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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2022

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, 11th Floor, New York, NY  
(Address of principal executive offices)

10001  
(Zip Code)

(Registrant's Telephone Number, Including Area Code): (212) 750-9595

**XpresSpa Group, Inc.**

(Former name, former address and former fiscal year, if changed since last report)

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.01 per share	XWEL	The Nasdaq Stock Market LLC

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 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 is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of November 10, 2022, 83,232,262 shares of the registrant's common stock were outstanding.

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**XWELL, Inc. and Subsidiaries**

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**PART I - FINANCIAL INFORMATION**

**Item 1. Condensed Consolidated Financial Statements (Unaudited)**

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
**(Unaudited)**

(In thousands, except share and per share data)

	September 30, 2022	December 31, 2021
<b>Current assets</b>		
Cash and cash equivalents	\$ 49,429	\$ 105,506
Accounts receivable	1,309	615
Contract Assets	1,128	-
Inventory	940	1,763
Other current assets	2,375	1,095
<b>Total current assets</b>	<u>55,181</u>	<u>108,979</u>
Restricted cash	751	751
Property and equipment, net	8,102	6,658
Intangible assets, net	4,414	3,732
Operating lease right of use assets, net	10,299	4,336
Goodwill	4,024	-
Other assets	2,205	2,810
<b>Total assets</b>	<u>\$ 84,976</u>	<u>\$ 127,266</u>
<b>Current liabilities</b>		
Accounts payable, accrued expenses and other	\$ 7,981	\$ 12,958
Current portion of operating lease liabilities	2,746	2,736
Deferred revenue	257	549
Current portion of promissory note, unsecured	-	3,584
<b>Total current liabilities</b>	<u>10,984</u>	<u>19,827</u>
<b>Long-term liabilities</b>		
Operating lease liabilities	12,465	7,504
<b>Total liabilities</b>	<u>23,449</u>	<u>27,331</u>
<b>Commitments and contingencies (see Note 15)</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 September 30, 2022 and December 31, 2021, respectively	832	1,013
Additional paid-in capital	467,268	487,306
Accumulated deficit	(414,655)	(395,275)
Accumulated other comprehensive loss	(560)	(312)
<b>Total equity attributable to XWELL, Inc.</b>	<u>52,885</u>	<u>92,732</u>
Noncontrolling interests	8,642	7,203
Total equity	61,527	99,935
<b>Total liabilities and equity</b>	<u>\$ 84,976</u>	<u>\$ 127,266</u>

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

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

	<u>Three months ended September 30,</u>		<u>Nine months ended September 30,</u>	
	<u>2022</u>	<u>2021</u>	<u>2022</u>	<u>2021</u>
<b>Revenue, net</b>				
Managed services fees	\$ -	\$ -	\$ -	\$ 16,843
Patient services revenue	4,607	25,351	31,728	25,351
Services	4,924	1,158	13,488	1,761
Products	542	258	1,308	402
Hyperpointe Services	659	-	1,853	-
Other	4	-	4	14
<b>Total revenue, net</b>	<u>10,736</u>	<u>26,767</u>	<u>48,381</u>	<u>44,371</u>
<b>Cost of sales</b>				
Labor	5,222	4,277	16,161	7,419
Occupancy	1,082	587	3,412	1,511
Products and other operating costs	3,035	8,798	17,170	16,592
<b>Total cost of sales</b>	<u>9,339</u>	<u>13,662</u>	<u>36,743</u>	<u>25,522</u>
Depreciation and amortization	1,564	852	4,329	2,542
Impairment of long-lived assets	677	-	677	-
Loss on disposal of assets, net	325	-	273	22
Impairment of operating lease right-of-use assets	38	-	38	-
General and administrative	6,447	5,196	24,193	14,350
<b>Total operating expenses</b>	<u>18,390</u>	<u>19,710</u>	<u>66,253</u>	<u>42,436</u>
<b>Operating (loss) income</b>	<u>(7,654)</u>	<u>7,057</u>	<u>(17,872)</u>	<u>1,935</u>
Interest income, net	114	6	159	31
Other non-operating expense, net	(136)	(381)	(650)	(830)
<b>(Loss) income before income taxes</b>	<u>(7,676)</u>	<u>6,682</u>	<u>(18,363)</u>	<u>1,136</u>
Income tax expense	(3)	(87)	(5)	(79)
<b>Net (loss) income</b>	<u>(7,679)</u>	<u>6,595</u>	<u>(18,368)</u>	<u>1,057</u>
Net loss (income) attributable to noncontrolling interests	500	(998)	(1,012)	(983)
<b>Net (loss) income attributable to XWELL, Inc.</b>	<u>\$ (7,179)</u>	<u>\$ 5,597</u>	<u>\$ (19,380)</u>	<u>\$ 74</u>
<b>Net (loss) income</b>	<u>\$ (7,679)</u>	<u>\$ 6,595</u>	<u>\$ (18,368)</u>	<u>\$ 1,057</u>
Other comprehensive loss from operations	(102)	(52)	(248)	(63)
<b>Comprehensive (loss) income</b>	<u>\$ (7,781)</u>	<u>\$ 6,543</u>	<u>\$ (18,616)</u>	<u>\$ 994</u>
<b>Loss per share</b>				
<b>Basic and diluted loss per share</b>	<u>\$ (0.08)</u>	<u>\$ 0.05</u>	<u>\$ (0.20)</u>	<u>\$ -</u>
<b>Weighted-average number of shares outstanding during the period</b>				
Basic	<u>94,621,339</u>	<u>105,531,418</u>	<u>97,167,867</u>	<u>103,950,731</u>
Diluted	<u>94,621,339</u>	<u>105,957,317</u>	<u>97,167,867</u>	<u>104,301,344</u>

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

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
**CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)**  
**(Unaudited)**  
(In thousands, except share and per 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>December 31, 2021</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	391,820	4	—	—	(4)	—	—	—	—	—
Value of Shares Withheld to fund payroll taxes	—	—	—	—	(73)	—	—	(73)	—	(73)
Stock-based compensation	—	—	—	—	1,543	—	—	1,543	—	1,543
Net loss for the period	—	—	—	—	—	(4,283)	—	(4,283)	1,521	(2,762)
Repurchase and retirement of common stock	(7,142,446)	(71)	—	—	(11,024)	—	—	(11,095)	—	(11,095)
Foreign currency translation	—	—	—	—	—	—	(41)	(41)	—	(41)
Distributions to noncontrolling interests	—	—	—	—	—	—	—	—	(824)	(824)
Contributions from noncontrolling interests	—	—	—	—	—	—	—	—	200	200
<b>March 31, 2022</b>	95,071,210	\$ 951	—	\$ —	\$ 478,649	\$ (399,558)	\$ (353)	\$ 79,689	\$ 8,100	\$ 87,789
Vesting of restricted stock units	289,061	3	—	—	(3)	—	—	—	—	—
Grant of stock options for services	—	—	—	—	15	—	—	15	—	15
Stock-based compensation	—	—	—	—	771	—	—	771	549	1,320
Net loss for the period	—	—	—	—	—	(7,918)	—	(7,918)	(9)	(7,927)
Repurchase of common stock	—	—	(1,338,404)	(1,021)	—	—	—	(1,021)	—	(1,021)
Foreign currency translation	—	—	—	—	—	—	(105)	(105)	—	(105)
Distributions to noncontrolling interests	—	—	—	—	—	—	—	—	(132)	(132)
<b>June 30, 2022</b>	95,360,271	\$ 954	(1,338,404)	\$ (1,021)	\$ 479,432	\$ (407,476)	\$ (458)	\$ 71,431	\$ 8,508	\$ 79,939
Vesting of restricted stock units	256,251	2	—	—	(2)	—	—	—	—	—
Grant of stock options for services	—	—	—	—	16	—	—	16	—	16
Contributions from noncontrolling interests	—	—	—	—	—	—	—	—	546	546
Stock-based compensation	—	—	—	—	392	—	—	392	91	483
Foreign currency translation	—	—	—	—	—	—	(102)	(102)	(3)	(105)
Net loss for the period	—	—	—	—	—	(7,179)	—	(7,179)	(500)	(7,679)
Repurchase and retirement of common stock	(12,384,260)	(124)	1,338,404	1,021	(12,570)	—	—	(11,673)	—	(11,673)
<b>September 30, 2022</b>	83,232,262	\$ 832	—	—	\$ 467,268	\$ (414,655)	\$ (560)	\$ 52,885	\$ 8,642	\$ 61,527

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

**XWELL, Inc. and Subsidiaries**  
**CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)**  
**(Continued)**  
**(Unaudited)**  
**(In thousands, except share and per 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>December 31, 2020</b>	94,058,853	\$ 941	—	—	\$ 475,709	\$ (398,624)	\$ (220)	\$ 77,806	\$ 2,565	\$ 80,371
Warrant exercises, net of costs	11,223,529	112	—	—	16,895	—	—	17,007	—	17,007
Stock-based compensation	—	—	—	—	264	—	—	264	741	1,005
Net loss for the period	—	—	—	—	—	(1,056)	—	(1,056)	248	(808)
Foreign currency translation	—	—	—	—	—	—	(16)	(16)	—	(16)
Contributions from noncontrolling interests	—	—	—	—	—	—	—	—	333	333
<b>March 31, 2021</b>	105,282,382	\$ 1,053	—	\$ —	\$ 492,868	\$ (399,680)	\$ (236)	\$ 94,005	\$ 3,887	\$ 97,892
Issuance of Common Stock for services	223,637	2	—	—	318	—	—	320	—	320
Issuance of restricted stock	27,983	—	—	—	—	—	—	—	—	—
Foreign currency translation	—	—	—	—	—	—	5	5	—	5
Net loss for the period	—	—	—	—	—	(4,467)	—	(4,467)	(263)	(4,730)
Stock-based compensation	—	—	—	—	267	—	—	267	61	328
Redemption of certain noncontrolling interests	—	—	—	—	—	—	—	—	(133)	(133)
<b>June 30, 2021</b>	105,534,002	\$ 1,055	—	\$ —	\$ 493,453	\$ (404,147)	\$ (231)	\$ 90,130	\$ 3,552	\$ 93,682
Stock grant for services	—	—	—	—	29	—	—	29	—	29
Stock-based compensation	—	—	—	—	767	—	—	767	23	790
Stock option exercises	8,334	—	—	—	13	—	—	13	—	13
Consolidation of Variable Interest Entities	—	—	—	—	—	—	—	—	4,307	4,307
Repurchase and retirement of common stock	(250,000)	(2)	—	—	(448)	—	—	(450)	—	(450)
Issuance of restricted stock	35,043	—	—	—	—	—	—	—	—	—
Foreign currency translation	—	—	—	—	—	—	(52)	(52)	—	(52)
Distributions to noncontrolling interests	—	—	—	—	—	—	—	—	(991)	(991)
Net income for the period	—	—	—	—	—	5,597	—	5,597	998	6,595
<b>September 30, 2021</b>	105,327,379	\$ 1,053	—	—	\$ 493,814	\$ (398,550)	\$ (283)	\$ 96,034	\$ 7,889	\$ 103,923

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

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

	<b>Nine months ended September 30,</b>	
	<b>2022</b>	<b>2021</b>
<b>Cash flows from operating activities</b>		
Net (loss) income	\$ (18,368)	\$ 1,057
Adjustments to reconcile net loss to net cash used in operating activities:		
<b>Items included in net loss not affecting operating cash flows:</b>		
Depreciation and amortization	4,329	2,542
Impairment of long-lived assets	715	—
Loss on disposal of assets, net	273	22
Amortization of operating lease right of use asset	1,357	1,162
Issuance of shares of Common Stock for services	31	349
Stock-based compensation	3,346	2,123
Loss on equity investment	528	716
<b>Changes in assets and liabilities:</b>		
Decrease (increase) in inventory	794	(1,385)
(Increase) decrease in accounts receivable	(352)	74
(Increase) decrease in contract assets	(1,128)	—
(Decrease) increase in deferred revenue	(1,015)	(890)
Other assets, current and non-current	(1,137)	519
Other liabilities, current and non-current	(3,913)	(3,035)
(Decrease) increase in accounts payable	(2,866)	2,713
<b>Net cash provided by (used in) operating activities</b>	<b>(17,406)</b>	<b>5,967</b>
<b>Cash flows from investing activities</b>		
Acquisition of property and equipment	(5,797)	(2,650)
Cash acquired on consolidation of certain Variable Interest Entities	—	2,434
Acquisition of HyperPointe net of cash assumed	(4,853)	—
Acquisition of software	(279)	(2,156)
<b>Net cash used in investing activities</b>	<b>(10,929)</b>	<b>(2,372)</b>
<b>Cash flows from financing activities</b>		
Proceeds from direct offerings of Common Stock and warrants exercises, net of costs	—	17,007
Redemption of non-controlling interests	—	(133)
Repurchase of Common Stock	(23,789)	(450)
Contributions from noncontrolling interests	746	333
Proceeds from stock option exercises	—	13
Payments for shares withheld on vesting	(73)	—
Repayment of Paycheck Protection Program	(3,584)	—
Distributions to noncontrolling interests	(956)	(991)
<b>Net cash provided by (used in) financing activities</b>	<b>(27,656)</b>	<b>15,779</b>
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(86)	36
(Decrease)/ Increase in cash, cash equivalents and restricted cash	(56,077)	19,410
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>\$ 50,180</b>	<b>\$ 109,912</b>
<b>Cash paid for</b>		
Interest	\$ 10	\$ —
Income taxes	5	\$ —
<b>Non-cash investing and financing transactions</b>		
Capital expenditures included in Accounts payable, accrued expenses and other	\$ 592	\$ —
Issuance of Common Stock on acquisition of gcg Connect, LLC, d/b/a HyperPointe	\$ 906	\$ —

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

**XWELL, Inc. (Formerly known as XpresSpa Group, Inc.) and Subsidiaries**  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(Unaudited)  
(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 leading global travel health and wellness services holding company. XWELL currently has four reportable operating segments: XpresSpa<sup>®</sup>, XpresTest<sup>®</sup>, 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.



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, Phoenix Sky Harbor International Airport and Salt Lake City International Airport).

The Company's HyperPointe segment, which the Company acquired in January 2022 (*see Note 7. 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 unaudited interim condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim financial information and the instructions to Article 8-03 of Regulation S-X, and should be read in conjunction with the Company's Annual Report on Form 10-K for the year ended December 31, 2021, as amended. The condensed consolidated balance sheet as of December 31, 2021 was derived from the audited annual financial statements but does not include all information required by GAAP for annual financial statements. The 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 as well as variable interest entities in which we are the primary beneficiaries. All adjustments that, in the opinion of management, are necessary for a fair presentation for the periods presented have been reflected by the Company. Such adjustments are of a normal, recurring nature. The results of operations for the three and nine months ended September 30, 2022 are not necessarily indicative of the results that may be expected for the entire fiscal year or for any other interim period. All significant intercompany balances and transactions have been eliminated in consolidation.

### **Recent Developments**

#### **XpresSpa**

There are currently twenty operating XpresSpa domestic locations and the Company expects to re-open two additional domestic locations in the near-term as airport traffic return to sufficient levels to support operations at a unit level. . During 2022, the Company sold its two franchise locations in Austin-Bergstrom International Airport. A significant number of the domestic XpresSpa locations are operating approximately eight hours per day during the busiest hours (compared to up to sixteen hours per day pre-pandemic). Additionally, XpresSpa implemented a price increase in mid-October 2021 in its efforts to return to profitability. As the Companies continue to monitor fluctuating airport volumes, the Company will also continue to review operating hours to optimize revenue opportunity.

During the fourth quarter of 2021, the Company began testing several new services to take advantage of a growing interest in non-traditional spa services and expansion of its retail offering to align more closely with the services the Company provides. The Company is evaluating the success of these new initiatives at each airport on an on-going basis and will incorporate changes to its approach as more of the portfolio is reactivated.

The Company also has eight international locations operating, including three XpresSpa locations in Dubai International Airport in the United Arab Emirates, three XpresSpa locations in Schiphol Amsterdam Airport in the Netherlands and two XpresSpa locations in Istanbul Airport in Turkey. The Company had signed for 5 locations at Istanbul Airport in Turkey of which 3 of them opened after September 30, 2022: the Company expects to open the remaining two locations before the end of 2022.

#### **XpresCheck Wellness Centers**

XpresTest's business has MSAs with state licensed physicians and nurse practitioners, under which we administer COVID-19 testing options, including a Polymerase Chain Reaction (PCR) test and a rapid PCR test. As of the date of this report, there are eight operating XpresCheck locations operating in eight airports, including one in Orlando International Airport, pre-security, in the South Walk area of the Main Terminal, which opened in March 2022.

During 2022, as countries continued to relax their testing requirements resulting in rapid decline of testing volumes at the Company's XpresCheck locations, the Company closed or consolidated its five non performing XpresCheck Wellness Centers and two XpresCheck Wellness Centers were assimilated into the Treat Segment. Also, due to the rapid decline of testing volumes at the Company's XpresCheck locations, the company absorbed a loss of \$1,040 related to the write-off of long-lived assets during the quarter ended September 30, 2022.

During 2021, XpresTest initiated a \$2,001 eight-week pilot program with the Centers for Disease Control and Prevention (CDC) in collaboration with Concentric by Ginkgo Bioworks (NYSE: DNA). Under this program, XpresTest 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 the fourth quarter of 2021, respectively.

During the third quarter of 2022, XpresTest, in partnership with Ginkgo Bioworks and 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 the Company is 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 the Company is entitled. The Company recognizes 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. The Company recognizes revenue ratably (straight line basis) over the term of the contract (one year). The Company will recognize revenue over time for the traveler enrollment initiative performance obligation based on the amount for which the Company has the right to invoice. The Company recorded \$916 in revenue during the quarter ended September 30, 2022.

## **Treat**

Treat is the Company's new travel, health and wellness brand transforming the way we access care 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, Phoenix Sky Harbor International Airport and Salt Lake City International Airport) provide access to health and wellness services for travelers. The Treat 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 the Company's 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](http://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, on-demand chat care by licensed providers, a health wallet to store personal and family health records (including COVID-19 testing results), and a scheduler to arrange for direct care at one of the Company's on-site locations. The information on the Treat website is not incorporated by reference into this Quarterly Report on Form 10-Q and does not constitute a part of this Form 10-Q.

## **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 September 30, 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 7. Acquisition of HyperPointe* for related discussion.

### ***Liquidity and Financial Condition***

As of September 30, 2022, the Company had cash and cash equivalents, excluding restricted cash, of \$49,429, total current assets of \$55,181, total current liabilities of \$10,984 and positive working capital of \$44,197 compared to a positive working capital of \$89,152 as of December 31, 2021. Management has performed an assessment of the Company's ability to continue as a going concern. As of the date of the report, the Company believes it has sufficient liquidity to fund operations for the next twelve months from the issuance of these financial statements. The Company's liquidity projections and actual performance through issuance relies heavily on the success and profitability of the Company's re-opened XpresSpa locations, and tailored service offerings. In addition, the Company's future liquidity relies on the market acceptance to the Company's new travel, health and wellness brand, Treat, which has generated a net loss of \$1,290 and \$4,049, for the three and nine months ended September 30, 2022, respectively. Furthermore, because the Company relies heavily on international and domestic airplane travel, any such decrease in demand for travel could have a negative impact on the Company's operations and liquidity.

## **Note 2. Significant Accounting and Reporting Policies**

### ***(a) Revenue Recognition Policy***

#### *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 its XpresSpa locations. 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.

#### *XpresTest*

Through its XpresCheck Wellness Centers and under the terms of the Managed Services Agreement ("MSA") with Professional Limited Liability Companies ("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 traveling public. 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.

Effective July 1, 2021 (*see Note 3. Variable Interest Entities*), the Company determined that the PLLCs are variable interest entities due to their equity holders having insufficient capital at risk, and the Company having a variable interest and being the primary beneficiary of the PLLCs. As a result of this determination, the total revenue of the PLLCs is designated as revenue for the Company. The performance obligation for this revenue is 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.

#### *Treat*

The Company recognizes revenue from the sale of Treat products and services when the services are rendered at Treat Centers and from the sale of products at the time products are purchased at the Treat Centers 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-centers 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 Treat retail and e-commerce businesses are recorded at the time goods are shipped. Also, under the terms of Treat's contracts with PLLCs, whereby the PLLCs as their performance obligations provide travel-related diagnostic testing for virus, cold, flu and other illnesses as well as hydration therapy, IV drips, and vitamin injections. The Company determined that these PLLCs are variable interest entities due to their equity holders having insufficient capital at risk, and the Company having a variable interest and being the primary beneficiary of the PLLCs. As a result of this determination, the total revenue of the PLLCs is designated as revenue for the Company. This revenue is recognized at the point in time at which the service is performed by the PLLCs.

#### *HyperPointe*

The Company's HyperPointe segment which we acquired in January 2022 (*see Note 7. Acquisition of HyperPointe*), provides a broad range of service and support options for its customers, including technical support services and advanced services. Technical support services represent the majority of these offerings which are distinct performance obligations that are 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 is treated as deferred revenue which was \$240 as of September 30, 2022. HyperPointe had unbilled receivables of \$212 included in Contract Assets as of September 30, 2022.

The Company excludes all sales taxes assessed to its customers from revenue. Sales taxes assessed on revenues are included in *Accounts payable, accrued expenses and other* on the Company's condensed consolidated balance sheets until remitted to state agencies.

#### **(b) 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.

**(c) Business Combinations**

The Company applies 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.

**(d) Goodwill**

The Company accounts for goodwill under ASC 350-30, *Intangibles-Goodwill and Other*. 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.

**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, 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.

**Note 3. 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 provides 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 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 shareholders 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 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 \$550, included in Cash and Cash Equivalents, and \$168 included in *Accounts payable, accrued expenses and other*, respectively, as of September 30, 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 *Accounts payable, accrued expenses and other*, 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 \$4,607 and \$31,728 for the three months and nine months ended September 30, 2022, respectively.

#### Note 4. Potentially Dilutive Securities

The table below presents the computation of basic and diluted net loss per share of Common Stock:

	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
<b>Basic numerator:</b>				
Net (loss) income attributable to common shareholders	\$ (7,179)	\$ 5,597	\$ (19,380)	\$ 74
<b>Basic denominator:</b>				
Basic weighted average shares outstanding	94,621,339	105,531,418	97,167,867	103,950,731
Basic (loss) earnings per share	\$ (0.08)	\$ 0.05	\$ (0.20)	\$ —
<b>Diluted numerator:</b>				
(Loss) earnings attributable to common shareholders	\$ (7,179)	\$ 5,597	\$ (19,380)	\$ 74
<b>Diluted denominator:</b>				
Diluted weighted average shares outstanding	94,621,339	105,957,317	97,167,867	104,301,344
Diluted (loss) earnings per share	\$ (0.08)	\$ 0.05	\$ (0.20)	\$ —

**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	4,713,363	2,606,771	4,713,363	2,631,246
Unvested RSUs to issue an equal number of shares of Common Stock	39,064	821,361	39,064	876,131
Warrants to purchase an equal number of shares of Common Stock	17,124,051	37,907,794	17,124,051	37,903,835
<b>Total number of potentially dilutive securities excluded from the calculation of earnings/(loss) per share attributable to common shareholders</b>	<b>21,876,478</b>	<b>41,335,926</b>	<b>21,876,478</b>	<b>41,411,212</b>

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

A reconciliation of the Company's cash and cash equivalents in the Condensed Consolidated Balance Sheets to cash, cash equivalents and restricted cash in the Condensed Consolidated Statements of Cash Flows as of September 30, 2022 and December 31, 2021 is as follows:

	September 30, 2022	December 31, 2021
Cash denominated in United States dollars	\$ 46,977	\$ 102,560
Cash denominated in currency other than United States dollars	2,338	2,133
Restricted cash	751	751
Credit and debit card receivables	114	813
<b>Total cash, cash equivalents and restricted cash</b>	<b>\$ 50,180</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. As of September 30, 2022 and December 31, 2021, deposits in excess of FDIC limits were \$46,509 and \$103,339



respectively. As of September 30, 2022 and December 31, 2021, the Company held cash balances in overseas accounts, totaling \$2,338 and \$2,133 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.

#### Note 6. Other current assets

As of September 30, 2022 and December 31, 2021, other current assets consisted of the following:

	<b>September 30, 2022</b>	<b>December 31, 2021</b>
Prepaid expenses	\$ 2,058	\$ 1,047
Other receivables	270	—
Other	47	48
Total other current assets	<u>\$ 2,375</u>	<u>\$ 1,095</u>

#### Note 7. 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 September 30, 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 adjustments set forth in the following condensed unaudited 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><u>\$ 4,024</u></b>

**Note 8. Accounts payable, accrued expenses and other**

As of September 30, 2022 and December 31, 2021, Accounts payable, accrued expenses and other consisted of the following:

	<b>September 30, 2022</b>	<b>December 31, 2021</b>
Accounts payable	\$ 3,642	\$ 5,966
Litigation accrual	845	845
Accrued compensation	1,176	2,862
Tax-related liabilities	594	603
Common area maintenance accruals	573	16
Gift certificates	494	494
Construction accrual	213	930
Credit card processing fees	70	501
Other miscellaneous accruals	374	741
Total accounts payable, accrued expenses and other current liabilities	<u>\$ 7,981</u>	<u>\$ 12,958</u>

**Note 9. Intangible Assets**

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

	September 30, 2022			December 31, 2021		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Trade names	\$ 1,641	\$ (1,302)	\$ 339	\$ 1,339	\$ (1,118)	\$ 221
Customer relationships	1,510	(482)	1,028	—	—	—
Software	4,403	(1,448)	2,955	3,886	(484)	3,402
Licenses	116	(24)	92	116	(7)	109
Total intangible assets	<u>\$ 7,670</u>	<u>\$ (3,256)</u>	<u>\$ 4,414</u>	<u>\$ 5,341</u>	<u>\$ (1,609)</u>	<u>\$ 3,732</u>

The Company’s intangible assets are amortized over their expected useful lives. The Company recorded amortization expense of \$474 and \$95 during the three months ended September 30, 2022 and 2021, respectively, and \$1,338 and \$300 during the nine months ended September 30, 2022 and 2021, respectively.

Based on the intangible assets balance as of September 30, 2022, the estimated amortization expense for the remainder of the calendar year and each of the succeeding calendar years is as follows:

Calendar Years ending December 31,	Amount
Remaining 2022	\$ 439
2023	1,491
2024	1,449
2025	397
2026	323
Thereafter	315
Total	<u>\$ 4,414</u>

**Note 10. Leases**

The Company leases its retail and diagnostic testing locations at various domestic and international airports. Additionally, the Company leases its corporate office in New York City. During 2022 the Company commenced new leases at Istanbul Airport in Turkey & Salt Lake City International Airport in Utah. At inception, the Company determines if a lease qualifies under ASC 842. Certain of the Company’s lease arrangements contain fixed payments throughout the term of the lease, while others involve a variable component to determine the lease obligation wherein a certain percentage of sales is used to calculate the lease payment.

All qualifying leases held by the Company are classified as operating leases. Operating lease right of use assets represent the Company’s right to use an underlying asset for the lease term and operating lease liabilities represent its obligation to make lease payments arising from the lease. Operating lease right of use assets and operating lease liabilities are recognized as of the commencement date based on the present value of lease payments over the lease term. The Company records its operating lease right of use assets and operating lease liabilities based on required guaranteed payments under each lease agreement. The Company uses its incremental borrowing rate as of the commencement date of the lease, which approximates the rate at which the Company can borrow funds on a secured basis, in determining the present value of the guaranteed lease payments.

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The Company reviews all of its existing lease agreements on a quarterly basis to determine whether there were any modifications to existing lease agreements and to assess if any leases should be accounted for pursuant to the guidance in ASC 842. The Company recalculates the right of use asset and lease liability based on the modified lease terms and adjusts both balances accordingly.

The Company has received rent concessions from landlords on a majority of its 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 the Company to receive minimum guaranteed payment concessions of approximately \$431 and \$1,568 in the nine months ended September 30, 2022 and 2021, respectively.

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. XWELL 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.

When a lessor grants a concession that contractually releases a lessee from certain lease payments or defers lease payments, a lessee may account for the concession as a negative variable lease payment and recognize negative variable lease expense in the period when the rent concession becomes accruable. The Company has recorded negative variable lease expense and adjusted lease liabilities at the point in which the rent concession has become accruable.

Supplemental cash flow information related to leases for the nine months ended September 30, 2022 and 2021 were as follows:

	<b>Nine months ended September 30,</b>	
	<b>2022</b>	<b>2021</b>
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ (3,072)	\$ (3,189)
Leased assets obtained in exchange for new and modified operating lease liabilities	\$ 7,380	\$ 3,673
Leased assets surrendered in exchange for termination of operating lease liabilities	\$ —	\$ 9

As of September 30, 2022, operating leases contain the following future minimum commitments:

<b>Calendar Years ending December 31,</b>	<b>Amount</b>
Remaining 2022	\$ 1,005
2023	3,459
2024	3,050
2025	2,614
2026	1,586
Thereafter	5,683
Total future lease payments	17,397
Less: interest expense at incremental borrowing rate	(2,186)
Net present value of lease liabilities	<u>\$ 15,211</u>

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

Weighted average remaining lease term:	5.95 years
Weighted average discount rate used to determine present value of operating lease liability:	7.33 %

Cash paid for minimum annual rental obligations during the three and nine months ended September 30, 2022 was \$445 and \$1,191, respectively. Cash paid for minimum annual rental obligations during the three and nine months ended September 30, 2021 was \$185 and \$399, respectively.

Variable lease payments calculated monthly as a percentage of product and services revenue, were \$397 and \$51 for the three months ended September 30, 2022 and 2021, respectively, and \$1,085 and \$262 for the nine months ended September 30, 2022 and 2021, respectively.

#### **Note 11. Debt**

Total Debt as of September 30, 2022 and December 31, 2021 is comprised of the following:

	<b>September 30, 2022</b>	<b>December 31, 2021</b>
Promissory note, unsecured (Current)	—	3,584
Total debt	<u>\$ —</u>	<u>\$ 3,584</u>

#### *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 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. The PPP loan was paid off on the maturity date of May 2, 2022.

**Note 12. Stockholders' Equity***Warrants*

The following table represents the activity related to the Company's warrants during the nine months ended September 30, 2022.

	<b>No. of Warrants</b>	<b>Exercise price range</b>
December 31, 2021	37,817,694	\$0.525 - 6.566
Granted	—	\$
Exercised	—	\$
Expired	(20,693,643)	\$ 3.02 - 6.566
September 30, 2022	<u>17,124,051</u>	<u>\$ 1.7 - 2.125</u>

*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. Under the program, the Company purchased and retired 19,526,706 shares for \$23,789 during the nine months ended September 30, 2022.

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. 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.

*Stock-based Compensation*

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 Company's directors, employees and consultants. Shareholder approval of the plan was subsequently obtained on October 28, 2020. On October 4, 2022, 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 was approved. Under the 2020 Equity Incentive Plan (the "2020 Plan"), a maximum of 7,353,289 shares of Common Stock may be issued. 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.

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In September 2020, XpresTest created a stock-based compensation plan available to grant stock options, Restricted Stock Awards (“RSAs”) and RSUs to 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 September 30, 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 XWELL’s Net Market Cap and XWELL’s standalone Fair Value, and (ii) Direct Valuation Method developing assumptions for XpresTest Representative Forecasted Revenue for 2021 and Peer companies Revenue’s Multiple. As of September 30, 2022, there is \$214 of unrecognized stock-based compensation related to the XpresTest Plan.

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:	\$	0.78 - 1.64
Exercise price:	\$	0.78 - 1.64
Expected volatility:		123.45 %
Expected dividend yield:		0 %
Annual average risk-free rate:		1.62 - 3.24 %
Expected term:		6.43 years

Total stock-based compensation for the three months ended September 30, 2022 and 2021 is \$483 and \$819, respectively, and for the nine months ended September 30, 2022 and 2021 is \$3,294 and \$2,152, respectively. The Company had \$2,831 and \$2,088 of unrecognized stock-based compensation related to the XWELL Stock Options, as of September 30, 2022 and December 31, 2021, respectively. During October 2022, the Company granted 375,000 RSUs and 150,000 Stock Options to its certain executives.

The following table sets forth the Company’s Equity Incentive activities for the nine months ended September 30, 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	156,250	1.28	15.0	56,890	2,200,338	1.51	0.78 - 1.64
Exercised/Vested	(717,186)	1.57	(10.0)	61,550	—	—	—
Forfeited	—	—	—	—	(245,027)	1.55	1.43-3.82
Expired	—	—	—	—	(68,819)	8.23	1.44-2,232
Outstanding as of September 30, 2022	<u>39,064</u>	\$ 1.28	<u>5.0</u>	\$ 47,570	<u>4,713,363</u>	\$ 2.04	\$ 0.78 - 2,460
Exercisable as of September 30, 2022					<u>1,955,823</u>	\$ 2.62	\$ 0.78 - 2,460



**Note 13. Fair Value Measurements**

Fair value measurements are determined based on assumptions that a market participant would use in pricing an asset or a liability. A three-tiered hierarchy distinguishes between market participant assumptions based on (i) observable inputs such as quoted prices in active markets (Level 1), (ii) inputs other than quoted prices in active markets that are observable either directly or indirectly (Level 2) and (iii) unobservable inputs that require the Company to use present value and other valuation techniques in the determination of fair value (Level 3).

The following table presents the placement in the fair value hierarchy measured at fair value on a recurring basis as of September 30, 2022 and December 31, 2021 (in thousands):

	<u>Balance</u>	<u>Fair value measurement at reporting date using</u>		
		<u>Quoted prices in active markets for identical assets (Level 1)</u>	<u>Significant other observable inputs (Level 2)</u>	<u>Significant unobservable inputs (Level 3)</u>
<b>As of September 30, 2022:</b>				
<b>Recurring fair value measurements</b>				
Equity securities:				
Route1, Inc.	\$ 194	\$ —	\$ 194	\$ —
Total equity securities	194	—	194	—
Total recurring fair value measurements	<u>\$ 194</u>	<u>\$ —</u>	<u>\$ 194</u>	<u>\$ —</u>
<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	<u>\$ 722</u>	<u>\$ —</u>	<u>\$ 722</u>	<u>\$ —</u>

Equity securities pertain to common shares in Route1, Inc. obtained in the 2018 sale of Group Mobile to Route 1, Inc. As of September 30, 2022, the Company owns 3,855,443 common shares of Route 1. In connection with the remeasurement of the common shares of Route 1, Inc., the Company recorded an unrealized loss of \$98 and \$528 for the three and nine months ended September 30, 2022, respectively, and \$302 and \$716, for the three and nine months ended September 30, 2021, respectively.

In addition to the above, the Company's financial instruments as of September 30, 2022 and December 31, 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 14. Income Taxes**

The Company's provision for income taxes consists of federal, state, local, and foreign taxes in amounts necessary to align the Company's year-to-date provision for income taxes with the effective tax rate that the Company expects to achieve for the full year. Each quarter, the Company updates its estimate of the annual effective tax rate and records cumulative adjustments as deemed necessary. The income tax provision for the nine months ended September 30, 2022 reflect an estimated global annual effective tax rate of approximately (0.10)%.

As of September 30, 2022, deferred tax assets generated from the Company's U.S. activities were offset by a valuation allowance because realization depends on generating future taxable income, which, in the Company's estimation, is not more likely than not to be generated before such net operating loss carryforwards expire. Net operating loss carryforwards generated after December 31, 2017 do not expire. The Company expects its effective tax rate for its current fiscal year to be significantly lower than the statutory rate as a result of a full valuation allowance; therefore, any loss before income taxes does not generate a corresponding income tax benefit.

Income tax expense/(benefit) for the nine months ended September 30, 2022 was \$5 which was attributed to foreign taxing jurisdictions in which controlled foreign corporations were profitable. In addition to income taxes, the Company operates in foreign jurisdictions in which excise taxes are levied. The final annual tax rate cannot be determined until the end of the fiscal year; therefore, the actual tax rate could differ from current estimates.

#### **Note 15. 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 \$845 both as of September 30, 2022 and December 31, 2021, which is included in *Accounts payable, accrued expenses and other current liabilities* in the condensed 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 was approved on September 20, 2022. Funding of the settlement amount is predicted to be end of year.

##### *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 from previously November 1, 2022 to January 3, 2023.

Leases

XWELL is contingently liable to a surety company under certain general indemnity agreements required by various airports relating to its lease agreements. XWELL 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.

**Note 16. Segment Information**

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, acquired in January 2022. The Company analyzes the results of the Company's business through the four reportable segments. 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. The HyperPointe segment provides a broad range of service and support options for its 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.

	<b>For the three months ended September 30,</b>	
	<b>2022</b>	<b>2021</b>
<b>Revenue</b>		
XpresSpa	\$ 3,557	\$ 1,416
XpresTest	6,079	25,351
Treat	425	—
HyperPointe	675	—
Corporate and other	—	—
<b>Total revenue</b>	<b>\$ 10,736</b>	<b>\$ 26,767</b>

<b>Operating income (loss)</b>		
XpresSpa	\$ (2,508)	\$ (1,595)
XpresTest	(1,692)	12,015
Treat	(1,282)	(2,305)
HyperPointe	(193)	—
Corporate and other	(1,979)	(1,058)
<b>Total operating (loss) income</b>	<b>\$ (7,654)</b>	<b>\$ 7,057</b>

<b>Depreciation &amp; Amortization</b>		
XpresSpa	\$ 364	\$ 340
XpresTest	576	509
Treat	520	—
HyperPointe	86	—
Corporate and other	18	3
<b>Total Depreciation &amp; Amortization</b>	<b>\$ 1,564</b>	<b>\$ 852</b>

	For the nine months ended September 30,	
	2022	2021
<b>Revenue</b>		
XpresSpa	\$ 9,490	\$ 2,172
XpresTest	35,928	42,199
Treat	1,110	—
HyperPointe	1,853	—
Corporate and other	—	—
<b>Total revenue</b>	<b>\$ 48,381</b>	<b>\$ 44,371</b>

<b>Operating loss</b>		
XpresSpa	\$ (8,921)	\$ (4,828)
XpresTest	2,576	14,597
Treat	(4,038)	(4,115)
HyperPointe	(745)	—
Corporate and other	(6,744)	(3,719)
<b>Total operating (loss) income</b>	<b>\$ (17,872)</b>	<b>\$ 1,935</b>

<b>Depreciation &amp; Amortization</b>		
XpresSpa	\$ 1,065	\$ 931
XpresTest	1,711	1,604
Treat	1,287	—
HyperPointe	243	—
Corporate and other	23	7
<b>Total depreciation &amp; amortization</b>	<b>\$ 4,329</b>	<b>\$ 2,542</b>

<b>Capital Expenditures</b>		
XpresSpa	\$ 1,413	\$ 706
XpresTest	675	3,984
Treat	3,329	—
HyperPointe	—	—
Corporate and other	55	77
<b>Total capital expenditures</b>	<b>\$ 5,472</b>	<b>\$ 4,767</b>

	September 30, 2022	December 31, 2021
<b>Long-lived Assets</b>		
XpresSpa	\$ 14,203	8,419
XpresTest	112	2,246
Treat	6,280	2,700
HyperPointe	123	—
Corporate and other	522	1,132
<b>Total long-lived Assets</b>	<b>\$ 21,240</b>	<b>\$ 14,497</b>

	September 30, 2022	December 31, 2021
<b>Assets</b>		
XpresSpa	\$ 21,348	\$ 12,351
XpresTest	5,356	19,349
Treat	9,822	5,918
HyperPointe	7,126	—
Corporate and other	41,324	89,648
<b>Total assets</b>	<b>\$ 84,976</b>	<b>\$ 127,266</b>

## Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

*This Quarterly Report on Form 10-Q contains “forward-looking statements” that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. 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. 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 be,” “plans,” “projects,” “seeks,” “should,” “targets,” “will,” “would,” and similar expressions or variations intended to identify forward-looking statements. These statements are based on the beliefs and assumptions of our management based on information currently available to management. Such forward-looking statements are subject to risks, uncertainties 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. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those discussed in the section titled “Risk Factors” included in our Annual Report on Form 10-K for the year ended December 31, 2021 filed on March 31, 2022, as subsequently amended on May 2, 2022 (the “2021 Annual Report”), our Quarterly Reports on Form 10-Q for the three months ended March 31, 2022 and June 30, 2022, and this Quarterly Report on Form 10-Q and any future reports 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. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.*

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

### **Overview**

On October 25, 2022, we changed our name to XWELL, 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, is a leading global travel health and wellness services holding company. XWELL currently has four reportable operating segments: XpresSpa®, XpresTest®, 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.

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 we were unable to reopen our spa locations for normal operations, in partnership with certain COVID-19 testing partners, we successfully launched our XpresCheck Wellness Centers through our 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 MSAs with professional medical services companies or professional limited liability companies (“PLLCs”) that provide health care services to patients. The PLLCs pay XpresTest a monthly fee to operate in the XpresCheck Wellness Centers. Under the terms of MSAs, we provide office space, equipment, supplies, non-licensed staff, and management services in return for a management fee. Effective July 1, 2021, we determined that the PLLCs are VIEs due to their equity holders having insufficient capital at risk, and the Company having a variable interest in and being a primary beneficiary of these PLLCs.

Furthermore, XWELL continues to develop Treat, a travel health and wellness brand that is positioned for a post-pandemic world. Treat's on-site centers (currently located in JFK International Airport, Phoenix Sky Harbor International Airport and 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. The integration and expansion of services and products, both domestically and internationally, is part of our objective to grow airport business.

Treat offers a website ([www.treat.com](http://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, on-demand chat care by licensed providers, a health wallet to store personal and family health records (including COVID-19 testing results), and a scheduler to arrange for direct care at one of our on-site locations. The information on the Treat website is not incorporated by reference into this Quarterly Report on Form 10-Q and does not constitute a part of this Form 10-Q.

Our HyperPointe segment, 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.

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 will expand our retail strategy, not only adding more products for sale but aligning those products more efficiently to our service offerings. For example, adding fortified water and hydration packets to the delivery of an onsite hydration IV or adding muscle relaxation patches to a neck or back massage to continue treatment after the delivery of the service. The integration and expansion of services and products, both domestically and internationally, is part of our objective to grow airport business.

We also plan to build our capability for delivering health and wellness services outside the airport. We believe operating outside of the airport complements our offering and allows us to scale growth faster.

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

While management has used all currently available information in assessing our business prospects, the ultimate impact of the COVID-19 pandemic on our XpresCheck Wellness Centers and on our results of operations, financial condition and cash flows remains uncertain and could have a material effect on our business.

## **Recent Developments**

### **XpresSpa**

There are currently twenty operating XpresSpa domestic locations, and we expect to re-open two additional domestic locations in 2022. During 2022, we sold our two franchise locations in Austin-Bergstrom International Airport. A majority of the domestic XpresSpa locations are operating approximately eight hours per day during the busiest hours (compared to up to sixteen hours per day pre-pandemic). Additionally, XpresSpa implemented a price increase in mid-October 2021 in its efforts to return to profitability. As we continue to monitor fluctuating airport volumes, we will continue to review our operating hours to optimize revenue opportunity.

During the fourth quarter of 2021, we began testing several new services to take advantage of a growing interest in non-traditional spa services and expansion of our retail offering to align more closely with the services we provide. We are evaluating the success of these new initiatives at each airport on an on-going basis and will incorporate changes to our approach as more of the portfolio is reactivated.

There are also eight international locations operating, including three XpresSpa locations in Dubai International Airport in the United Arab Emirates, three XpresSpa locations in Schiphol Amsterdam Airport in the Netherlands and two XpresSpa locations in Istanbul Airport in Turkey. The Company had signed for 5 locations at Istanbul Airport in Turkey of which 3 of them opened after September 30, 2022., and we expect to open an additional two locations before the end of 2022.

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 \$1,568 in the nine months ended September 30, 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 COVID-19 testing options, including a Polymerase Chain Reaction (PCR) test and a rapid PCR test.

As of the date of this report, there are eight operating XpresCheck locations operating in eight airports, including an XpresCheck Wellness Center in Orlando International Airport, pre-security, in the South Walk area of the Main Terminal, which opened in March 2022.

During 2022, as countries continued to relax their testing requirements resulting in rapid decline of testing volumes at our XpresCheck locations, we closed or consolidated our five non performing XpresCheck Wellness Centers and two XpresCheck Wellness Centers were assimilated into the Treat Segment.

During 2021, XpresTest initiated a \$2,001, eight-week pilot program with the Centers for Disease Control and Prevention (CDC) in collaboration with Concentric by Ginkgo Bioworks (NYSE: DNA). Under this program, XpresTest 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, 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 the first half of 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 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 recognizes 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 \$916 in revenue during the quarter ended September 30, 2022.

### **Treat**

Treat is our new travel, health and wellness brand transforming the way we access care 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, Phoenix Sky Harbor International Airport and 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.

### **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 we expect it will play 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. 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.

### **Results of Operations**

#### **Revenue**

We recognize revenue from the sale of XpresSpa services when they are rendered at our stores and from the sale of products at the time goods are purchased at our stores or online (usually by credit card), net of discounts and applicable sales taxes.

We have entered into managed services agreements with professional medical services companies that provide healthcare services to patients in our XpresCheck and Treat Wellness Centers. The medical services companies will pay XpresTest and Treat, a monthly management fee to operate in the XpresCheck and Treat Wellness Centers.

Our HyperPointe segment 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 satisfied over time with revenue recognized ratably over the contract term.

#### **Cost of sales**

Cost of sales for our XpresSpa segment consists of store-level costs. Store-level costs include all costs that are directly attributable to the store operations, primarily payroll and related benefit costs for store personnel, occupancy costs and cost of products sold. Cost of sales of our XpresTest and Treat segments include costs related to the XpresCheck and Treat Medical Office business, and consists of expenses directly attributable to the clinic operations under the terms of the MSAs, primarily payroll and related benefit costs for personnel, occupancy costs and cost of supplies used to administer the diagnostic COVID-19 tests and a suite of health and wellness services

### General and administrative

General and administrative expenses include management and administrative personnel, overhead and occupancy costs, insurance and various professional fees, as well as stock-based compensation for directors, management and administrative personnel.

#### *Three months ended September 30, 2022 compared to the three months ended September 30, 2021*

### Revenue

	Three months ended September 30,		
	2022	2021	Inc/(Dec)
Total revenue	\$ 10,736	\$ 26,767	\$ (16,031)

The decrease in revenue of \$16,031 or 60%, 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, testing volumes at our XpresCheck locations decreased as we progressed through 2022. We saw an increase in revenue associated with the XpresSpa locations that opened during and after the third quarter of 2021.

### Cost of sales

	Three months ended September 30,		
	2022	2021	Inc/(Dec)
Cost of sales	\$ 9,339	\$ 13,662	\$ (4,323)

The decrease in cost of sales of \$4,323 or 32%, was primarily due to the decrease in revenues resulting in decreased costs to operate the decreased volume at XpresCheck locations. There were some related costs of sales triggered by the reopening of certain XpresSpa locations that were temporarily closed during the second quarter of 2021. We had twenty open Spa locations as of September 30, 2022, and two open Spa locations as of September 30, 2021. The largest component 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 can primarily include rent based on percentage of sales, as well as other product costs directly associated with the procurement of retail inventory, and other operating costs.

### Depreciation and amortization

	Three months ended September 30,		
	2022	2021	Inc/(Dec)
Depreciation and amortization	\$ 1,564	\$ 852	\$ 712

The increase in depreciation and amortization of approximately 84% was primarily due to depreciation and amortization related to the XpresCheck and Treat Wellness Centers opened after the third quarter of the Calendar year 2021.

**Impairment/loss on disposal of assets**

	<b>Three months ended September 30,</b>		
	<b>2022</b>	<b>2021</b>	<b>Inc/(Dec)</b>
Impairment/Loss on disposal of assets	<u>\$ 1,040</u>	<u>\$ —</u>	<u>\$ 1,040</u>

Impairment/loss on disposal of assets primarily pertain to closure of XpresCheck Locations triggered by the rapid decline in testing volumes at our XpresCheck locations as countries continue to relax their testing requirements.

**General and administrative**

	<b>Three months ended September 30,</b>		
	<b>2022</b>	<b>2021</b>	<b>Inc/(Dec)</b>
General and administrative	<u>\$ 6,447</u>	<u>\$ 5,196</u>	<u>\$ 1,251</u>

The increase of approximately 24% was primarily due to functional costs associated with the operations of more XpresCheck and Treat Wellness Centers, XpresSpa locations, and the newly acquired HyperPointe segment.

**Other non-operating expense, net**

	<b>Three months ended September 30,</b>		
	<b>2022</b>	<b>2021</b>	<b>Inc/(Dec)</b>
Other non-operating expense, net	<u>\$ (136)</u>	<u>\$ (381)</u>	<u>\$ 245</u>

The following is a summary of the transactions included in other non-operating expense, net for the three months ended September 30, 2022 and 2021:

	<b>Three months ended September 30,</b>		
	<b>2022</b>	<b>2021</b>	
Loss on equity investments	\$ (98)	\$ (302)	
Bank fees and financing charges	(38)	(62)	
Other	—	(17)	
Total	<u>\$ (136)</u>	<u>\$ (381)</u>	

**Interest income, net**

	<b>Three months ended September 30,</b>		
	<b>2022</b>	<b>2021</b>	<b>Inc/(Dec)</b>
Interest income, net	<u>\$ 114</u>	<u>\$ 6</u>	<u>\$ 108</u>

Interest income, net increased as a result of increased interest rates and elimination of interest expense since the beginning of May 2022.

**Nine months ended September 30, 2022 compared to the Nine months ended September 30, 2021****Revenue**

	<b>Nine months ended September 30,</b>		
	<b>2022</b>	<b>2021</b>	<b>Inc/(Dec)</b>
Total revenue	\$ 48,381	\$ 44,371	\$ 4,010

The increase in revenue of \$4,010 or 9%, was primarily due to patient service revenue triggered by the rapid growth of the XpresTest segment with the addition of more locations between October 1, 2021 and June 30, 2022. The Company also saw an increase in revenue associated with the XpresSpa locations that opened after October 1, 2021.

**Cost of sales**

	<b>Nine months ended September 30,</b>		
	<b>2022</b>	<b>2021</b>	<b>Inc/(Dec)</b>
Cost of sales	\$ 36,743	\$ 25,522	\$ 11,221

The increase in cost of sales of \$11,221 or 44%, was due to the increase in revenues resulting in increased costs to operate the increased number of XpresCheck locations and the reopening of certain XpresSpa locations that were temporarily closed during the second quarter of 2021. We had 20 open Spa locations as of September 30, 2022, and two open Spa locations as of September 30, 2021. The largest component 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 can primarily include rent based on percentage of sales, as well as other product costs directly associated with the procurement of retail inventory, and other operating costs.

**Depreciation and amortization**

	<b>Nine months ended September 30,</b>		
	<b>2022</b>	<b>2021</b>	<b>Inc/(Dec)</b>
Depreciation and amortization	\$ 4,329	\$ 2,542	\$ 1,787

The increase in depreciation and amortization of approximately 70% was primarily due to depreciation and amortization related to XpresCheck and Treat Wellness Centers after September 30, 2021.

**Impairment/loss on disposal of assets**

	<b>Nine months ended September 30,</b>		
	<b>2022</b>	<b>2021</b>	<b>Inc/(Dec)</b>
Impairment/Loss on disposal of assets	\$ 988	\$ 22	\$ 966

Impairment/loss on disposal of assets primarily pertain to closure of XpresCheck Locations triggered by the rapid decline in testing volumes at our XpresCheck locations as countries continue to relax their testing requirements.

**General and administrative**

	<b>Nine months ended September 30,</b>		
	<b>2022</b>	<b>2021</b>	<b>Inc/(Dec)</b>
General and administrative	<u>\$ 24,193</u>	<u>\$ 14,350</u>	<u>\$ 9,843</u>

The increase of approximately 69% was primarily due to functional costs associated with the operations of XpresCheck and Treat Wellness Centers, XpresSpa locations, and the newly acquired HyperPointe segment.

**Other non-operating expense, net**

	<b>Nine months ended September 30,</b>		
	<b>2022</b>	<b>2021</b>	<b>Inc/(Dec)</b>
Other non-operating expense, net	<u>\$ (650)</u>	<u>\$ (830)</u>	<u>\$ 180</u>

The following is a summary of the transactions included in other non-operating expense, net for the nine months ended September 30, 2022 and 2021:

	<b>Nine months ended September 30,</b>	
	<b>2022</b>	<b>2021</b>
Loss on equity investments	\$ (528)	\$ (716)
Bank fees and financing charges	(122)	(97)
Other	—	(17)
Total	<u>\$ (650)</u>	<u>\$ (830)</u>

**Interest income, net**

	<b>Nine months ended September 30,</b>		
	<b>2022</b>	<b>2021</b>	<b>Inc/(Dec)</b>
Interest income, net	<u>\$ 159</u>	<u>\$ 31</u>	<u>\$ 128</u>

Interest income, net increased as a result of increased interest rates and elimination of interest expense since the beginning of May 2022.

**Liquidity and Capital Resources**

As of September 30, 2022, we had cash and cash equivalents, excluding restricted cash, of \$49,429, total current assets of \$55,181, total current liabilities of \$10,984 and positive working capital of \$44,197, compared to a positive working capital of \$89,152 as of December 31, 2021. We have performed an assessment of our ability to continue as a going concern. As of the date of the report, we believe that our Company has sufficient liquidity to fund operations for the next twelve months. Our liquidity projections and actual performance through issuance relies heavily on the success and profitability of our re-opened XpresSpa locations, and tailored service offerings. In addition, our future liquidity relies on the market acceptance to our new travel, health and wellness brand, Treat, which has generated a net loss of \$1,290 and \$4,049, for the three and nine months ended September 30, 2022, respectively. Furthermore, because we rely heavily on international and domestic airplane travel, any such decrease in demand for travel could have a negative impact on the Company's operations and liquidity.

On August 31, 2021, our board of directors initially authorized a stock repurchase program that permitted the purchase and repurchase of up to 15 million shares of our 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 the new 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. Under the program, we purchased and retired 19,526,706 shares for \$23,789 during the nine months ended September 30, 2022.

While we have addressed our working capital deficiency and long-term debt, and continue to focus on our overall operating profitability, we expect to incur net losses in the foreseeable future. In addition, the ongoing impact of the COVID-19 pandemic on our business going forward remains uncertain at this time and may result in additional material adverse impacts on our liquidity position and access to capital.

### **Critical Accounting Estimates**

These condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2021, as amended, filed with the SEC which includes a description of our critical accounting estimates that involve subjective and complex judgments that could potentially affect reported results. There have been no material changes to our critical accounting estimates as to the methodologies or assumptions we apply under them. We continue to monitor such methodologies and assumptions.

### **Adjusted EBITDA**

Adjusted EBITDA is a supplemental measure of financial performance that is not required by or presented in accordance with GAAP but is a measurement used by management to assess the trends in our business. In evaluating our performance as measured by Adjusted EBITDA, we recognize and consider the limitations of this measurement.

We define Adjusted EBITDA as earnings before interest, taxes, depreciation and amortization expense, non-cash charges, and stock-based compensation expense.

We consider Adjusted EBITDA to be an important indicator for the performance of our operating business, but it is not a measure of performance or liquidity calculated in accordance with GAAP. We have included this non-GAAP financial measure because management utilizes this information for assessing our performance and liquidity, and as an indicator of our ability to make capital expenditures and finance working capital requirements. We believe that Adjusted EBITDA is a measurement that is commonly used by analysts and some investors in evaluating the performance and liquidity of growth companies such as ours.

In particular, we believe that it is useful for analysts and investors to understand that Adjusted EBITDA excludes certain transactions not related to our core cash operating activities, which are primarily related to our XpresCheck Wellness Centers. We believe that excluding these transactions allows investors to meaningfully analyze the performance of our core cash operations.

Adjusted EBITDA should not be considered in isolation or as an alternative to cash flow from operating activities or as an alternative to operating income or as an indicator of operating performance or any other measure of performance derived in accordance with GAAP. Adjusted EBITDA does not reflect our obligations for the payment of income taxes, interest expense, or other obligations such as capital expenditures.

A reconciliation of operating income (loss) from operations presented in accordance with GAAP for the three and nine month periods ended September 30, 2022 and 2021 to Adjusted EBITDA is presented in the table below.

### Q3 2022 Results of Operations and Adjusted EBITDA

(Amounts in thousands)

Revenue:	Three months ended September 30,		Nine months ended September 30,	
	2022	2021	2022	2021
Managed services fees	\$ —	\$ —	\$ —	\$ 16,843
Patient service revenue	4,607	25,351	31,728	25,351
Services	4,924	1,158	13,488	1,761
Products	542	258	1,308	402
Hyperpointe Services	659	—	1,853	—
Other	4	—	4	14
<b>Total revenue</b>	<b>10,736</b>	<b>26,767</b>	<b>48,381</b>	<b>44,371</b>
<b>Cost of sales</b>				
Labor	5,222	4,277	16,161	7,419
Occupancy	1,082	587	3,412	1,511
Product and other operating costs	3,035	8,798	17,170	16,592
<b>Total cost of sales</b>	<b>9,339</b>	<b>13,662</b>	<b>36,743</b>	<b>25,522</b>
Depreciation and amortization	1,564	852	4,329	2,542
Impairment of long-lived assets	677	—	677	—
Loss on disposal of assets, net	325	—	273	22
Impairment of operating lease right-of-use assets	38	—	38	—
General and administrative	6,447	5,196	24,193	14,350
<b>Total operating expense</b>	<b>18,390</b>	<b>19,710</b>	<b>66,253</b>	<b>42,436</b>
<b>(Loss) income from operations</b>	<b>(7,654)</b>	<b>7,057</b>	<b>(17,872)</b>	<b>1,935</b>
Interest income, net	114	6	159	31
Other non-operating expense, net	(136)	(381)	(650)	(830)
<b>(Loss) income before income taxes</b>	<b>(7,676)</b>	<b>6,682</b>	<b>(18,363)</b>	<b>1,136</b>
Income tax expense	(3)	(87)	(5)	(79)
<b>Net (loss) income</b>	<b>(7,679)</b>	<b>6,595</b>	<b>(18,368)</b>	<b>1,057</b>
Net loss (income) attributable to noncontrolling interests	500	(998)	(1,012)	(983)
<b>Net (loss) income attributable to common shareholders</b>	<b>\$ (7,179)</b>	<b>\$ 5,597</b>	<b>\$ (19,380)</b>	<b>\$ 74</b>
<b>(Loss) income from operations</b>	<b>\$ (7,654)</b>	<b>\$ 7,057</b>	<b>\$ (17,872)</b>	<b>\$ 1,935</b>
<b>Add back:</b>				
Depreciation and amortization	1,564	852	4,329	2,542
Impairment of long-lived assets	677	—	677	—
Loss on disposal of assets, net	325	—	273	22
Impairment of operating lease right-of-use assets	38	—	38	—
Stock-based compensation expense	483	790	3,346	2,123
<b>Adjusted EBITDA</b>	<b>\$ (4,567)</b>	<b>\$ 8,699</b>	<b>\$ (9,209)</b>	<b>\$ 6,622</b>

### Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Not required as we are a smaller reporting company.

**Item 4. 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 and Chief Financial Officer (Principal Financial and Accounting Officer), as appropriate, to allow timely decisions regarding required disclosure.

As of September 30, 2022, our management carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Interim Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Our management's evaluation as of December 31, 2019 identified a material weakness in our internal control over financial reporting. Based on our evaluation, our Chief Executive Officer and Interim Chief Financial Officer concluded that our disclosure controls and procedures were not effective as of September 30, 2022, to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our Chief Executive Officer and Interim Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. Notwithstanding this conclusion, management believes that the condensed consolidated financial statements in this Quarterly Report on Form 10-Q fairly present in all material respects our financial condition, results of operations and cash flows in conformity with GAAP.

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

We and our Board treat the controls surrounding, and the integrity of, our financial statements with the utmost priority. Management is committed to the planning and implementation of remediation efforts to address control deficiencies and any other identified areas of risk. These remediation efforts are intended to both address the identified material weakness and to enhance our overall financial control environment. In particular:

- we will continue to strengthen our interim and annual financial review controls to function with a sufficient level of precision to detect and correct errors on a timely basis; and
- we will continue to improve the timeliness of our closing processes with respect to interim and annual periods.

Following identification of this control deficiency, commenced remediation efforts by implementing modifications to better ensure that the Company has appropriate and timely reviews on all financial reporting analysis. The material weakness in our internal control over financial reporting will not be considered remediated until these modifications are implemented, in operation for a sufficient period of time, tested, and concluded by management to be designed and operating effectively. In addition, as we continue to evaluate and work to improve our internal control over financial reporting, management may determine to take additional measures to address control deficiencies or determine to modify our remediation plan. Management is testing and evaluating the implementation of these modifications during 2022 to ascertain whether they are designed and operating effectively to provide reasonable assurance that they will prevent or detect a material misstatement in the Company's financial statements.

The steps we took to address the deficiencies identified included:

- we hired a permanent Chief Financial Officer in December 2020, and following his departure in June 2022 we are currently searching for a new Chief Financial Officer;
- we have engaged in efforts to restructure accounting processes and revise organizational structures to enhance accurate accounting and appropriate financial reporting;
- we have engaged outside service providers to assist with the valuation and recording of key reporting areas such as leases and stock compensation expense;



- we have implemented additional accounting software to aid in the accounting and financial reporting process;
- we have contracted an independent consulting firm to assist with the preparation of the Financial Statements and U.S. GAAP accounting research; and
- in March 2021, we hired a seasoned Certified Public Accountant as a permanent Corporate Controller, who also has a Certified Information Systems Auditor accreditation.

We are committed to maintaining a strong internal control environment, and we believe the measures described above will strengthen our internal control over financial reporting and remediate the material weakness we have identified. Our remediation efforts have begun, and we will continue to devote significant time and attention to these remedial efforts. As we continue to evaluate and work to improve our internal control over financial reporting, management may determine to take additional measures to strengthen controls or to modify the remediation plan described above, which may require additional implementation time.

As noted above, we believe that, as a result of management's in-depth review of its accounting processes, and the additional procedures management has implemented, there are no material inaccuracies or omissions of material fact in this Form 10-Q and, to the best of our knowledge, we believe that the condensed consolidated financial statements in this Form 10-Q fairly present in all material respects our financial condition, results of operations and cash flows in conformity with GAAP.

#### *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 September 30, 2022, due to a material weakness in our internal control over our financial close and reporting process, which was discovered in 2019, still remaining unmitigated. Management continues to conclude that as of September 30, 2022 we still did not have a sufficient complement of corporate 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 a result of this evaluation, we also selectively used outside consultants who possessed the appropriate levels of accounting and controls knowledge to appropriately analyze, record, and disclose accounting matters completely and accurately.

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 September 30, 2022 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II – OTHER INFORMATION

### **Item 1. Legal Proceedings.**

For information regarding legal proceedings, see Note 15. “*Commitments and Contingencies*” in our notes to the condensed consolidated financial statements included in “Item 1. Condensed Consolidated Financial Statements (Unaudited).”

### **Item 1A. Risk Factors.**

There have been no material changes to the risk factors discussed in Item 1A. Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2021.

### **Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

None

### **Item 3. Defaults Upon Senior Securities.**

None.

### **Item 4. Mine Safety Disclosures.**

Not applicable.

### **Item 5. Other Information.**

None.

**Item 6. Exhibits.**

Exhibit No.	Description
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 the Secretary of State of the 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>
10.1†	<a href="#">XWELL, 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>
10.2†*	<a href="#">Executive Employment Agreement dated January 9, 2022, between the Company and Ezra T. Ernst</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
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

† **Management contract.**

\* **Filed herewith.**

\*\* **Furnished herein.**

**SIGNATURES**

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

**XWELL, Inc.**

Date: November 14, 2022

By: /s/ Scott R Milford  
**Scott R. Milford**  
**Chief Executive Officer**  
**(Principal Executive Officer)**

Date: November 14, 2022

By: /s/ Omar A. Haynes  
**Omar A. Haynes**  
**Interim Chief Financial Officer**  
**(Principal Financial and**  
**Accounting Officer)**

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## EXECUTION VERSION

## EXECUTIVE EMPLOYMENT AGREEMENT

This **EXECUTIVE EMPLOYMENT AGREEMENT** (this “Agreement”) is made and entered into, at New York, New York, as of the 9th day of January, 2022, and is by and between Ezra T. Ernst, an individual residing at the address listed in the Company’s files (“Executive”), and XpresSpa Group, Inc., a Delaware corporation with principal offices located at 254 W 31st St, New York, NY 10001 (the “Company”).

## WITNESSETH

**WHEREAS**, Executive is employed by GCG Connect LLC d/b/a HyperPointe, a New Jersey limited liability company (“GCG”), pursuant to an employment agreement dated February 18, 2020 (the “GCG Employment Agreement”) which, among other things, provides for payment of severance to Executive upon the termination by GCG of his employment with GCG;

**WHEREAS**, the Company and the owners of the equity of GCG are parties to a Membership Interests Purchase Agreement pursuant to which the Company will purchase all of the equity interests of GCG (the “MIPA”);

**WHEREAS**, Executive desires to be employed by the Company as the CEO of the Company’s wholly-owned subsidiary, XpresTest, Inc., a Delaware corporation (“XpresTest”) and Executive Vice President of the Company, including service as a member of the Board of Directors of XpresTest under the terms set forth herein, and the Company wishes to employ Executive in such capacities conditioned upon the closing of the transactions contemplated by the MIPA;

**NOW, THEREFORE**, in consideration of the foregoing recital and the respective covenants and agreements of the parties contained in this document, the Company and Executive hereby agree as follows:

1. Employment and Duties.

(a) Subject to the terms of this Agreement, the Company agrees to hire and employ, and Executive agrees to serve, as the Chief Executive Officer (“CEO”) of XpresTest. Subject to compliance with applicable nomination and election procedures that may be required by XpresTest’s governance documents, Executive also agrees to serve as a member of XpresTest’s Board of Directors (the “XpresTest Board”). The duties and responsibilities of Executive shall include the duties and responsibilities normally associated with such positions and such other executive officer duties and responsibilities as may be assigned from time to time. At all times during the Employment Period (as defined below), the Executive shall report directly to the Chief Executive Officer of the Company and the XpresTest Board. The Executive may also be required to provide services, without additional compensation, to XpresSpa Holdings, LLC, and any or all of its subsidiaries, including, without limitation, any entities acquired by or merged with the Company (collectively, “XpresSpa”). Executive shall serve in a loyal, faithful and trustworthy manner, and shall comply with all of the policies of the Company and XpresSpa, including, without limitation, such policies with respect to legal compliance, conflicts of interest, confidentiality, code of conduct and business ethics as are from time to time in effect (as the same may be amended or modified from time to time by the XpresTest Board in its discretion).

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(b) Executive shall devote substantially all of his working time and efforts during the Company's normal business hours to the business and affairs of XpresSpa and to the diligent and faithful performance of the duties and responsibilities duly assigned to him pursuant to this Agreement to the best of Executive's abilities. Notwithstanding the foregoing, nothing herein shall preclude Executive from (i) performing services for such other companies as the Company may designate or permit at the Company's discretion, (ii) serving, with the prior written consent of the Company's Board of Directors (the "Board"), which consent shall not be unreasonably withheld, as an officer or member of the boards of directors or advisory boards (or their equivalents in the case of a non-corporate entity) of noncompeting businesses or charitable, educational or civic organizations, (iii) engaging in charitable activities and community affairs and (iv) managing Executive's personal investments and affairs; provided, however, that the activities set out in clauses (i), (ii), (iii) and (iv) shall be limited by Executive so as not to materially interfere, individually or in the aggregate, with the performance of Executive's duties and responsibilities hereunder.

2. Effective Date; Term; Termination of Prior Agreement and Waiver of Severance.

(a) This Agreement shall be effective on the date of the Closing as defined in the MIPA (the "Effective Date"). If the Closing does not occur, then this Agreement shall be null and void *ab initio* and of no force or effect.

(b) The Company hereby agrees to employ Executive, and Executive hereby accepts employment with the Company, upon the terms set forth in this Agreement, for the period commencing on the Effective Date and ending on the third (3<sup>rd</sup>) anniversary of the Effective Date, unless sooner terminated in accordance with the provisions of Section 8 below (such period is the "Employment Period").

(c) This Agreement supersedes and replaces the GCG Employment Agreement, which is hereby terminated as of the Effective Date. As a condition of employment with the Company pursuant to this Agreement, and in consideration thereof, Executive hereby resigns his employment with GCG effective as of the Effective Date and waives and releases any right or claim that he might have to severance benefits in connection with the termination of his employment with GCG, whether arising under the GCG Employment Agreement or otherwise.

3. Place of Employment. Executive's services may be performed primarily remotely, at Executive's home or other suitable location provided by Executive, but Executive will also be required to work at XpresSpa office locations from time to time, including the Company's main office (with current address shown above) and the office located at 1086 Teaneck Road, Teaneck, New Jersey. The parties further acknowledge, however, that Executive may be required to travel in connection with the performance of his duties hereunder.

4. Compensation. For all services to be rendered by Executive pursuant to this Agreement, the Company agrees to pay Executive during the Employment Period an annual base salary, less applicable taxes, including income tax, FICA and FUTA, and other appropriate deductions (the "Base Salary") at an annual rate of three hundred seventy-five thousand dollars (\$375,000). During the Employment Period, the Board has the discretion to raise the Base Salary from time-to-time and shall reevaluate the Executive's Base Salary on at least an annual basis (with first reevaluation

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on or about December, 2022). The Base Salary shall be paid in equal biweekly installments in accordance with the Company's regular payroll practices.

5. Bonuses and Incentive Compensation; Expenses.

(a) During the Employment Period, the Executive will be eligible to participate in any annual bonus and other incentive compensation program that the Company may adopt from time to time for its executive officers. As of the Effective Date, the Executive shall be eligible to receive the incentive compensation set forth on **Exhibit A**.

(b) To the extent that the Company is required pursuant to Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act to develop and implement a policy (the "Policy") providing for the recovery from the Executive of any payment of incentive based compensation (whether in cash or in equity) paid to the Executive that was based upon erroneous data contained in an accounting statement, this Agreement shall be deemed amended and the Policy incorporated herein by reference as of the date that the Company takes all necessary corporate action to adopt the Policy, without requiring any further action of the Company or the Executive, provided that any such Policy shall only be binding on the Executive if the same Policy applies to the Company's other executive officers.

(c) Expenses. Executive shall be entitled to reimbursement for all reasonable and necessary travel, entertainment, and other expenses incurred by Executive while employed (in accordance with the policies and procedures established by the Company for its executive officers) in the performance of his duties and responsibilities under this Agreement; provided that Executive properly accounts for such expenses in accordance with Company policies and procedures. The Executive shall be responsible for any unreasonable or unnecessary expenses incurred in violation of Company policies and procedures.

6. Other Benefits. During the Employment Period, the Executive shall be eligible to participate in all incentive, savings, retirement (401(k)), and welfare benefit plans, health, medical, dental, vision, life (including accidental death and dismemberment) and disability insurance plans (collectively, to the extent they exist, "Benefit Plans"), in substantially the same manner and at substantially the same levels as the Company makes such opportunities available to the Company's executive officers, provided however, that the Company may not reduce the benefits provided to the Executive under these Benefits Plans without the Executive's written consent, unless such reduction is required by law. The Executive shall also be entitled to coverage under such directors and officers, error and omissions, fiduciary liability and other similar insurance coverages, that the Company makes available to its directors and executives and shall enter into its/their standard indemnification agreement with the Executive.

7. Vacation. The Company has an unlimited paid time off ("PTO") policy. PTO shall be taken at such times as are mutually convenient to the Executive and the Company. PTO is not earned and does not accrue. Therefore, there will be no unused PTO to be paid upon termination of employment.

8. Termination of Employment.

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(a) General. The Employment Period and the Executive's employment hereunder shall terminate upon the earliest to occur of: (i) Executive's death, (ii) a termination by reason of Executive's Disability, (iii) a termination by the Company with or without Cause, (iv) a termination by Executive with or without Good Reason, or (v) the last day of the Employment Period. The parties agree that, upon the termination of Executive's employment (regardless of reason), Executive shall be deemed to have automatically resigned from all officer, director and other positions of any kind with the Company, XpresTest and any of their respective subsidiaries.

(b) Death. If Executive dies during the Employment Period, this Agreement and the Executive's employment with the Company shall automatically terminate and the Company shall have no further obligations to the Executive or his heirs, administrators or executors with respect to compensation and benefits accruing thereafter, except for the obligation to pay to the Executive's heirs, administrators or executors (i) any earned but unpaid Base Salary up to and through the date of termination (within fourteen (14) days following termination), (ii) any earned but unpaid Incentive Compensation under the terms set forth in Section 5, (iii) any and all reasonable expenses paid or incurred by the Executive in connection with and related to the performance of his duties and responsibilities for the Company up to and through the date of termination, and (iv) any benefits provided under the Company's employee benefit plans pursuant to, and in accordance with, the terms of such plans through the date of termination (including, without limitation, any death benefit or disability benefit plans or programs) (collectively, the "Accrued Obligations") The Company shall deduct, from all payments made hereunder, all applicable taxes, including income tax, FICA and FUTA, and other appropriate deductions.

(c) Disability. In the event that during the Employment Period the Company determines that the Executive is unable to perform his essential duties and responsibilities hereunder to the full extent required by the Company by reason of a Disability (as defined below), this Agreement and the Executive's employment with the Company shall terminate immediately upon notice to the Executive, and the Company shall have no further obligations or liability to the Executive or his heirs, administrators or executors with respect to compensation and benefits accruing thereafter, except for the obligation to pay the Accrued Obligations. The Company shall deduct, from all payments made hereunder, all applicable taxes, including income tax, FICA and FUTA, and other appropriate deductions. For purposes of this Agreement, "Disability" shall mean a physical or mental disability that prevents the performance by the Executive, with or without reasonable accommodation, of his essential duties and responsibilities hereunder for sixty (60) consecutive days, or an aggregate of one hundred and twenty (120) days during any twelve consecutive months, as determined consistent with applicable law, provided that the determination of Executive's physical or mental health and the date of the Disability shall be determined by a medical expert who will examine the Executive as appointed by the Company in its discretion. Executive hereby consents to such examination and consultation regarding Executive's health and ability to perform as aforesaid.

(d) By the Company for Cause.

(i) At any time during the Employment Period, the Company may terminate this Agreement and the Executive's employment hereunder for Cause. Such termination shall be effective immediately upon notice to the Executive, subject to the provisions of this Section 8(d)(i) and Section 8(d)(iii). "Cause" as used in this Agreement (and with respect to any other arrangement (including,

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without limitation, any equity award agreement) with the Company or its affiliates) shall mean: (a) the willful and continued failure of the Executive to perform his duties and responsibilities for the Company (other than any such failure resulting from Executive's death or Disability) or lawful directives of the Board related to Executive's duties pursuant to this Agreement, after a written demand by the Board for performance is delivered to the Executive by the Company, which identifies with reasonable specificity the manner in which the Board believes that the Executive has not performed his duties and responsibilities, which willful and continued failure is not cured by the Executive within thirty (30) days of his receipt of such written demand; (b) the conviction of, or plea of guilty or *nolo contendere* to a felony; (c) faithless conduct or the breach of fiduciary duty; (d) gross negligence or willful misconduct in the performance of Executive's material duties; (e) breach of Section 9 of this Agreement, (f) an intentional or grossly negligent breach of the Non-Disclosure and Non-Solicitation Agreement then in effect, the current form of which is annexed as **Exhibit B** (the "**NDA**") which results or could reasonably be expected to result in material harm to the Company or XpresTest; (g) a material violation of Company's or XpresTest's policies, which policies and procedures have previously been disclosed to Executive in writing; or (h) a good faith finding by the Board that Executive has engaged in (A) (1) fraud, (2) dishonesty or faithless conduct, or (3) gross negligence, in each case related to the Company, or (B) criminal misconduct which (1) constitutes a felony or a crime of moral turpitude or (2) results or could reasonably be expected to result in harm to the Company.

(ii) Upon termination of this Agreement for Cause, the Company shall have no further obligations or liability to the Executive or his heirs, administrators or executors with respect to compensation and benefits thereafter, except for the obligation to pay the Executive the Accrued Obligations. The Company shall deduct, from all payments made hereunder, all applicable taxes, including income tax, FICA and FUTA, and other appropriate deductions.

(iii) It is expressly acknowledged and agreed that the decision as to whether "Cause" exists for termination of the employment relationship by the Company is delegated to the Board for determination. However, the termination of Executive's employment shall not be deemed to be for "Cause" unless and until (A) there shall have been delivered to Executive a written notice specifying with reasonable detail the basis for the proposed termination for "Cause," and (B) if has so requested by Executive in writing within seven (7) days of such notice, the Executive shall have been provided a reasonable opportunity to address a physical or telephonic meeting of the Board with a quorum of at least two thirds (2/3) of the Board's members, and a majority of the Board at such meeting shall have determined that the matter forming the basis for "Cause" is not curable or, if curable, was not cured within the applicable cure period.

(e) By the Executive for Good Reason.

(i) At any time during the Employment Period, subject to the conditions set forth in Section 8(e)(ii) below, the Executive may terminate this Agreement and the Executive's employment with the Company for Good Reason. "Good Reason" as used in this Agreement shall mean the occurrence of any of the following events: (a) without the Executive's prior written consent, a material diminution of the duties, authorities or responsibilities of the Executive (including as a member of the XpresTest Board); (b) a material reduction in Executive's Base Salary; (c) the failure by the Company to pay all or any material portion of the Base Salary, any material bonus payable, or any material benefits payable to the Executive as required under this

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Agreement; (d) a change in Executive's reporting relationship from that described in Section 1(a); or (e) any other action or inaction that constitutes a material breach by the Company of this Agreement.

(ii) The Executive shall not be entitled to terminate this Agreement for Good Reason unless and until he shall have delivered written notice to the Company of his intention to terminate this Agreement and his employment with the Company for Good Reason, which notice must be provided within sixty (60) days following the initial occurrence (or following the Executive's actual knowledge) of the grounds purporting to constitute Good Reason, and which specifies in reasonable detail the circumstances claimed to provide the basis for such termination for Good Reason pursuant to Section 8(e)(i) above, and the Company shall not have cured the circumstances constituting Good Reason within thirty (30) days of its receipt from the Executive of such written notice. The Company shall retain the discretion to terminate the Employment Period at any time during the Good Reason notice period provided for in this Section 8(e)(ii).

(iii) In the event that the Executive terminates this Agreement and his employment with the Company for Good Reason or the Company terminates this Agreement without Cause (each, a "Qualifying Termination"), the Company shall pay or provide to the Executive (or, following his death, to the Executive's heirs, administrators or executors):

(A) The Accrued Obligations through the date the Employment Period is terminated.

(B) (y) An amount of Base Salary (at the rate of Base Salary in effect immediately prior to the Executive's termination hereunder) equal to 100% of the Executive's Base Salary as of the date of the Qualifying Termination (the "Separation Payment"). The Company shall pay to Executive the Separation Payment in substantially equal installments pursuant to the Company's regular payroll practices over a period of twelve months, commencing on the Company's next regular payroll date following the date the Release (referenced in Section 8(i) below) becomes irrevocable and enforceable. The Company shall deduct, from all payments made hereunder, all applicable taxes, including income tax, FICA and FUTA, and other appropriate deductions.

(C) Subject to Section 8(i) below, so long as Executive elects COBRA continuation coverage, has not become actually covered by the medical plan of a subsequent employer during any such month and otherwise remains eligible to receive COBRA continuation coverage, the Company will reimburse premiums paid by the Executive with respect to COBRA continuation coverage for up to a maximum of twelve months following the date of Qualifying Termination. After such period, Executive shall be responsible for paying the full cost for any additional COBRA continuation coverage. If the Company's payment of the COBRA premiums on the Executive's behalf would violate the nondiscrimination rules or cause the reimbursement of claims to be taxable under the Patient Protection and Affordable Care Act of 2010, together with the Health Care and Education Reconciliation Act of 2010 (collectively, the "Act") or Section 95(h) of the Code, the Company paid premiums shall be treated as taxable payments and be subject to imputed income tax treatment to the extent necessary to eliminate any discriminatory treatment or taxation under the Act or Section 95(h) of the Code.

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(f) By Executive without Good Reason. At any time during the Employment Period, the Executive shall be entitled to terminate this Agreement and the Executive's employment with the Company without Good Reason by providing prior written notice to the Company of at least sixty (60) calendar days, provided however that the Company shall maintain the discretion to terminate the Employment Period at any time during the notice period set forth in this Section 8(f). Upon termination by the Executive of this Agreement and the Executive's employment with the Company without Good Reason, the Company shall have no further obligations or liability to the Executive or his heirs, administrators or executors with respect to compensation and benefits thereafter, except for the obligation to pay the Executive the Accrued Obligations. The Company shall deduct, from all payments made hereunder, all applicable taxes, including income tax, FICA and FUTA, and other appropriate deductions.

(g) By the Company without Cause. At any time during the Employment Period, the Company shall be entitled to terminate this Agreement and the Executive's employment with the Company without Cause upon written notice to the Executive which shall set forth a date of termination. Upon termination by the Company of this Agreement and the Executive's employment with the Company without Cause, the Company shall pay or provide to the Executive (or, following his death, to the Executive's heirs, administrators or executors) the amounts and benefits due upon a resignation for Good Reason, as further described in Section 8(e)(iii), including the Separation Payment. The Company shall deduct, from all payments made hereunder, all applicable taxes, including income tax, FICA and FUTA, and other appropriate deductions.

(h) Upon Expiration of the Employment Period. If the Executive's employment terminates upon the expiration of the Employment Period set forth in Section 1, the Company shall have no further obligations or liability to the Executive or his heirs, administrators or executors with respect to compensation and benefits thereafter, except for the obligation to pay the Executive the Accrued Obligations.

(i) Release of Claims. It is agreed that an express condition of the payment or provision by the Company of any severance amount or post termination benefit called for under Section 8(e)(iii) and Section 8(g) of this Agreement (other than the payment of any Accrued Obligations) shall be subject to the Company's concurrent receipt of a general release of all claims in the form set forth on **Exhibit C**, which release must be effective, unrevoked and irrevocable prior to the ninetieth (90th) day following the termination of the Executive's employment (the "Release").

(j) Section 409A. Notwithstanding any provision in this Agreement to the contrary:

(i) The payments and benefits provided under this Agreement are intended to be exempt from Section 409A of the Code ("Section 409A") to the greatest extent possible; if not so exempt, this Agreement (and any definitions hereunder) are intended to comply with the requirements of Section 409A. Any amounts payable solely on account of Executive's involuntary separation from service within the meaning of Section 409A shall be excludible from the requirements of Section 409A, either as involuntary separation pay (exempt from the provisions of Section 409A under Treas. Reg. Section 1.409A-1(b)(9)) or as short-term deferral amounts (as described in Treas. Reg. Section 1.409A-1(b)(4)), to the maximum possible extent. Deferrals of compensation subject to the restrictions set forth under Section 409A (hereinafter, "Non-Qualified

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Deferred Compensation”) may only be made to Executive pursuant to this Agreement upon an event and in a manner permitted by Section 409A.

(ii) For purposes of Section 409A, the right to a series of installment payments under this Agreement shall be treated as a right to a series of separate payments.

(iii) All taxable reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with Section 409A including, where applicable, the requirement that (i) any reimbursement is for expenses incurred during the period of time specified in this Agreement, (ii) the amount of expenses available for reimbursement, or the in-kind benefits provided, during a calendar year may not affect the expenses eligible for reimbursement, or in-kind benefits provided, in any other calendar year, (iii) the reimbursement of an eligible expense will be made no later than the last day of the calendar year following the year in which the expense is incurred, and (iv) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

(iv) To the extent required by Section 409A, and notwithstanding any other provision of this Agreement to the contrary, no payment of Non-Qualified Deferred Compensation will be provided to, or with respect to, Executive on account of his separation from service until the first to occur of (A) the date of Executive’s death or (B) the date which is one day after the six (6) month anniversary of his separation from service, but in either case only if he is a “specified employee” (as defined under Section 409A(a)(2)(B)(i) of the Code and the regulations promulgated thereunder) in the year of his separation from service. Any payment that is delayed pursuant to the provisions of the immediately preceding sentence shall instead be paid in a lump sum within thirty (30) days following the first to occur of the two dates specified in such immediately preceding sentence. Furthermore, any payments scheduled to be paid under Sections 8(e)(iii) or 8(g) during the applicable ninety (90) day period pending the effectiveness of the Release referenced therein and in Section 8(i), will be accumulated and paid, subject to the other provisions of this Section 8(j), on such ninetieth (90<sup>th</sup>) day or earlier following the effectiveness of such Release.

(v) Any payment of Non-Qualified Deferred Compensation made pursuant to a voluntary or involuntary termination of employment shall be withheld until Executive incurs both (A) such a termination of employment and (B) a “separation from service” with the Company and all of its affiliates, as such term is defined in Treas. Reg. Section 1.409A-1(h).

(vi) To the extent the Agreement provides that Non-Qualified Deferred Compensation can be paid or commenced during a certain period (e.g., sixty (60) days) following a permissible payment or commencement event or trigger, the date of such payment or payment commencement shall be determined by the Company in its sole discretion (and by disregarding any desire of Executive) and, if the payment or commencement period exceeds ninety (90) days and spans two taxable years of Executive, then such Non-Qualified Deferred Compensation shall be paid and/or commenced during the second of such taxable years.

(vii) The preceding provisions of this section of the Agreement shall not be construed as a representation, covenant or guarantee by the Company or by any officer, director or affiliate of the Company of any particular tax effect to Executive under this Agreement. Neither the

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Company nor any of its officers, directors or affiliates shall be liable to Executive for any tax, penalty or interest imposed under Section 409A nor for reporting (or for failing to report) in good faith any payment made under this Agreement as an amount includible in gross income under Section 409A. Neither the Company nor any of its officers, directors or affiliates will have any liability to Executive or any other party if a payment or benefit under this Agreement is challenged by any taxing authority or is ultimately determined not to be exempt or compliant. Executive further understands and agrees that Executive will be entirely responsible for any and all taxes on any benefits payable to Executive as a result of this Agreement. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable and/or benefits provided to the Executive under this Agreement, and such amounts payable and/or benefits provided to the Executive under this Agreement shall not be reduced because Executive obtains other employment, becomes self-employed and/or receives remuneration and/or benefits from a third party after the date of termination.

9. Covenant Not to Compete.

(a) The Executive recognizes that the services to be performed by him hereunder are special, unique and extraordinary. The parties confirm that it is reasonably necessary for the protection of the Company that the Executive agree, and accordingly, the Executive does hereby agree, that, he shall not, directly or indirectly, at any time during the “Restricted Period” within the “Restricted Area” engage in any “Restricted Business Activity” (as those terms are defined in Sections 9(b), (c) and (d) below). In the event of any inconsistencies between the terms of this Agreement and the NDA, this Agreement shall control.

(b) The term “Restricted Business Activity” as used in this Section 9, means that the Executive shall not, directly or indirectly:

(i) provide services, either on his own behalf or as an officer, director, partner, consultant, associate, employee, owner, agent, independent contractor, or coventurer of any third party that sells products or services that are directly competitive in airports with the core products or services sold by XpresSpa during the Employment Period; or

(ii) solicit any material commercial relationships of XpresSpa, other than in the furtherance of the business of XpresSpa during the Employment Period;

provided however, that Restricted Business Activity shall not be construed to prevent and this Agreement shall not prevent the Executive from (i) owning, directly or indirectly, in the aggregate, an amount not exceeding two percent (2%) of the issued and outstanding voting securities of any class of any company whose voting capital stock is traded or listed on a national securities exchange or in the over-the-counter market; or (ii) soliciting any material commercial relationships of XpresSpa for the purpose of selling products or providing services that are not the same or substantially similar to the core products or services sold by XpresSpa during the Employment Period.

(c) The term “Restricted Period,” as used in this Section 9, shall mean during the Employment Period and for six (6) months after the date the Executive is no longer employed by the Company.

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(d) The term “Restricted Area” as used in this Section 9 shall mean the United States of America and every country outside the United States of America where the Company and/or XpresSpa is directly or indirectly operating or Executive is aware that the Company and/or XpresSpa is planning to operate, is actively evaluating operating in such country in the future, or is involved in any negotiations, discussions or other actions relating to such plans, including but not limited to submitting or responding to a RFP; except for any country which the Company or XpresSpa has abandoned such plans or has ceased, without any reason (such as waiting for responses from third parties), to pursue such plans or to respond to a RFP for a period exceeding sixty (60) days.

(e) If any of the restrictions contained in this Section 9 shall be deemed to be unenforceable by reason of the extent, duration or geographical scope thereof, or otherwise, then the court making such determination shall have the right to reduce such extent, duration, geographical scope, or other provisions hereof, and in its reduced form this Section shall then be enforceable in the manner contemplated hereby.

(f) The provisions of this Section 9 shall survive the termination of the Executive’s employment hereunder and until the end of the Restricted Period.

10. Executive’s Representations. Executive hereby represents and warrants to the Company that (i) the execution, delivery and performance of this Agreement by Executive does not and shall not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which Executive is bound, (ii) Executive is not a party to or bound by any employment agreement, noncompete agreement, non-solicitation agreement, covenants agreement, or confidentiality agreement with any other person or entity, (iii) Executive shall not use any confidential information or trade secrets of any third party in connection with the performance of Executive’s duties hereunder and (iv) this Agreement constitutes the valid and binding obligation of Executive, enforceable against Executive in accordance with its terms. Executive hereby acknowledges and represents that Executive has had the opportunity to consult with independent legal counsel regarding Executive’s rights and obligations under this Agreement and that Executive fully understands the terms and conditions contained herein.

11. Dispute Resolution.

(a) In the event of a breach or anticipated breach of the Agreement by either Party, the non-breaching Party shall inform the breaching Party by letter of the suspected or anticipated breach. The breaching Party shall have ten (10) days to cure said breach, if curable. In the event the breach has not been cured within ten (10) days, if curable, then, except as otherwise provided in Section 13(a), the non-breaching Party shall pursue a remedy or remedies through final and binding arbitration to which Sections 11(b) and (c) below shall apply.

(b) Any dispute arising between the Parties under this Agreement or concerning Executive’s employment or the termination of Executive’s employment shall be submitted to final and binding arbitration before the American Arbitration Association (“AAA”). Such arbitration shall be conducted in New York, New York, and the arbitrator will apply New York law, including federal law as applied in New York courts. The arbitration shall be conducted in accordance with

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AAA Employment Arbitration Rules as modified herein. The arbitration shall be conducted by a single arbitrator and the award of the arbitrator shall be final and binding on the parties, and judgment on the award may be confirmed and entered in any state or federal court in the State and City of New York. The arbitration shall be conducted on a strictly confidential basis, and the Parties shall not disclose the existence of a claim, the nature of a claim, any documents, exhibits, or information exchanged or presented in connection with such a claim, or the result of any action (collectively, "Arbitration Materials") to any third party, with the sole exception of their respective legal counsel, who also shall be bound by these confidentiality terms. Nothing herein shall prevent either Party from seeking or obtaining an injunction in aid of arbitration, nor from confirming the award of the arbitrator in court.

(c) In the event of any court proceeding, including a court proceeding to challenge or enforce an arbitrator's award, the parties hereby consent to the exclusive jurisdiction of the state and federal courts in New York, New York and agree to venue in that jurisdiction. Each Party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by delivering a copy thereof to such Party in accordance with the notice provisions of Section 13(h) below. The Parties agree to take all steps necessary to protect the confidentiality of all confidential information, including the Arbitration Materials (if applicable), in connection with any such proceeding, agree to file all confidential information under seal, and agree to the entry of an appropriate protective order.

12. Defend Trade Secrets Act of 2016 Notice. In accordance with the federal Defend Trade Secrets Act of 2016 ("DTSA"), nothing in this Agreement is intended to interfere with or discourage the Executive's good faith disclosure of a trade secret or other confidential information to any governmental entity related to a suspected violation of law. Notwithstanding anything to the contrary in this Agreement, the DTSA provides that the Executive cannot be held criminally or civilly liable under any federal or state trade secret law (a) if the Executive discloses a trade secret or other confidential information (i) in confidence (A) to any federal, state, or local government official, either directly or indirectly, or (B) an attorney, and solely for the purpose of reporting or investigating a suspected violation of the law; or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and does not disclose the trade secret, except pursuant to court order. Should the Executive file a lawsuit for retaliation for reporting a suspected violation of law, he may disclose the trade secret to his attorney and use the trade secret information in the court proceeding, if the Executive (y) files any document containing the trade secret under seal, and (z) does not disclose the trade secret, except pursuant to court order.

13. Miscellaneous.

(a) The Executive acknowledges that the services to be rendered by him under the provisions of this Agreement are of a special, unique and extraordinary character and that it would be difficult or impossible to replace such services. Furthermore, the parties acknowledge that monetary damages alone would not be an adequate remedy for any breach by the Executive of this Agreement. Accordingly, the Executive agrees that any breach or threatened breach by him of this Agreement or the NDA shall entitle the Company, in addition to all other legal remedies available to it, to apply to any court of competent jurisdiction to seek to enjoin such breach or threatened breach. The parties understand and intend that each restriction agreed to by the Executive hereinabove shall be construed as separable and divisible from every other restriction, that the

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unenforceability of any restriction shall not limit the enforceability, in whole or in part, of any other restriction, and that one or more or all of such restrictions may be enforced in whole or in part as the circumstances warrant. In the event that any restriction in this Agreement is more restrictive than permitted by law in the jurisdiction in which the Company seeks enforcement thereof, such restriction shall be limited to the extent permitted by law. The remedy of injunctive relief herein set forth shall be in addition to, and not in lieu of, any other rights or remedies that the Company may have at law or in equity.

(b) The Executive may not assign or delegate any of his rights or duties under this Agreement without the express written consent of the Company. The Company will require any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, the "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which executes and delivers the agreement provided for in this subsection (b) or which otherwise becomes bound by all of the terms and provisions of this Agreement by operation of law.

(c) This Agreement, together with the NDA and any indemnification agreement, equity plan, stock option agreement, restricted stock unit agreement or other stock agreement to which plaintiff is a party or otherwise subject to, constitutes and embodies the full and complete understanding and agreement of the parties with respect to the Executive's employment by the Company, and supersedes all prior understandings and agreements, whether oral or written, between the Executive and the Company, and shall not be amended, modified or changed except by an instrument in writing executed by the party to be charged. The invalidity or partial invalidity of one or more provisions of this Agreement shall not invalidate any other provision of this Agreement. No waiver by either party of any provision or condition to be performed shall be deemed a waiver of similar or dissimilar provisions or conditions at the same time or any prior or subsequent time.

(d) Executive acknowledges that he has had the opportunity to be represented by separate independent counsel in the negotiation of this Agreement, has consulted with his attorney of choice, or voluntarily chose not to do so, concerning the execution and meaning of this Agreement, and has read this Agreement and fully understands the terms hereof, and is executing the same of his own free will. Executive warrants and represents that he has had sufficient time to consider whether to enter into this Agreement and that he is relying solely on his own judgment and the advice of his own counsel, if any, in deciding to execute this Agreement.

(e) This Agreement shall inure to the benefit of, be binding upon and enforceable against, the parties hereto and their respective successors, heirs, beneficiaries and permitted assigns including, any successor of the Company including a purchaser of all or substantially all of Company's assets.

(f) If this Agreement or the Employment Period is terminated for any reason, the NDA and Sections 8, 9 and 11 shall survive termination of this Agreement.

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(g) The headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

(h) All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when personally delivered, sent by registered or certified mail, return receipt requested, postage prepaid, or by reputable national overnight delivery service (e.g. FedEx) for overnight delivery to the party at the address set forth in the preamble to this Agreement, or to such other address as either party may hereafter give the other party notice of in accordance with the provisions hereof. Notices shall be deemed given on the sooner of the date actually received or the third business day after deposited in the mail or one business day after deposited with an overnight delivery service for overnight delivery.

(i) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without reference to principles of conflicts of laws.

(j) This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one of the same instrument. The parties hereto have executed this Agreement as of the date set forth above.

(k) Each Party will pay its own costs and expenses related to the transactions contemplated by this Agreement.

*[Remainder of Page Intentionally Left Blank]*  
*[Signature Page Follows]*

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**IN WITNESS WHEREOF**, the Executive and the Company have caused this Executive Employment Agreement to be executed as of the date first above written.

**COMPANY:**

XPRESSPA GROUP, INC.

By:     /s/ Douglas Satzman    

Name: Douglas Satzman

Title: CEO

**EXECUTIVE:**

    /s/ Ezra T. Ernst    

EZRA T. ERNST

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## EXHIBIT A

### INCENTIVE COMPENSATION

#### **Bonus:**

The Executive will be eligible to earn an annual bonus, the target amount of which shall be equal to fifty percent (50%) of Base Salary, based upon the achievement of performance goals and metrics established by the Board at its sole discretion. Any bonus will be determined as soon as reasonably practicable after the Company's annual financial statements are finalized (such date of determination, the "Bonus Determination Date").

The bonus payment will be split 50/50 between cash and a grant of restricted stock units with respect to the Company's common stock (the "Bonus Stock Award"). The cash portion of the bonus will be paid in a lump sum as soon as reasonably practicable following the Bonus Determination Date. The number of shares of Company common stock subject to the Bonus Stock Award will be computed by dividing (x) the value of the bonus payment attributable to the Bonus Stock Award by (y) the closing market price of the Company's common stock on the Bonus Determination Date. The Bonus Stock Award will be subject to vesting based on the Executive's continued service with the Company through the first anniversary of the Bonus Determination Date, and shall be subject to the terms and conditions of the Company's 2020 Equity Incentive Plan, as may be amended and/or restated from time to time.

Payment of the bonus will be subject to the Executive's continued employment through the date that the cash bonus is paid or the Bonus Stock Award is granted, as applicable.

#### **Equity Awards:**

Following the Executive's start date, it will be recommended to the Board that the Executive be granted stock options with respect to 1 million shares of Company common stock. The stock options will vest in approximately equal ratable installments on the first three anniversaries of the Executive's start date, subject to the Executive's continued service with the Company or its subsidiaries on each such vesting date. All stock options will (i) have an exercise price equal to the fair market value of the Company's common stock on the grant date, consistent with the requirements for an exemption from the application of Section 409A of the Internal Revenue Code of 1986, as amended, (ii) have a 10-year term, and (iii) be subject to the terms and conditions of the form of option agreement to be provided by the Company; except that the stock options will be exercisable for one year following termination of service (subject to the scheduled expiration of any such option).

In addition, it will be recommended to XpresTest's board of directors that XpresTest issue five (5) restricted shares of XpresTest's common stock ("XpresTest Restricted Stock"), which represents one half of one percent (0.5%) of XpresTest's fully diluted shares as of on the date of such grant. The XpresTest Restricted Stock will vest in approximately equal ratable installments on the first three anniversaries of the Executive's start date, subject to the Executive's continued service with XpresTest on each such vesting date. All shares of XpresTest Restricted Stock will be subject to the terms and conditions of the XpresTest, Inc. 2020 Equity Incentive Plan and the standard forms of award agreement thereunder.

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However, notwithstanding any contrary term in the applicable equity incentive plan, all equity awards issued to Executive pursuant to this Agreement or otherwise shall become 100% vested, non-forfeitable, and (with respect to stock options) exercisable if, prior to the vesting date or period stated above, (i) a Change in Control of the Company (as defined in the Company's 2020 Equity Incentive Plan) or a Change in Control of XpresTest (as defined in the XpresTest, Inc. 2020 Equity Incentive Plan) occurs, subject to Executive's continued service through the closing of the applicable Change in Control or (ii) the Company terminates Executive without Cause, Executive terminates employment for Good Reason, or this Agreement expires without being renewed or novated.

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**EXHIBIT B**

**FORM OF NDA**

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**EXHIBIT C**

**FORM OF SEPARATION AGREEMENT RELEASE**<sup>1</sup>

1. **Termination of Employment.** My employment with XpresSpa Group, Inc. (the “Company”) terminated effective as of \_\_\_\_\_.
2. **Consideration.** I understand that in consideration for my execution of this Release (the “Release”), and my fulfillment of the promises made in the Employment Agreement between Company and me dated as of January [\_\_\_], 2022 (the “Employment Agreement”), Company agrees to provide me with the compensation and benefits set forth in the Employment Agreement.
3. **Conditions Applying to Payment of Benefits.** I understand and agree that the compensation and benefits payable to me pursuant to Section 2 above are subject to my compliance with the terms and conditions set forth in this Separation Agreement and the Employment Agreement.
4. **General Release of Claims.** I hereby voluntarily release Company, and its subsidiaries, partners, affiliates, owners, agents, officers, directors, employees, successors and assigns, and all related persons, individually and in their official capacities (hereinafter collectively referred to as the “Released Parties”), of and from any and all claims, known and unknown, relating to my employment or cessation of employment that I, my heirs, executors, administrators, successors, and assigns, have or may have as of the date of execution of this Release, including, but not limited to, any alleged violation of any of (a) The National Labor Relations Act; Title VII of the Civil Rights Act of 1964; Sections 1981 through 1988 of Title 42 of the United States Code; Civil Rights Act of 1991; The Employee Retirement Income Security Act of 1974 (“ERISA”); The Age Discrimination in Employment Act of 1967; The Americans with Disabilities Act of 1990; The Fair Credit Reporting Act; The Fair Labor Standards Act; The Occupational Safety and Health Act; The Family and Medical Leave Act of 1993; Executive Order 11246; The New York Equal Pay Law; The New York Human Rights Law; The New York Civil Rights Law; The New York State Wage and Hour Laws; The New York Labor Law, The New York Executive Law, The New York Occupational Safety and Health Laws, The New York City Administrative Code, The New York City Human Rights Law, and the New York City Earned Safe and Sick Time Act; including any amendment, consolidation or re-enactment of any of the foregoing, or (b) any other federal, state or local civil or human rights law or any other local, state or federal law, regulation or ordinance; (c) any public policy, contract, tort, or common law; or (d) any claims for vacation, sick or personal leave, pay or payment pursuant to any practice, policy, handbook, or manual of Company; or any allegation for costs, fees or other expenses including attorneys’ fees and expert’s fees incurred in these matters. Notwithstanding the foregoing, the release set forth in this Section 4 shall not apply to any vested employee benefits accrued by me prior to the effective date of this Release under any compensation or benefit plans, programs and arrangements maintained by Company for the benefit of its employees and subject to ERISA.
5. **No Existing Claims.** I confirm that no claim, charge, or complaint against the Released Parties exists before any federal, state, or local court or administrative agency.
6. **No Participation In Claims.** I understand that if this Release were not signed, I would have the right to voluntarily assist other individuals in bringing claims against the Released Parties. I hereby waive that

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<sup>1</sup> The Company reserves the right to modify this Release to the extent that the Company reasonably determines necessary or advisable to help ensure that this Release is enforceable to the fullest extent permissible under applicable law and to reflect the applicable payments.

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right and shall not provide any such assistance other than assistance in an investigation or proceeding conducted by an agency of the United States government.

7. Nonadmission of Wrongdoing. I agree that neither this Release nor the furnishing of the consideration for this Release shall be deemed or construed at any time for any purpose as an admission by the Released Parties of any liability or unlawful conduct of any kind.

8. Other Covenants.

(a) I shall abide by the provisions of the Non-Disclosure and Non-Solicitation Agreement dated January [ ], 2022 (the “NDA”) the terms of which shall survive the signing of this Release. The term “Termination Date” as that term is used in the NDA shall be the date of this Release. Further, I agree that I will abide by any and all common law and/or statutory obligations relating to protection and non-disclosure of the Company’s trade secrets and/or confidential and proprietary documents and information.

(b) I agree that all non-public information relating in any way to this Release, including the terms and amount of financial consideration provided for in this Release, shall be held confidential by me and shall not be publicized or disclosed to any person (other than an immediate family member, legal counsel or financial advisor, provided that any such individual to whom disclosure is made agrees to be bound by these confidentiality obligations), business entity or government agency (except as mandated by state or federal law), except that nothing in this paragraph shall prohibit me from participating in an investigation with a state or federal agency if requested by the agency to do so;

(c) I will not make any statements that are professionally or personally disparaging about, or adverse to, the interests of the Released Parties including, but not limited to, any statements that disparage any person, service, finances, financial condition, capability or any other aspect of the business of the Company, and that I will not engage in any conduct which could reasonably be expected to harm professionally or personally the reputation of the Released Parties; and

(d) After the Separation Date, I will make myself reasonably available and cooperate with reasonable requests from the Company to help with requests for information concerning any business or legal matters (including, without limitation, testimony in any litigation matters) involving facts or events relating to the Company that may be within my knowledge.

9. Breach of Agreement. I agree that if I breach any of the promises set forth in this Release or if I challenge this Release, Company shall have the right to terminate the benefits payable under the Employment Agreement and to require me to return all monies paid by Company in consideration for my signing this Release.

10. Governing Law and Interpretation. This Release shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflict of laws provisions. If any portion of this Release is declared to be unenforceable by a court of competent jurisdiction in any action in which I participate or join, I agree that all consideration paid to me under the Employment Agreement shall be offset against any monies that I may receive in connection with any such action.

11. Entire Agreement. I acknowledge that I have not relied on any representations, promises, or agreements of any kind made to me in connection with my decision to sign this Release, except for those set forth in the Employment Agreement.

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12. Amendment. This Release may not be amended except by a written agreement signed by both parties which specifically refers to this Release.

13. Right to Revoke. I understand that I have the right to revoke this Release at any time during the seven (7) day period following the date on which I first sign the Release. If I want to revoke, I must make a revocation in writing which states: "I hereby revoke my Release." This written revocation must be received by [\_\_\_\_\_] of the Company before the end of the seven-day revocation period; otherwise, such revocation shall not be effective.

14. Waiver of Claims.

(a) In consideration of the terms of this Release and the monies paid by the Company, as described in Paragraph 1 of this Release (which I agree constitute consideration in addition to anything of value to which I am already entitled), I agree that this Release constitutes a knowing and voluntary waiver of all waivable rights or claims I may have against the Released Parties, or any of them, including, but not limited to, all rights or claims arising under the Age Discrimination in Employment Act of 1967, as amended (the "ADEA"), including, but not limited to, all claims of age discrimination in employment and all claims of retaliation in violation of the ADEA.

(b) I understand that, by entering into this Release, I do not waive rights or claims that may arise after the date this Release is executed.

(c) I understand that this Release will not affect the rights and responsibilities of the U.S. Equal Employment Opportunity Commission ("EEOC") to enforce the ADEA, and further understand that this Release will not be used to justify interfering with my protected right to file a charge or participate in an investigation or proceeding conducted by the EEOC, the National Labor Relations Board, the Securities and Exchange Commission, the Occupational Safety and Health Administration, or any similar federal, state, or local agency. I knowingly and voluntarily waive all rights or claims (that arose prior to my execution of this Release) that I may have against the Released Parties, or any of them, to receive any benefit or remedial relief (including, but not limited to, reinstatement, back pay, front pay, damages, and attorneys' and experts' fees) as a consequence of any charge or complaint filed with the EEOC or any other agency, and of any litigation concerning any facts alleged in any such charge or complaint.

15. Effective Date. This Release shall not become effective or enforceable until the expiration of the 7-day revocation period described in Section 12 above.

I HAVE READ THIS AGREEMENT IN ITS ENTIRETY.

I UNDERSTAND THAT BY SIGNING THIS RELEASE, I SHALL BE GIVING UP IMPORTANT RIGHTS, AND SHALL BE WAIVING MY RIGHTS UNDER FEDERAL, STATE AND LOCAL LAW TO BRING ANY CLAIMS THAT I HAVE OR MIGHT HAVE AGAINST THE RELEASED PARTIES INCLUDING BUT NOT LIMITED TO THE ACTS, STATUTES, CODES, ORDINANCES, RULES AND LAWS SET FORTH IN THIS RELEASE, AND ANY OTHER CONSTITUTIONAL, STATUTORY COMMON LAW RIGHTS AND PRIVILEGES.

I UNDERSTAND THAT MY RIGHT TO RECEIVE SEPARATION PAYMENTS SET FORTH IN SECTION 8 OF THE EMPLOYMENT AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS RELEASE AND THAT I WOULD NOT RECEIVE SUCH BENEFITS BUT FOR MY EXECUTION OF THIS RELEASE.

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I HAVE BEEN ADVISED IN WRITING TO CONSULT WITH AN ATTORNEY PRIOR TO SIGNING THIS RELEASE. I HAVE HAD A REASONABLE OPPORTUNITY TO RETAIN AND CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS RELEASE AND HAVE DONE SO.

I ALSO HAVE BEEN ADVISED IN WRITING BY COMPANY THAT I HAVE TWENTY-ONE (21) DAYS TO CONSIDER THIS RELEASE. I AGREE THAT ANY MODIFICATIONS, MATERIAL OR OTHERWISE, MADE TO THIS SEPARATION AGREEMENT DO NOT RESTART OR AFFECT IN ANY MANNER THE ORIGINAL TWENTY-ONE (21) DAY CONSIDERATION PERIOD.

I AGREE TO EVERYTHING CONTAINED IN THIS RELEASE AND AM SIGNING THIS RELEASE KNOWINGLY, VOLUNTARILY, AND FREE OF ANY DURESS.

IN WITNESS WHEREOF, I have executed this Release as of the date set forth below.

\_\_\_\_\_  
EZRA T. ERNST

Date: \_\_\_\_\_

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**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, Scott R. Milford, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of XWELL, 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 first 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 my 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.

Dated: November 14, 2022

/s/ SCOTT R. MILFORD

\_\_\_\_\_  
**Chief Executive Officer  
(Principal Executive Officer)**

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**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF  
THE SARBANES-OXLEY ACT OF 2002**

I, Omar A. Haynes, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of XWELL, 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 first 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 my 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.

Dated: November 14, 2022

/s/ OMAR A. HAYNES  
\_\_\_\_\_  
**Interim Chief Financial Officer**  
**(Principal Financial and Accounting Officer)**

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**CERTIFICATIONS OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

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), the undersigned officer of XWELL, Inc., a Delaware corporation (the "Company"), does hereby certify, to such officer's knowledge, that:

The Quarterly Report for the quarter ended September 30, 2022 (the "Form 10-Q") 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-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 14, 2022

/s/ SCOTT R. MILFORD

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

/s/ OMAR A. HAYNES

\_\_\_\_\_  
**Omar A. Haynes**  
**Interim Chief Financial Officer**  
**(Principal Financial and Accounting Officer)**

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