSpa RDU Airport, LLC	New York
XpresSpa S.F. International, LLC	New York
XpresSpa Salt Lake City, LLC	New York
Xpresspa Turkey Sağlık Hizmetleri Ve Perakende Ticaret Limited Sirketi	Turkiye
Xpresspa Sağlık Hizmetleri Ve Ticaret Limited Sirketi	Turkiye
XpresSpa Washington Reagan, LLC	New York
XpresRecover Charlotte Airport, LLC	New York
XpresTest, Inc.	Delaware
Treat, Inc.	Delaware

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INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in the Registration Statements of XWELL, Inc. on Form S-8 (Nos 333-254508, 333-268004 and 333-264028), and on Form S-3 (Nos 333-239913, 333-240084, 333-225531, 333-233419, and 333-264026), of our report dated April 17, 2023, with respect to our audit of the consolidated financial statements of XWELL, Inc. (formerly known as XpresSpa Group, Inc.) and Subsidiaries as of and for the year ended December 31, 2022, which report is included in this Annual Report on Form 10-K of XWELL, Inc. for the year ended December 31, 2022.

/s/ Marcum LLP

Marcum LLP  
East Hanover, New Jersey  
April 17, 2023

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INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in the Registration Statements of XWELL, Inc. on Form S-8 Nos. 333-254508, 333-268004 and 333-264028 and on Form S-3 Nos. 333-239913, 333-240084, 333-225531, 333-233419, and 333-264026 of our report dated March 30, 2022, with respect to our audit of the consolidated financial statements of XWELL, Inc. (formerly known as XpresSpa Group, Inc.) and Subsidiaries as of December 31, 2021, which report is included in the Annual Report on Form 10-K of XWELL, Inc. for the year ended December 31, 2022.

We were dismissed as auditors on October 4, 2022, and, accordingly, we have not performed any audit or review procedures with respect to any financial statements for the periods after the date of our dismissal.

/s/ Friedman LLP

New York, New York  
April 17, 2023

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## CERTIFICATIONS UNDER SECTION 302

I, Scott Milford, certify that:

1. I have reviewed this Annual Report on Form 10-K of XpresSpa Group, 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. I am 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 my supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to me 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 my 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 my 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. 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 17, 2023

/s/ SCOTT R MILFORD

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**Chief Executive Officer**  
**(Principal Executive Officer)**

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## CERTIFICATIONS UNDER SECTION 302

I, Omar Haynes, certify that:

1. I have reviewed this Annual Report on Form 10-K of XpresSpa Group, 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. I am 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 my supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to me 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 my 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 my 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. 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 17, 2023

/s/ OMAR A. HAYNES

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**Interim Chief Financial Officer**  
**(Principal Accounting and Financial Officer)**

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## CERTIFICATIONS UNDER SECTION 906

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), each of the undersigned officers of XpresSpa Group, Inc., a Delaware corporation (the "Company"), does hereby certify, to such officer's knowledge, that:

The Annual Report for the year ended December 31, 2022 (the "Form 10-K") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: April 17, 2023

/s/ SCOTT R. MILFORD

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Chief Executive Officer

(Principal Executive Officer)

/s/ OMAR A. HAYNES

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Interim Chief Financial Officer

((Principal Financial and Accounting Officer)

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