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

FORM 10-K

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

For the fiscal year ended December 31, 2021

OR

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

Commission file number: 0-11635

STRATA SKIN SCIENCES, INC.

(Exact name of registrant as specified in its charter)

Delaware	13-3986004
(State or Other Jurisdiction of incorporation or Organization)	(I.R.S. Employer Identification No.)
5 Walnut Grove Drive, Suite 140 Horsham, Pennsylvania	19044
(Address of principal executive offices)	(Zip code)

Registrant's telephone number, including area code: (215) 619-3200

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

Title of Each Class	Trading Symbol(s)	Name Of Each Exchange On Which Registered
Common Stock, $0.001 Par Value	SSKN	The Nasdaq Stock Market LLC

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

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

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

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

Indicate by check mark whether the Registrant has submitted electronically; every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.0405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒ Smaller reporting company ☒
Emerging growth company ☐

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

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

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

The number of shares outstanding of our common stock as of June 30, 2021 was 33,889,239 shares. The aggregate market value of voting and non-voting common equity held by non-affiliates on the registrant was $25,923,351, computed by reference to the closing market price of $1.56 of the common stock as of June 30, 2021 and 16,617,533 shares held by non-affiliates. As of March 18, 2022, the number of shares outstanding of our common stock was 34,723,046.

TABLE OF CONTENTS

		Page
	PART I	4
Item 1.	Business	4
Item 1A.	Risk Factors	15
Item 1B.	Unresolved Staff Comments	37
Item 2.	Properties	37
Item 3.	Legal Proceedings	37
Item 4.	Mine Safety Disclosures	38
	PART II	38
Item 5.	Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	38
Item 6.	Selected Consolidated Financial Data	39
Item 7.	Management's Discussion and Analysis of Financial Condition and Results of Operations	39
Item 7A.	Quantitative and Qualitative Disclosures About Market Risk	53
Item 8.	Financial Statements and Supplementary Data	54
Item 9.	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	54
Item 9A.	Controls and Procedures	54
Item 9B.	Other Information	54
	PART III	55
Item 10.	Directors, Executive Officers and Corporate Governance	55
Item 11.	Executive Compensation	55
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	55
Item 13.	Certain Relationships and Related Transactions, and Director Independence	55
Item 14.	Principal Accounting Fees and Services	55
	PART IV	56
Item 15.	Exhibits and Financial Statement Schedules	56
Item 16.	Form 10-K Summary	61

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Report, including the sections entitled “Risk Factors”, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business”, includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”) and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Forward-looking statements relate to, among others, our plans, objectives and expectations for our business, operations and financial performance and condition, and can be identified by terminology such as “may,” “should,” “expect,” “intend,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “will,” “could,” “project,” “target,” “potential,” “continue” and similar expressions that do not relate solely to historical matters. Forward-looking statements are based on management’s belief and assumptions and on information currently available to management. Although we believe that the expectations reflected in forward-looking statements are reasonable, such statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by forward-looking statements.

Forward-looking statements include, but are not limited to, statements about:

- forecasts of future business performance, consumer trends and macro-economic conditions;
- descriptions of market, competitive conditions, and competitive product introductions;
- descriptions of plans or objectives of management for future operations, products or services;
- actions by the FDA or other regulatory agencies with respect to our products or product candidates;
- changes to third-party reimbursement of laser treatments using our devices;
- our estimates regarding the sufficiency of our cash resources, expenses, capital requirements and needs for additional financing and our ability to obtain additional financing;
- our ability to protect our intellectual property and operate our business without infringing upon the intellectual property rights of others;
- anticipated results of existing or future litigation;
- health emergencies, the spread of infectious disease or pandemics; and
- descriptions or assumptions underlying or related to any of the above items.

In light of these assumptions, risks and uncertainties, the results and events discussed in the forward-looking statements contained in this Report might not occur. Investors are cautioned not to place undue reliance on the forward-looking statements, which speak only as of the date of this Report, even if subsequently made available by us on our website or otherwise. We are not under any obligation, and we expressly disclaim any obligation, to update or alter any forward-looking statements, whether as a result of new information, future events or otherwise. You should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all. All subsequent forward-looking statements attributable to us or to any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section.

You should read this Annual Report and the documents that we reference in this Annual Report as exhibits with the understanding that our actual future results, performance, and events and circumstances may be materially different from what we expect.

PART I

ITEM 1. BUSINESS

Our Company

Overview

We are a medical technology company in dermatology dedicated to developing, commercializing and marketing innovative products for the treatment of dermatologic conditions. Our products include the XTRAC® and now Pharos® excimer lasers and VTRAC® lamp systems utilized in the treatment of psoriasis, vitiligo and various other skin conditions. We have recently acquired the TheraClear ® acne treatment device to broaden our opportunity with expansion potential into the acne care market.

Corporate Overview

We were incorporated in the State of New York in 1989 under the name Electro-Optical Sciences, Inc. and subsequently reincorporated under the laws of the State of Delaware in 1997. In April 2010, we changed our name to MELA Sciences, Inc. On January 5, 2016, we changed our name to STRATA Skin Sciences, Inc. In June 2015, we completed the acquisition of the XTRAC® Excimer Laser and the VTRAC® excimer lamp businesses from PhotoMedex, Inc. (the "Acquisition"). Prior to the Acquisition, the Company's only product was the MelaFind® system, or MelaFind, a device for aiding dermatologists in the evaluation of clinically atypical pigmented skin lesions. We have discontinued the MelaFind business.

In August 2021 and January 2022, we acquired certain assets and certain liabilities related to the Pharos U.S. dermatology business of Ra Medical Systems, Inc. and devices related to the TheraClear business of Theravant Corporation, respectively.

Impact of COVID-19 Pandemic

In late 2019, there was an outbreak of a new strain of coronavirus ("COVID-19") which became a global pandemic. The COVID-19 pandemic has negatively impacted the global economy, disrupted global supply chains, constrained work force participation and created significant volatility and disruption of financial markets. In addition, the pandemic led to the suspension of elective procedures in the U.S. and to the temporary closure of many physician practices which are our primary customers. While most offices reopened, some physician practices closed and never reopened, and the impact of the ongoing COVID-19 pandemic and its variants on our operational and financial performance, including our ability to execute our business strategies and initiatives in the expected time frames, will depend on future developments, including the duration and ongoing spread of the COVID-19 outbreak and its variants, continued or renewed restrictions on business operations and transport, any governmental and societal responses thereto, including legislative or regulatory as well as the percentage of the populace vaccinated and effectiveness of COVID-19 vaccines and the continued impact on worldwide economic and geopolitical conditions, all of which are uncertain and cannot be predicted. Domestically, as the procedures in which our devices are used are elective in nature; and as social distancing, travel restrictions, quarantines and other restrictions became prevalent in the United States, this had a negative impact on our recurring revenue model and our financial position and cash flow. The virus has disrupted the supply chains world-wide that we depend upon to provide a steady source of components to manufacture and repair our devices.

To mitigate the impact of COVID-19, we have taken a variety of measures to ensure the availability and functioning of our critical infrastructure by implementing business continuity plans to promote the safety and security of our employees, while complying with various government mandates, including work-from-home arrangements, social-distancing initiatives to reduce the transmission of COVID-19, and complying with federal and local regulations at our facilities. The Company implemented a policy whereby all Company employees are required to be vaccinated or complete weekly COVID-19 testing. In addition, we created and executed programs utilizing our direct to consumer advertising and call center to contact patients and partner clinics to restart our partners' businesses. In the event our own employees are impacted through direct or ancillary contact with a person who has the virus, we may need to devise other methods of transacting business in our offices by working from home and or potentially ceasing operations for a period of time. Supply chain disruptions which began during the pandemic have continued and may continue for the foreseeable future. While the Company's operations have not been materially impacted by the general trends in supply chain problems, the Company continues to monitor and assess potential risks. The ongoing COVID-19 pandemic has had a negative impact on our results of operations and financial performance for fiscal 2021, and we expect it will continue to have a negative impact on revenues, earnings and cash flows in fiscal 2022. Some physician offices continue to experience staffing issues, and we believe these shortages of trained personnel have negatively impacted our business. Accordingly, current results and financial conditions discussed herein may not be indicative of future operating results and trends.

XTRAC and Pharos Systems and VTRAC Systems

The XTRAC and Pharos excimer laser technology emits highly concentrated UV light targeted primarily towards autoimmune dermatological skin disorders such as psoriasis, vitiligo, atopic dermatitis, and eczema, among others. The XTRAC system received U.S. Food and Drug Administration ("FDA") clearance in 2000 and the Pharos in 2004, and excimer laser has since become a widely recognized treatment for psoriasis, vitiligo and other skin diseases. Psoriasis and vitiligo alone affect up to 13 million people in the U.S. and 190 million people worldwide. VTRAC is a UV light lamp system that works in much the same way as the XTRAC. It received FDA clearance in August 2005 and Conformité Européenne ("CE") mark approval in January 2006 and has been marketed exclusively in international markets.

Present in natural sunlight, ultraviolet B ("UVB") is an accepted psoriasis treatment that penetrates the skin to slow the growth of damaged skin cells thereby placing the disease into remission for a period of time. Studies have shown that the remission time can last three to six months or longer. In our XTRAC system, our targeted therapy approach delivers optimum amounts of UVB light directly to skin lesions, sparing healthy tissue. Many peer reviewed studies have proven that the XTRAC excimer laser can clear psoriasis faster and produce longer remissions than other UVB modalities, resulting in fewer treatments to produce the desired result.

We currently market four XTRAC excimer models. In October 2018, we announced the launch of XTRAC S3®, which, as compared to previous XTRAC generations, is smaller, faster and has a new user interface. In January 2020, we announced the FDA granted clearance for our XTRAC Momentum Excimer Laser System platform. This clearance is the first full platform clearance since 2008. Momentum has an increased power range to improve patient safety and treatment efficiency; a new and exclusive proprietary short-hair tip, providing ease of use in difficult-to-treat scalp psoriasis; and an enhanced user interface and database. We continue to market the XTRAC Velocity, our third-generation laser and the XTRAC Ultra Plus, which is also a highly effective model marketed primarily in certain international markets. The Momentum, S3, Velocity and the Ultra Plus are capable of treating mild, moderate and severe psoriasis, vitiligo, atopic dermatitis and leukoderma.

The XTRAC excimer laser is marketed in the U.S. mainly under a recurring revenue model in which we place the system in the physician's office for no upfront charge and generate our revenue on a per-use basis (referred to herein as the dermatology recurring procedures model or segment). We estimate that there are over 1,000 XTRAC lasers in use in the U.S., of which 890 systems were, as of December 31, 2021, included in our dermatology recurring procedures revenue model. The Pharos business provides the opportunity for us to convert the customer base to our dermatology recurring procedures revenue model. The target U.S. audience for XTRAC lasers comprises approximately 3,500 dermatologists who perform disease management. Until 2019, in markets outside the U.S. the XTRAC laser had been marketed primarily as dermatology procedures equipment sales through distributors in over twenty-five countries. The VTRAC is marketed exclusively in international markets through the same distributors.

Since 2019, we have been transitioning our international dermatology procedures equipment sales through our master distributor to a direct distribution model for equipment sales and recurring revenue on a country by country basis. In January 2022 our agreement with our master distributor expired, and we decided to enter into direct contractual relationships with our distributors. We have signed distributor contracts in Korea (in 2019), Japan (in 2020), China (in January 2021), Israel, Saudi Arabia, Kuwait, Oman, Qatar, Bahrain, UAE, Jordan, and Iraq (in 2021). While we continue to promote the recurring revenue model where appropriate, we have learned that the model not conducive to growth in some areas and in some circumstances, in which case we encourage our distributors to pursue capital sales.

Studies have concluded that XTRAC treatment leads to significant improvement in psoriasis plaques and severity scores in as few as six to ten treatments. Treatment protocols recommend that patients receive two treatments per week with a minimum of 48 hours between treatments. Our data shows that treatment with XTRAC excimer lasers has an 89% efficacy rate and produces only minimal side effects. In support of its clinical effect, the XTRAC excimer lasers have been cited in over 45 clinical studies and research programs, with findings published in peer-reviewed medical journals around the world. The XTRAC excimer laser has also been endorsed by the National Psoriasis Foundation, and its use for psoriasis is covered by nearly all major insurance companies, including Medicare. XTRAC treatment is a reimbursable procedure for psoriasis under three Current Procedural Terminology ("CPT") codes. There are three applicable CPT codes that differ based on the total skin surface area being treated. Insurance Reimbursement to physicians varies based upon insurance company and location. The national CPT code reimbursement established by the Center for Medicaid Services ("CMS"), which forms the basis for most insurance companies' reimbursement levels, ranges for the three codes between $160 per treatment to $250 per treatment. (See "Third Party Reimbursement" below.)

Psoriasis, the Disease

The World Health Organization describes psoriasis as a chronic, noncommunicable, painful, disfiguring and disabling disease for which there is no cure, and which generates a great negative impact on patients' quality of life. It manifests itself in many forms and typically causes raised, red, scaly patches that appear on the skin and may cause itchiness, burning or stinging. Psoriasis is also associated with other serious health conditions such as diabetes, heart disease and depression.

Psoriasis Treatment Options

There are essentially three main types of psoriasis treatments, as listed below:

Topical therapies: These can include corticosteroids, vitamin D3 derivatives, coal tar, anthralin and retinoids, among others, that are sold as a cream, gel, liquid, spray, or ointment. The efficacy of topical agents varies from person to person, although these products are commonly associated with a loss of potency over time as people develop resistance.

Phototherapy: This is the area in which we operate. Our XTRAC Excimer Systems are FDA-cleared, reimbursed by insurance, and exhibit none of the significant side-effects associated with some alternative therapies.

Systemic medications: There are a number of prescription medications available for psoriasis, which are given either by mouth or as an injection. The popularity and use of these medications are growing significantly, notwithstanding their cost and their potentially severe side-effects.

XTRAC excimer lasers are particularly significant and beneficial for mild to moderate psoriasis patients who prefer a noninvasive treatment approach without the side effects of invasive, systemic agents, or to patients who have developed a resistance to topical agents. In many cases, patients treated with topical or systemic therapies are also candidates for phototherapy.

Using the XTRAC and Pharos Excimer Lasers to Treat Vitiligo and Other Skin Diseases

UV light therapy is considered to be an effective and safe treatment for many skin disorders beyond psoriasis. To this effect, the XTRAC technology is FDA cleared for the treatment of not only psoriasis but also vitiligo (a skin pigment deficiency), atopic dermatitis (eczema) and leukoderma, which is a localized loss of skin pigmentation that occurs after an inflammatory skin condition such as a burn, intralesional steroid injection, or post dermabrasion.

XTRAC technology for vitiligo patients typically requires more therapy sessions than for psoriasis but is dependent on the severity of the disease. In the treatment of vitiligo, we believe the XTRAC functions to reactivate the skin's melanocytes (the cells that produce melanin), which causes pigment to return. To date, there is not sufficient data to confirm how long patients can expect their vitiligo to be in remission after XTRAC therapy. Based on anecdotal reports, we believe that re-pigmentation may last for several years. Historically, vitiligo treatments had been considered cosmetic procedures by insurance companies, and as such were not reimbursed. However, over the past several years, there has been a significant increase in insurance coverage for these procedures and we estimate that currently approximately 76% of insurers consider XTRAC treatments to be medically necessary for the treatment of vitiligo and therefore provide coverage.

We believe that several factors have limited the growth of the use of XTRAC treatments from those who suffer from psoriasis and vitiligo. Specifically, we believe that awareness of the positive effects of XTRAC treatments has not been high enough among both sufferers and providers; and that the treatment regimen requiring sometimes up to 12 or more treatments has limited XTRAC use to certain patient populations. Addressing the lack of knowledge issue, we have a direct to patient advertising campaign aimed at motivating psoriasis and vitiligo patients to seek out XTRAC treatments from our physician partners. Specific advertisements encourage prospective patients to contact our patient advocacy center via telephone or web site, wherein we provide information on the treatment and insurance coverage, and ultimately we can schedule an appointment for the prospective patient to be evaluated by a physician within our customer network, convenient to their location, to determine if they would benefit from XTRAC treatments.

STRATAPEN

In January 2017, we entered into an OEM agreement with Esthetic Education, LLC to private label the STRATAPEN device. STRATAPEN® MicroSystems is a micropigmentation device that provides advanced technology offering exceptional results. This contract expired in January 2020, but we continue to sell this product on a purchase order basis.

THERACLEAR

In January 2022 we acquired the TheraClear assets from Theravant Corporation. The TheraClear Acne System delivers a two-part process for treating inflammatory acne, pustular acne and comedonal acne that combines a vacuum and broadband light that has been proven to clear skin rapidly for fast and visible reduction in acne and associated redness. Treatments are very comfortable, take 10 minutes to perform, are highly effective, and can be used on all skin types.

Competition

Our XTRAC product line competes with pharmaceutical compounds and methodologies used to treat an array of skin conditions. Such alternative treatments may be in the form of topical products, systemic medications, and phototherapies from both large pharmaceutical and smaller devices companies. Our major competitors for dermatological solutions include The Daavlin Company, National Biologic Corporation, and pharmaceutical companies producing topical products and systemic and biologic medications. Currently, our XTRAC system is believed to be a competitive therapy to alternative treatments on the basis of its recognized clinical effect, minimal side effect profile, cost-effectiveness and reimbursement.

Our TheraClear device competes with a range of over the counter treatment methodologies, as well as prescription only medications, and in-office treatment methodologies.

Manufacturing

We manufacture our XTRAC products at our 17,000 sq. ft. facility in Carlsbad, California. Our California facility is certified as ISO 13485 compliant. ISO 13485 is an International standardization written by the International Organization for Standardization, which publishes requirements for a comprehensive quality management system for the design and manufacture of medical devices. Certification to the standard is awarded by accredited third parties. We believe that our present manufacturing capacity at these facilities is sufficient to meet foreseeable demand for our products.

Research and Development Efforts

Our research and development team, including engineers, consists of approximately four employees. We conduct research and development activities at our facility located in Carlsbad, California. Our research and development efforts are focused on the application of our XTRAC system for the treatment of inflammatory skin disorders.

Intellectual Property

Our policy is to protect our intellectual property by obtaining U.S. and foreign patents to protect technology, inventions and improvements important to the development of our business. As of December 31, 2021, 26 issued U.S. patents are in force, and many of these patents have foreign counterparts issued and pending. The Company maintains 15 patents from Mela Sciences, Inc. related to the MelaFind product.

We also rely on trade secrets and technical know-how in the manufacture and marketing of our products. We require our employees, consultants and contractors to execute confidentiality agreements with respect to our proprietary information.

In February 2021, the license for the exclusive rights for patents related to the delivery of treatment to vitiligo with the Icahn School of Medicine at Mount Sinai expired. We do not believe that this will have a material impact on our business.

We believe that our patented methods and apparatus, together with proprietary trade-secret technology and registered trademarks, give us a competitive advantage; however, whether a patent is infringed or is valid, or whether or not a patent application should be granted, are all complex matters of science and law, and therefore, we cannot be certain that, if challenged, our patented methods and apparatus and/or trade-secret technology would be upheld. If one or more of our patented methods, patented apparatus or trade-secret technology rights, or our trademark rights, are invalidated, rejected or found unenforceable, that could reduce or eliminate any competitive advantage we might otherwise have had.

Government Regulation

Regulations Relating to Products and Manufacturing

Our products and research and development activities are regulated by numerous governmental authorities, principally the FDA and corresponding state and foreign regulatory agencies. Any medical device or cosmetic we manufacture and/or distribute will be subject to pervasive and continuing regulation by the FDA. The U.S. Food, Drug and Cosmetics Act, or FD&C Act, and other federal and state laws and regulations govern the pre-clinical and clinical testing, design, manufacture, use, labeling and promotion of medical devices, including our XTRAC, VTRAC, STRATAPEN and TheraClear devices. Product development and approval for medical devices within this regulatory framework takes a number of years and involves the expenditure of substantial resources.

In the U.S., medical devices are classified into three different classes, Class I, II and III, on the basis of controls deemed necessary to provide a reasonable assurance of the safety and effectiveness of the device. Class I devices are subject to general controls, such as facility registration, medical device listing, labeling requirements, premarket notification (unless the medical device has been specifically exempted from this requirement), adherence to the FDA's Quality System Regulation, and requirements concerning the submission of device-related adverse event reports to the FDA. Class II devices are subject to general and special controls, such as performance standards, premarket notification (510(k) clearance), post-market surveillance, and FDA Quality System Regulations. Generally, Class III devices are those that must receive premarket approval by the FDA to provide a reasonable assurance of their safety and effectiveness, such as life-sustaining, life-supporting and implantable devices, or new devices that have been found not to be substantially equivalent to existing legally marketed devices. Both XTRAC and TheraClear are Class II devices.

With limited exceptions, before a new medical device can be distributed in the U.S., marketing authorization typically must be obtained from the FDA through a premarket notification under Section 510(k) of the FD&C Act, or through a premarket approval application under Section 515 of the FD&C Act. The FDA will typically grant a 510(k) clearance if it can be established that the device is substantially equivalent to a predicate device that is a legally marketed Class I or II device (or to pre-amendments Class III devices for which the FDA has yet to call for premarket approvals). We have received FDA 510(k) clearance to market our XTRAC and VTRAC systems for the treatment of psoriasis, vitiligo, atopic dermatitis and leukoderma. The FDA granted these clearances under Section 510(k) on the basis of substantial equivalence to other technologies that had received prior clearances.

For any devices that are cleared through the 510(k) process, modifications or enhancements that could significantly affect the safety or effectiveness of the device, or that constitute a major change in the intended use of the device, will require a new 510(k) submission. In August 2003 the FDA granted 510(k) clearance for a significantly modified version of our XTRAC laser, which we have marketed as the XTRAC XL Plus Excimer Laser System. In October 2004 the FDA granted clearance for the XTRAC Ultra (AL 8000) Excimer Laser System and, in March 2008 we received 510(k) clearance for the XTRAC Velocity (AL 10000) Excimer Laser System. These approvals were originally granted to PhotoMedex, Inc. and acquired by us in the June 2015 acquisition described above. In January 2020, we announced the FDA granted clearance of our XTRAC Momentum Excimer Laser platform.

The TheraClear device has been cleared by the FDA through the 510(k) process.

We are subject to routine inspection by the FDA and, as noted above, must comply with a number of regulatory requirements applicable to firms that manufacture medical devices and other FDA-regulated products for distribution within the U.S., including requirements related to device labeling (including prohibitions against promoting products for unapproved or off-label uses), facility registration, medical device listing, adherence to the FDA's Quality System Regulation, good manufacturing processes and requirements for the submission of reports regarding certain device-related adverse events to the FDA.

We are also subject to the radiological health provisions of the FD&C Act and the general and laser-specific radiation safety regulations administered by the Center for Devices and Radiological Health, or CDRH, of the FDA. These regulations require laser manufacturers to file initial, new product, supplemental and annual reports, to maintain quality control, product testing and sales records, to incorporate certain design and operating features (depending on the class of product) in lasers sold to end users pursuant to a performance standard and to certify and appropriately label each laser sold as belonging to one of four classes, based on the level of radiation from the laser that is accessible to users. Moreover, we are obligated to repair, replace, or refund the cost of certain electronic products that are found to fail to comply with applicable federal standards or otherwise are found to be defective. The CDRH is empowered to seek fines and other remedies for violations of the regulatory requirements. To date, we have filed the documentation with the CDRH for our laser products requiring such filing and have not experienced any difficulties or incurred significant costs in complying with such regulations.

We are approved by the European Union to affix the CE mark to our XTRAC laser and VTRAC lamp systems. This certification is a mandatory conformity mark for products placed on the market in the European Economic Area, which is evidence that they meet all European Community, or EC, quality assurance standards and compliance with applicable European medical device directives for the production of medical devices. This will enable us to market our approved products in all of the member countries that accept the CE mark. We also are required to comply with additional individual national requirements that are in addition to those required by these nations. Our products have also met the requirements for marketing in various other countries.

Our TheraClear device will be manufactured for us by a third party and we purchase our STRATAPEN devices from third parties, who are subject to the same regulations. We rely on these third parties to ensure compliance with the regulations. Failure to comply with applicable regulatory requirements can result in fines, injunctions, civil penalties, recalls or seizures of products, total or partial suspensions of production, refusals by the U.S. and foreign governments to permit product sales and criminal prosecution. We are, or may become, subject to various other federal, state, local and foreign laws, regulations and policies relating to, among other things, safe working conditions, good laboratory practices and the use and disposal of hazardous or potentially hazardous substances used in connection with research and development.

Fraud and Abuse Laws

Because of the significant federal funding involved in Medicare and Medicaid, Congress and the states have enacted, and actively enforce, a number of laws whose purpose is to eliminate fraud and abuse in federal health care programs. Our business is subject to compliance with these laws.

Anti-Kickback Laws

In the U.S., there are federal and state anti-kickback laws that generally prohibit the payment or receipt of kickbacks, bribes or other remuneration in exchange for the referral of patients or other health-related business. The U.S. federal healthcare programs' Anti-Kickback Statute makes it unlawful for individuals or entities knowingly and willfully to solicit, offer, receive or pay any kickback, bribe or other remuneration, directly or indirectly, in exchange for or to induce the purchase, lease or order, or arranging for or recommending purchasing, leasing, or ordering, any good, facility, service, or item for which payment may be made in whole or in part under a federal healthcare program such as Medicare or Medicaid. The Anti-Kickback Statute covers "any remuneration," which has been broadly interpreted to include anything of value, including for example gifts, certain discounts, the furnishing of free supplies, equipment or services, credit arrangements, payments of cash and waivers of payments. Several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the arrangement can be found to violate the statute. Penalties for violations include criminal penalties and civil sanctions such as fines, imprisonment and possible exclusion from Medicare, Medicaid and other federal healthcare programs. In addition, several courts have permitted kickback cases brought under the Federal False Claims Act to proceed, as discussed in more detail below.

The reach of the Anti-Kickback Statute was broadened by the Patient Protection and Affordable Care Act of 2010 (the "ACA"), which, among other things, amends the intent requirement of the federal Anti-Kickback Statute. Pursuant to the statutory amendment, a person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it in order to have committed a violation. In addition, the ACA provides that the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the civil False Claims Act (discussed below) or the civil monetary penalties statute, which imposes penalties against any person who is determined to have presented or caused to be presented a claim to a federal health program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent.

Because the Anti-Kickback Statute is broadly written and encompasses many harmless or efficient arrangements, Congress authorized the Office of Inspector General of the U.S. Department of Health and Human Services, or OIG, to issue a series of regulations, known as "safe harbors." For example, there are regulatory safe harbors for payments to bona fide employees, properly reported discounts and rebates, and for certain investment interests. Although an arrangement that fits into one or more of these exceptions or safe harbors is immune from prosecution, arrangements that do not fit squarely within an exception or safe harbor do not necessarily violate the statute. The failure of a transaction or arrangement to fit precisely within one or more of the exceptions or safe harbors does not necessarily mean that it is illegal or that prosecution will be pursued. However, conduct and business arrangements that arguably implicate the Anti-Kickback Statute but do not fully satisfy all the elements of an exception or safe harbor may be subject to increased scrutiny by government enforcement authorities such as the OIG.

Many states have laws that implicate anti-kickback restrictions similar to the Anti-Kickback Statute. Some of these state prohibitions apply, regardless of whether federal health care program business is involved, to arrangements such as for self-pay or private-pay patients. Government officials have focused their enforcement efforts on marketing of healthcare services and products, among other activities, and recently have brought cases against companies, and certain sales, marketing and executive personnel, for allegedly offering unlawful inducements to potential or existing customers in an attempt to procure their business.

Federal Civil False Claims Act and State False Claims Laws

The federal civil False Claims Act imposes liability on any person or entity who, among other things, knowingly and willfully presents, or causes to be presented, a false or fraudulent claim for payment by a federal healthcare program, including Medicare and Medicaid. The "qui tam," or "whistleblower" provisions of the False Claims Act allow a private individual to bring actions on behalf of the federal government alleging that the defendant has submitted a false claim to the federal government, and to share in any monetary recovery. In recent years, the number of suits brought against healthcare providers by private individuals has increased dramatically. Medical device companies, like us, can be held liable under false claims laws, even if they do not submit claims to the government, when they are deemed to have caused submission of false claims by, among other things, providing incorrect coding or billing advice about their products to customers that file claims, or by engaging in kickback arrangements with customers that file claims.

The False Claims Act also has been used to assert liability on the basis of misrepresentations with respect to the services rendered and in connection with alleged off-label promotion of products. Our future activities relating to the manner in which we sell our products and document our prices, such as the reporting of discount and rebate information and other information affecting federal, state and third-party reimbursement of our products, and the sale and marketing of our products, may be subject to scrutiny under these laws.

When an entity is determined to have violated the False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties of $5,500 to $11,000 for each separate false claim. There are many potential bases for liability under the False Claims Act. A number of states have enacted false claim laws analogous to the federal civil False Claims Act and many of these state laws apply where a claim is submitted to any state or private third-party payer. In this environment, our engagement of physician consultants in product development and product training and education could subject us to similar scrutiny. We are unable to predict whether we would be subject to actions under the False Claims Act or a similar state law, or the impact of such actions. However, the costs of defending such claims, as well as any sanctions imposed, could significantly affect our financial performance.

HIPAA Fraud and Other Regulations

The Health Insurance Portability and Accountability Act of 1996, or HIPAA, created a class of federal crimes known as the "federal health care offenses," including healthcare fraud and false statements relating to healthcare matters. The HIPAA health care fraud statute prohibits, among other things, knowingly and willfully executing, or attempting to execute, a scheme or artifice to defraud any healthcare benefit program, or to obtain by means of false or fraudulent pretenses, any money under the control of any health care benefit program, including private payers. A violation of this statute is a felony and may result in fines, imprisonment and/or exclusion from government-sponsored programs. The HIPAA false statements statute prohibits, among other things, knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement or representation in connection with the delivery of or payment for healthcare benefits, items or services. A violation of this statute is a felony and may result in fines and/or imprisonment. Entities that are found to have aided or abetted in a violation of the HIPAA federal health care offenses are deemed by statute to have committed the offense and are punishable as a principal.

We are also subject to the U.S. Foreign Corrupt Practices Act and similar anti-bribery laws applicable in non-U.S. jurisdictions that generally prohibit companies and their intermediaries from making improper payments to non-U.S. government officials for the purpose of obtaining or retaining business. Because of the predominance of government-sponsored healthcare systems around the world, most of our customer relationships outside of the U.S. will be with governmental entities and therefore subject to such anti-bribery laws.

Effective January 1, 2020, The California Consumer Privacy Act (CCPA) became effective. The CCPA provides certain privacy protections for California residents not generally available to citizens of any other state. The law provides California residents with the right to know that their personal data is being collected; know whether that data is being sold or disclosed; to prevent the sale of their personal information; to access their personal data; to request that a business delete their personal information; and to not be discriminated against for exercising these rights.

HIPAA and Other Privacy Regulations

The regulations that implement HIPAA also establish uniform standards governing the conduct of certain electronic healthcare transactions and protecting the security and privacy of individually identifiable health information maintained or transmitted by healthcare providers, health plans and healthcare clearinghouses, which are referred to as "covered entities." Several regulations have been promulgated under HIPAA's regulations including: the Standards for Privacy of Individually Identifiable Health Information, or the Privacy Rule, which restricts the use and disclosure of certain individually identifiable health information; the Standards for Electronic Transactions, or the Transactions Rule, which establishes standards for common healthcare transactions, such as claims information, plan eligibility, payment information and the use of electronic signatures; and the Security Standards for the Protection of Electronic Protected Health Information, or the Security Rule, which requires covered entities to implement and maintain certain security measures to safeguard certain electronic health information. Although we do not believe we are a covered entity and therefore are not currently directly subject to these standards, we expect that our customers generally will be covered entities and may ask us to contractually comply with certain aspects of these standards by entering into requisite business associate agreements. While the government intended this legislation to reduce administrative expenses and burdens for the healthcare industry, our compliance with certain provisions of these standards entails significant costs for us.

The Health Information Technology for Economic and Clinical Health, or HITECH, Act has increased civil penalty amounts for violations of HIPAA by either covered entities or business associates up to an annual maximum of $1.5 million for uncorrected violations based on willful neglect. Imposition of these penalties is more likely now because HITECH significantly strengthens enforcement. It requires the Department of Health & Human Services ("HHS") to conduct periodic audits to confirm compliance and to investigate any violation that involves willful neglect which carries mandatory penalties. Additionally, state attorneys general are authorized to bring civil actions seeking either injunctions or damages in response to violations of HIPAA Privacy and Security Rules that threaten the privacy of state residents.

In addition to federal regulations issued under HIPAA, some states have enacted privacy and security statutes or regulations that, in some cases, are more stringent than those issued under HIPAA. In those cases, it may be necessary to modify our planned operations and procedures to comply with the more stringent state laws. If we fail to comply with applicable state laws and regulations, we could be subject to additional sanctions.

Federal and state consumer protection laws are being applied increasingly by the United States Federal Trade Commission, or FTC, and state attorneys general to regulate the collection, use, storage and disclosure of personal or patient information, through websites or otherwise, and to regulate the presentation of web site content. Courts may also adopt the standards for fair information practices promulgated by the FTC, which concern consumer notice, choice, security and access. Numerous other countries have or are developing laws governing the collection, use, disclosure and transmission of personal or patient information.

HIPAA as well as other federal and state laws apply to our receipt of patient identifiable health information in connection with research and clinical trials. We collaborate with other individuals and entities in conducting research and all involved parties must comply with applicable laws. Therefore, the compliance of the physicians, hospitals or other providers or entities with whom we collaborate also impacts our business.

Third-Party Reimbursement

Our ability to market our phototherapy products successfully depends in large part on the extent to which various third parties are willing to reimburse patients or providers for the cost of medical procedures utilizing our treatment products. These third parties include government authorities, private health insurers and other organizations, such as health maintenance organizations. Third-party payers are systematically challenging the prices charged for medical products and services. They may deny reimbursement if they determine that a prescribed device is not used in accordance with cost-effective treatment methods as determined by the payer, or is experimental, unnecessary or inappropriate. Accordingly, if less costly drugs or other treatments are available, third-party payers may not authorize, or may limit, reimbursement for the use of our products, even if our products are safer or more effective than the alternatives. Additionally, they may require changes to our pricing structure and revenue model before authorizing reimbursement.

Reimbursement systems in international markets vary significantly by country and by region within some countries, and reimbursement approvals must be obtained on a country-by-country basis. Many international markets have government-managed healthcare systems that control reimbursement for new devices and procedures. In most markets, there are private insurance systems, as well as government-managed systems. Our XTRAC products remain substantially without approval for reimbursement in many international markets under either government or private reimbursement systems. To date, patients of the TheraClear products have had limited success in obtaining third party reimbursement for such treatments.

Many private plans key their reimbursement rates to rates set by the CMS under three distinct CPT codes based on the total skin surface area being treated.

As of December 31, 2021, the national rates were as follows:

- 96920 – designated for: the total area less than 250 square centimeters. CMS assigned a 2021 national payment of $166 per treatment;
- 96921 – designated for: the total area 250 to 500 square centimeters. CMS assigned a 2021 national payment of $181 per treatment; and
- 96922 – designated for: the total area over 500 square centimeters. CMS assigned a 2021 national payment of $246 per treatment.

The national rates are adjusted by overhead factors applicable to each state.

Employees

As of December 31, 2021, we had 115 full-time employees, which consisted of 2 executive officers, 3 vice presidents, 61 sales and marketing staff, 18 people engaged in manufacturing of lasers, 16 customer-field service personnel, 5 engaged in research and development and 10 finance and administration staff.

Customers

Domestically, our XTRAC customers consist of dermatologists and dermatological group clinics who partner with us in our dermatology procedures recurring revenue model. As of December 31, 2021, we have 890 partner clinics throughout the United States. Internationally, we have been transitioning our international dermatology procedures equipment sales through our master distributor to a direct distribution model for equipment sales and recurring revenue on a country by country basis. We have signed contracts in Korea (in 2019), Japan (in 2020), China (in January 2021), and a number of countries in the Middle East (in 2021).

Available Information

We file annual, quarterly and current reports, proxy statements and other information with the Commission. These filings are available to the public on the Internet at the Commission's website at http://www.sec.gov.

Our Internet address is http://www.strataskinsciences.com (this website address is not intended to function as a hyperlink and the information contained on our website is not intended to be a part of this Report). We make available free of charge on https://strataskinsciencesinc.gcs-web.com/sec-filings our annual, quarterly and current reports, and amendments to those reports, as soon as reasonably practical after we electronically file such material with, or furnish it to, the Commission. We may from time to time provide important disclosures to investors by posting them in the Investor Relations section of our website, as allowed by the Commission's rules. The information on the website listed above is not and should not be considered part of this Report and is intended to be an inactive textual reference only.

ITEM 1A. RISK FACTORS

In addition to the other information contained in this Report and the exhibits hereto, the following risk factors should be considered carefully in evaluating our business. Our business, financial condition, cash flows or results of operations could be materially adversely affected by any of these risks. Additional risks not presently known to us or that we currently deem immaterial may also adversely affect our business, financial condition, cash flows or results of operations. The following discussion of risk factors contains forward-looking statements as discussed on page 1. Our business routinely encounters and addresses risks, some of which may cause our future results to be different – sometimes materially different – than we presently anticipate.

Risk Factor Summary

Risks Relating to Our Business Operations

- We have incurred losses for a number of years and anticipate that we will incur continued losses for the foreseeable future.
- The current outbreak of the novel coronavirus, or COVID-19, or the future outbreak of any other highly infectious or contagious diseases, could materially and adversely affect our results of operations, financial condition and cash flows.
- We may acquire other assets or businesses, or form collaborations or make investments in other companies or technologies that could harm our operating results, dilute our stockholders' ownership, increase our debt or cause us to incur significant expense.
- We may not be able to successfully integrate newly acquired businesses, joint ventures and other partnerships into our operations or achieve expected profitability from our acquisitions.
- Our laser treatments of psoriasis, vitiligo, atopic dermatitis and leukoderma and/or any of our future products or services may fail to gain market acceptance or be impacted by competitive products, services or therapies which could adversely affect our competitive position.
- The success of our products depends on third-party reimbursement of patients' costs, which could result in potentially reduced prices or reduced demand and adversely affect our revenues and business operations.
- The continuing development of our products depends upon our developing and maintaining strong working relationships with physicians.
- Any failure in our customer education efforts could have a material adverse effect on our revenue and cash flow.
- If revenue from significant customers declines, we may have difficulty replacing the lost revenue, which would negatively affect our results and operations.
- If we fail to manage our sales and marketing force or to market and distribute our products effectively, we may experience diminished revenues and profits.
- We are reliant on a limited number of suppliers for production of our products.
- Our failure to respond to rapid changes in technology and other applications in the medical devices industry or the development of a cure for skin conditions treated by our products could make our treatment system obsolete.
- Our customers, or physicians and technicians, as the case may be, may misuse certain of our products, and product liability lawsuits and other damages imposed on us may exceed our insurance coverage, or we may be subject to claims that are not covered by insurance.

- We must comply with complex statutes prohibiting fraud and abuse, and both we and physicians utilizing our products could be subject to significant penalties for noncompliance.
- We may be subject, directly or indirectly, to federal and state healthcare fraud and abuse laws and regulations and could face substantial penalties if we are unable to fully comply with such laws.
- If the effectiveness and safety of our devices are not supported by long-term data, and the level of acceptance of our products by dermatologists does not increase or is not maintained, our revenues could decline.
- Our failure to obtain or maintain necessary FDA clearances and approvals, or to maintain continued clearances, or equivalents thereof in the U.S. and relevant foreign markets, could hurt our ability to distribute and market our products.
- If required, clinical trials necessary to support a 510(k) notice or PMA application, for new or modified products, will be expensive and will require the enrollment of large numbers of patients, and suitable patients may be difficult to identify and recruit.
- Our medical device operations are subject to FDA regulatory requirements.
- Healthcare policy changes may have a material adverse effect on us.
- Our market acceptance in international markets requires regulatory approvals from foreign governments and may depend on third party reimbursement of participants' cost.
- We face substantial competition, which may result in others discovering, developing or commercializing products more successfully than us.
- Consolidation in the medical device industry could have an adverse effect on our revenue and results of operations.
- We actively employ social media as part of our marketing strategy, which could give rise to regulatory violations, liability, breaches of data security or reputational damage.
- Social media companies on which we rely for advertising may change their policies limiting our ability to reach our target markets.
- We may become subject to claims of infringement or misappropriation of the intellectual property rights of others, which could prohibit us from shipping affected products, require us to obtain licenses from third parties or to develop non-infringing alternatives, and subject us to substantial monetary damages and injunctive relief. Our patents may also be subject to challenge on validity grounds, and our patent applications may be rejected.
- If we or our third-party manufacturers or suppliers fail to comply with the FDA's Quality System Regulation or any applicable state equivalent, our manufacturing operations could be interrupted and our potential product sales and operating results could suffer.
- If we fail to comply with ongoing regulatory requirements, or if we experience unanticipated problems with products, these products could be subject to restrictions or withdrawal from the market.
- Our medical products may in the future be subject to product recalls that could harm our reputation, business and financial results.

- If any of our medical products cause or contribute to a death or a serious injury, or malfunction in certain ways, we will be subject to medical device reporting regulations, which can result in voluntary corrective actions or agency enforcement actions.

- We may have a need for additional funds in the future and there is no guarantee that we will be able to generate those funds from our business.

- If we do not have enough capital to fund operations, then we will have to cut costs or raise funds.
- If our actual liability for state sales and use taxes is higher than our accrued liability, it could have a material impact on our financial condition.

- We may be subject to disruptions or failures in our information technology systems and network infrastructures, including through cyber-attacks or other third-party breaches that could have a material adverse effect on our business.

- Environmental and health safety laws may result in liabilities, expenses and restrictions on our operations.

Risks Relating to Our Common Stock

- In the event of certain contingencies, the investors in the May 2018 Equity Financing may receive additional shares issued pursuant to the Retained Risk Provisions as defined in the purchase agreements.

- Our stock price may be volatile, meaning purchasers of our common stock could incur substantial losses.

- Our charter documents and Delaware law may inhibit a takeover that stockholders consider favorable and could also limit the market price of our stock.

Risks Relating to Our Business Operations

We have incurred losses for a number of years and anticipate that we will incur continued losses for the near future.

Since 2015, we have devoted substantially all of our resources in the commercialization and sales of the XTRAC products. Our net loss for the year ended December 31, 2021 was approximately $2.7 million, and as of December 31, 2021, we had an accumulated deficit of approximately $221.7 million. Our losses, among other things, have had and may continue to have an adverse effect on the adequacy of our capitalization and cash flow. We believe that our cash and cash equivalents as of December 31, 2021, combined with the anticipated revenues from the sale of our products, will be sufficient to satisfy our working capital needs, lasers placed-in-service, capital asset purchases, outstanding commitments and other liquidity requirements associated with our existing operations through at least the next 12 months following the filing of this Report.

The current outbreak of the novel coronavirus, or COVID-19, or the future outbreak of any other highly infectious or contagious diseases, could materially and adversely affect our results of operations, financial condition and cash flows. Further, the spread of the COVID-19 outbreak has caused severe disruptions in the U.S. and global economy and financial markets and could potentially create widespread business continuity issues of an as yet unknown magnitude and duration.

In December 2019, a novel strain of coronavirus (COVID-19) was reported to have surfaced in Wuhan, China. COVID-19 has since spread to over 100 countries, including every state in the United States. On March 11, 2020 the World Health Organization declared COVID-19 a pandemic, and on March 13, 2020 the United States declared a national emergency with respect to COVID-19. In the last 24 months, the United States and the world have experienced various levels of government shutdowns, closures and quarantines.

The outbreak of COVID-19 has severely impacted global economic activity and caused significant volatility and negative pressure in financial markets. The global impact of the outbreak has been rapidly evolving and many countries, including the United States, have reacted by instituting quarantines, mandating business and school closures and restricting travel. This outbreak has triggered a period of global economic slowdown or a global recession which could continue for some time which cannot be predicted. COVID-19 or another pandemic has or could have material and adverse effects on our ability to successfully operate our business due to, among other factors:

- a general decline in business activity;
- the destabilization of the markets and negative impacts on the healthcare system globally could negatively impact our ability to market and sell our products, including through the disruption of health care activities in general and elective health care procedures in particular, the inability of our sales team to contact and/or visit doctors in person, patients' interest in starting or continuing procedures involving our products and our ability to support patients that presently use our products;
- difficulty accessing the capital and credit markets on favorable terms, or at all, and a severe disruption and instability in the global financial markets, or deteriorations in credit and financing conditions which could affect our access to capital necessary to fund business operations;
- the potential negative impact on the health of our employees, especially if a significant number of them are impacted;
- the impact of the pandemic our customers, which may result in an increase in past due accounts receivable, write-offs and customer bankruptcies; and
- a deterioration in our ability to ensure business continuity during a disruption.

We may acquire other assets or businesses, or form collaborations or make investments in other companies or technologies that could harm our operating results, dilute our stockholders' ownership, increase our debt or cause us to incur significant expense.

As part of our business strategy, we may pursue acquisitions of assets, including preclinical, clinical or commercial stage products or product candidates, or businesses, or strategic alliances and collaborations, to expand our existing technologies and operations. We may not identify or complete these transactions in a timely manner, on a cost-effective basis, or at all, and we may not realize the anticipated benefits of any such transaction, any of which could have a detrimental effect on our financial condition, results of operations and cash flows. We have limited experience with acquiring other companies, products or product candidates, and limited experience with forming strategic alliances and collaborations. We may not be able to find suitable acquisition candidates, and if we make any acquisitions, we may not be able to integrate these acquisitions successfully into our existing business and we may incur additional debt or assume unknown or contingent liabilities in connection therewith. Integration of an acquired company or assets may also disrupt ongoing operations, require the hiring of additional personnel and the implementation of additional internal systems and infrastructure, especially the acquisition of commercial assets, and require management resources that would otherwise focus on developing our existing business. We may not be able to find suitable strategic alliances or collaboration partners or identify other investment opportunities, and we may experience losses related to any such investments.

To finance any acquisitions or collaborations, we may choose to issue debt or equity securities as consideration. Any such issuance of shares would dilute the ownership of our stockholders. If the price of our common stock is low or volatile, we may not be able to acquire other assets or companies or fund a transaction using our stock as consideration. Alternatively, it may be necessary for us to raise additional funds for acquisitions through public or private financings. Additional funds may not be available on terms that are favorable to us, or at all.

We may not be able to successfully integrate newly acquired businesses, joint ventures and other partnerships into our operations or achieve expected profitability from our acquisitions.

On January 10, 2022 we announced the acquisition of the TheraClear Acne Treatment Device. If we cannot successfully integrate acquisitions (including TheraClear), joint ventures and other partnerships on a timely basis, we may be unable to generate sufficient revenue to offset acquisition costs, we may incur costs in excess of what we anticipate, and our expectations of future results of operations, including certain cost savings and synergies, may not be achieved. Acquisitions involve substantial risks, including:

- unforeseen difficulties in integrating operations, technologies, services, accounting and personnel;
- diversion of financial and management resources from existing operations;
- unforeseen difficulties related to entering geographic regions where we do not have prior experience;
- risks relating to obtaining sufficient equity or debt financing; and
- potential loss of customers.

In addition, if we finance acquisitions by issuing equity securities or securities convertible into equity securities, our existing stockholders' interests would be diluted, which, in turn, could adversely impact the market price of our stock. Moreover, we could finance an acquisition with debt, resulting in higher leverage and interest costs and could increase losses and losses per share which could impact the price of our stock.

Our laser treatments of psoriasis, vitiligo, atopic dermatitis and leukoderma and/or any of our future products or services may fail to gain market acceptance or be impacted by competitive products, services or therapies which could adversely affect our competitive position.

We have generated limited worldwide commercial distribution for our products. In the United States, our XTRAC systems are placed at physician offices at no upfront charge to the physician and we are generally paid on a per-usage method where we retain ownership of the system. We cannot assure you that our products and services will find sufficient acceptance in the marketplace under our sales strategies.

We also face a risk that other companies in the market for dermatological products and services may be able to provide dermatologists a higher overall financial return and therefore compromise our ability to increase our installed base of users and ensure they engage in optimal usage of our products. If, for example, such other companies have products or medical devices that require less time commitment from the dermatologist and yield an attractive return on a dermatologist's time and investment, we may find that our efforts to increase our base of users are hindered.

We also face a risk that the overall cost of systemic or biologic medications or treatment modalities become less expensive through the development of generics or other means. We may be faced with pressure to reduce our costs to be competitive which may negatively impact our business. In addition, our business could be negatively impacted if these medications are prescribed for less severe cases of the diseases or if new, more effective or less expensive medications are developed.

CPT codes for all procedures are subject to continued reevaluation. Should CMS reduce reimbursement for the CPT codes for XTRAC treatment or raise reimbursement for competitive products we may see a decline in our recurring revenue business as well as a decline in new XTRAC installations.

Whether a treatment may be delegated to non-physician staff members and, if so, to whom and to what extent, are matters that may vary state by state, as these matters are within the province of the state medical boards. In states that may be more restrictive in such delegation, a physician may decline to adopt the XTRAC system into his or her practice, deeming it to be fraught with too many constraints and finding other outlets for the physician's time and staff's time to be more remunerative. There can be no assurance that we will be successful in persuading such medical boards that a liberal standard for delegation is appropriate for the XTRAC system, based on its design for ease and safety of use. If we are not successful, we may find that even if a geographic region has wide insurance reimbursement, the region's physicians may decline to adopt the XTRAC system into their practices.

We therefore cannot assure you that the marketplace will be receptive to our excimer laser technology over competing products, services and therapies or that a cure will not be found for the underlying diseases we are focused on treating. Failure of our products to achieve market acceptance could have a material adverse effect on our business, financial condition and results of operations.

In addition, while this introduction is specifically for those patients that might not be able to avail themselves of in-office treatments, it may be viewed by our partner clinics as a channel conflict and cause a deterioration in our relationships with our current partners or negatively impact our ability to grow the number of partner clinics.

The success of our products depends on third-party reimbursement of patients' costs, which could result in potentially reduced prices or reduced demand and adversely affect our revenues and business operations.

Our ability to market our products successfully, especially XTRAC treatments, depends in large part on the extent to which various third parties are willing to reimburse patients or providers for the costs of medical procedures utilizing such products. These third parties include government authorities, private health insurers and other organizations, such as health maintenance organizations, whose patterns of reimbursement may change as a result of new standards for reimbursement determined by these third parties or because of the programs and policies enacted under the ACA.

Third-party payers are systematically challenging the prices charged for medical products and services. They may deny reimbursement if they determine that a prescribed device is not used in accordance with cost-effective treatment methods as determined by the payer, or is experimental, unnecessary or inappropriate. Further, although third parties may approve reimbursement, such approvals may be under terms and conditions that discourage use of the XTRAC system. Accordingly, if less costly drugs or other treatments are available, third-party payers may not authorize or may limit reimbursement for the use of our products, even if our products are safer or more effective than the alternatives.

In addition, medical insurance policies and treatment coverage have been and may be affected by the parameters of the ACA or successor policies enacted by the current or any new administration. While the ACA's stated purpose is to expand access to coverage, it also mandates certain requirements regarding the types and limitations of insurance coverage. There can be no guarantee that the changes in coverage under the ACA will not affect the type and level of reimbursement for our products.

Although we have received reimbursement approvals from a majority of private healthcare plans for the XTRAC system, we cannot give assurance that these private plans will continue to adopt or maintain favorable reimbursement policies or accept the XTRAC system in its clinical role as a second-line therapy in the treatment of psoriasis. Additionally, third-party payers may require further clinical studies or changes to our pricing structure and revenue model before authorizing or continuing reimbursement.

As of March 10, 2020, we estimate, based on published coverage policies and on payment practices of private and Medicare insurance plans, that more than 86% of the insured population in the U.S. is covered by insurance coverage or payment policies that reimburse physicians for using the XTRAC system for treatment of psoriasis. We can give no assurance that health insurers will not adversely modify their reimbursement policies for the use of the XTRAC system in the future.

Currently, there is little insurance reimbursement coverage for acne treatments, such as those provided by TheraClear. In order for TheraClear to be successful, patients and decision makers will need to be able to pay for treatments without insurance reimbursement.

The continuing development of our products depends upon our developing and maintaining strong working relationships with physicians.

The research, development, marketing and sale of our current products and any potential new and improved products or future product indications for which we receive regulatory clearance or approval depend upon our maintaining working relationships with physicians. We rely on these professionals to provide us with considerable knowledge and experience regarding the development, marketing and sale of our products. Physicians assist us as researchers, marketing and product consultants and public speakers. If we cannot maintain our strong working relationships with these professionals and continue to receive their advice and input, the development and marketing of our products could suffer, which could have a material adverse effect on our business, financial condition, and results of operations. At the same time, companies in the medical device industry are under increasing scrutiny by the U.S. Department of Health and Human Services Office of Inspector General, or OIG, and the U.S. Department of Justice, or DOJ for improper relationships with physicians. Our failure to comply with requirements governing the industry's relationships with physicians, including the reporting of certain payments to physicians under the National Physician Payment Transparency Program (Open Payments) or an investigation into our compliance by the OIG or the DOJ, could have a material adverse effect on our business, financial condition, and results of operations.

Any failure in our customer education efforts could have a material adverse effect on our revenue and cash flow.

It is important to the success of our marketing efforts to educate physicians and technicians how to properly use our products. We rely on physicians to spend their time and money to participate in our pre-installation educational sessions. Moreover, if physicians and technicians use our products improperly, they may have unsatisfactory patient outcomes or, in the case of the XTRAC system, cause patient injury, which may give rise to negative publicity or lawsuits against us, any of which could have a material adverse effect on our reputation, revenues and profitability.

If revenue from significant customers declines, we may have difficulty replacing the lost revenue, which would negatively affect our results and operations.

In our international business, we depend for a material portion of our sales in the international arena on several key sub-distributors. Historically, we relied on a single master distributor, GlobalMed, for international sales of our XTRAC and VTRAC products. Our agreement with GlobalMed expired on January 1, 2022 and over the last two years we have transitioned away from the historical relationship with GlobalMed and entered into direct relationships with in-country distributors and have been working to replace GlobalMed's historical position and significance.

If we fail to manage our sales and marketing force or to market and distribute our products effectively, we may experience diminished revenues and profits.

There are significant risks involved in managing our sales and marketing force and marketing our products, including our ability:

- to hire, as needed, a sufficient number of qualified sales and marketing personnel with the aptitude, skills and understanding to market our products;
- to adequately train our sales and marketing force in the use and benefits of all our products and services, thereby making them more effective promoters;
- to manage our sales and marketing force and our ancillary channels (e.g., telesales) such that variable and semi-fixed expenses grow at a lesser rate than our revenues; and
- to set the prices and other terms and conditions for treatments using the XTRAC system in a complex legal environment so that treatments will be accepted as attractive skin health and appropriate alternatives to conventional modalities and treatments

To increase acceptance and utilization of our products, we may expand our sales and marketing programs in the U.S. While we may be able to draw on currently available personnel within our organization to meet this need, we also expect that we will have to increase the number of representatives devoted to the sales and marketing programs and to broaden, through such representatives, the talents we have at our disposal. In some cases, we may look outside our organization for assistance in marketing our products.

We are reliant on a limited number of suppliers for production of our products.

Production of our products requires specific component parts obtained from our suppliers. While we believe that we could find alternate suppliers, in the event that our current suppliers fail to meet our needs, a change in suppliers or any significant delay in our ability to have access to such resources could have a material adverse effect on our delivery schedules, business, operating results and financial condition. Moreover, in the event we can no longer utilize this supplier or acquire this resource and must identify a new supplier or substitute a different resource, such change may trigger an obligation for us to comply with additional FDA regulatory requirements including, but not limited to, premarketing authorization and Quality System Requirements ("QSR").

Our failure to respond to rapid changes in technology and other applications in the medical devices industry or the development of a cure for skin conditions treated by our products could make our treatment system obsolete.

The medical device industry is subject to rapid and substantial technological development and product innovations. To be successful, we must respond to new developments in technology, new applications of existing technology and new treatment methods. Our financial condition and operating results could be adversely affected if we fail to be responsive on a timely and effective basis to competitors' new devices, applications, treatments or price strategies. For example, the development of a cure for psoriasis, vitiligo, atopic dermatitis or leukoderma would eliminate the need for our XTRAC system for these diseases and would require us to focus on other uses of our technology, which could have a material adverse effect on our business and prospects.

As we develop new products or improve our existing products, we may accelerate the economic obsolescence of the existing, unimproved products and their components. The obsolete products and related components may have little to no resale value, leading to an increase in the reserves we have against our inventory. Likewise, there is a risk that the new products or improved existing products may not achieve market acceptance and therefore may also lead to an increase in the reserves against our inventory.

Our customers, or physicians and technicians, as the case may be, may misuse certain of our products, and product liability lawsuits and other damages imposed on us may exceed our insurance coverage, or we may be subject to claims that are not covered by insurance.

We face an inherent risk of product liability as a result of the marketing and sale of our products. For example, we may be sued if our products cause or are perceived to cause injury or are found to be otherwise unsuitable during manufacturing, marketing or sale. Any such product liability claim may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability or breach of warranty. Our products are highly complex, and some are used to treat delicate skin conditions on and near a patient's face. In addition, the clinical testing, manufacturing, marketing and use of certain of our products and procedures may also expose us to product liability, FDA regulatory and/or legal actions, or other claims. If a physician elects to apply an off-label use and the use leads to injury, we may be involved in costly litigation. In addition, the fact that we train technicians whom we do not supervise in the use of our XTRAC system during patient treatment may expose us to third-party claims if we are accused of providing inadequate training. We may also be subject to claims against us even if the apparent injury is due to the actions of others or the pre-existing health of the patient. For example, we rely on physicians in connection with the use of our products on patients. If these physicians are not properly trained or are negligent, the capabilities and safety features of our products may be diminished or the patient may suffer critical injury. We may also be subject to claims that are caused by the actions of our suppliers, such as those who provide us with components and sub-assemblies.

We presently maintain liability insurance with coverage limits of at least $5.0 million per occurrence and overall aggregate, which we believe is an adequate level of product liability insurance, but product liability insurance is expensive and we might not be able to obtain product liability insurance in the future on acceptable terms or in sufficient amounts to protect us, if at all. Our insurance policy contains various exclusions, and we may be subject to a product liability claim for which we have no coverage. A successful claim brought against us in excess of our insurance coverage could have a material adverse effect on our business, results of operations and financial condition. Even successful defense would require significant financial and management resources. In addition, continuing insurance coverage may also not be available at an acceptable cost, if at all. Therefore, we may not be able to obtain insurance coverage that will be adequate to satisfy a liability that may arise. Regardless of merit or eventual outcome, product liability claims may result in decreased demand for a product, harm to our reputation, withdrawal of clinical trial volunteers, initiation of investigations by regulators, costs to defend the related litigation, diversion of management's time and our resources, monetary awards to trial participants or patients, product recalls, withdrawals or labeling, marketing or promotional restrictions, exhaustion of any available insurance and our capital resources, a resulting decline in the price of our common stock and loss of revenues. As a result, regardless of whether we are insured, a product liability claim or product recall may result in losses that could result in the FDA taking legal or regulatory enforcement action against us and/or our products including recall, and could have a material adverse effect upon our business, financial condition and results of operations.

We must comply with complex statutes prohibiting fraud and abuse, and both we and physicians utilizing our products could be subject to significant penalties for noncompliance.

There are extensive federal and state laws and regulations prohibiting fraud and abuse in the healthcare industry that can result in significant criminal and civil penalties. These federal laws include:

- the anti-kickback statute which prohibits certain business practices and relationships, including the payment or receipt of remuneration for the referral of patients whose care will be paid by Medicare or other federal healthcare programs, as modified by the ACA;

- the physician self-referral prohibition, commonly referred to as the Stark Law;

- the anti-inducement law, which prohibits providers from offering anything to a Medicare or Medicaid beneficiary to induce that beneficiary to use items or services covered by either program; the Civil False Claims Act, which prohibits any person from knowingly presenting or causing to be presented false or fraudulent claims for payment by the federal government, including the Medicare and Medicaid programs; and

- the Civil Monetary Penalties Law, which authorizes HHS to impose civil penalties administratively for fraudulent or abusive acts. Sanctions for violating these federal laws include criminal and civil penalties that range from punitive sanctions, damage assessments, monetary penalties, and imprisonment, denial of Medicare and Medicaid payments, or exclusion from the Medicare and Medicaid programs, or both.

As federal and state budget pressures continue, federal and state administrative agencies may also continue to escalate investigation and enforcement efforts to root out waste and to control fraud and abuse in governmental healthcare programs. Private enforcement of healthcare fraud has also increased, due in large part to amendments to the Civil False Claims Act in 1986 that were designed to encourage private persons to sue on behalf of the government. A violation of any of these federal and state fraud and abuse laws and regulations could have a material adverse effect on our liquidity and financial condition. An investigation into the use of our products by physicians may dissuade physicians from either purchasing or using our products and could have a material adverse effect on our revenues.

We may be subject, directly or indirectly, to federal and state healthcare fraud and abuse laws and regulations and could face substantial penalties if we are unable to fully comply with such laws.

While we do not control referrals of healthcare services or bill directly to Medicare, Medicaid or other third-party payers, many healthcare laws and regulations apply to our business. For example, we could be subject to healthcare fraud and abuse and patient privacy regulation and enforcement by both the federal government and the states in which we conduct our business. The healthcare laws and regulations that may affect our ability to operate include:

- the federal healthcare programs' anti-kickback laws, as modified by the ACA, which prohibits, among other things, persons or entities from soliciting, receiving, offering or providing remuneration, directly or indirectly, in return for or to induce either the referral of an individual for, or the purchase order or recommendation of, any item or service for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs;

- federal false claims laws which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payers that are false or fraudulent, or are for items or services not provided as claimed and which may apply to entities like us to the extent that our interactions with customers may affect their billing or coding practices;

- HIPAA, which established new federal crimes for knowingly and willfully executing a scheme to defraud any healthcare benefit program or making false statements in connection with the delivery of or payment for healthcare benefits, items or services, as well as leading to regulations imposing certain requirements relating to the privacy, security and transmission of individually identifiable health information; and

- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payer, including commercial insurers, and state laws governing the privacy of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

The medical device industry has been under heightened scrutiny as the subject of government investigations and regulatory or legal enforcement actions involving manufacturers who allegedly offered unlawful inducements to potential or existing customers in an attempt to procure their business, including arrangements with physician consultants. If our operations or arrangements are found to be in violation of any of the laws described above or any other governmental regulations that apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines, exclusion from the Medicare and Medicaid programs and the curtailment or restructuring of its operations. Any penalties, damages, fines, exclusions, curtailment or restructuring of our operations could adversely affect our ability to operate our business and our financial results. The risk of us being found in violation of these laws is increased by the fact that many of these laws are broad and their provisions are open to a variety of interpretations. Any action against us for violation of these laws, even if we successfully defend against that action and the underlying alleged violations, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. If the physicians or other providers or entities with whom we do business are found to be non-compliant with applicable laws, they may be subject to sanctions, which could also have a negative impact on our business.

If the effectiveness and safety of our devices are not supported by long-term data, and the level of acceptance of our products by dermatologists does not increase or is not maintained, our revenues could decline.

Our products may not be accepted in the market if we do not produce clinical data supported by the independent efforts of clinicians. We received clearance from the FDA for the use of the XTRAC system to treat psoriasis based upon our study of a limited number of patients. Safety and efficacy data presented to the FDA for the XTRAC system was based on studies on these patients. For the treatment of vitiligo, atopic dermatitis and leukoderma, we have received clearance from the FDA for the use of the XTRAC system based primarily on a showing of substantial equivalence to other previously cleared predicate devices. However, we may discover that physicians will expect clinical data on such treatments with the XTRAC system. We also may find that data from longer-term psoriasis patient follow-up studies may be inconsistent with those indicated by our relatively short-term data. If longer-term patient studies or clinical experience indicate that treatment with the XTRAC system does not provide patients with sustained benefits or that treatment with our product is less effective or less safe than our current data suggests, our revenues could decline. In addition, the FDA could then bring legal or regulatory enforcement actions against us and/or our products including, but not limited to, recalls or requirements for premarket 510(k) authorizations. We can give no assurance that our data will be substantiated in studies involving more patients. In such a case, we may never achieve significant revenues or profitability.

Our failure to obtain or maintain necessary FDA clearances and approvals, or to maintain continued clearances, or equivalents thereof in the U.S. and relevant foreign markets, could hurt our ability to distribute and market our products.

In both our U.S. and foreign markets, we are affected by extensive laws, governmental regulations, administrative determinations, court decisions and similar constraints. Such laws, regulations and other constraints may exist at the federal, state or local levels in the U.S. and at analogous levels of government in foreign jurisdictions. In addition, the formulation, manufacturing, packaging, labeling, distribution, importation, sale and storage of our products are subject to extensive regulation by various federal agencies, including, but not limited to, the FDA and the FTC, State Attorneys General in the U.S., as well as by various other federal, state, local and international regulatory authorities in the countries in which our products are manufactured, distributed or sold. If we or our manufacturers fail to comply with those regulations, we could become subject to significant penalties or claims, which could harm our results of operations or our ability to conduct our business. In addition, the adoption of new regulations or changes in the interpretations of existing regulations may result in significant compliance costs or discontinuation of product sales and may impair the marketing of our products, resulting in significant loss of net sales. Our failure to comply with federal or state regulations, or with regulations in foreign markets that cover our product claims and advertising, including direct claims and advertising by us, may result in enforcement actions and imposition of penalties or otherwise harm the distribution and sale of its products. Further, our businesses are subject to laws governing our accounting, tax and import and export activities. Failure to comply with these requirements could result in legal and/or financial consequences that might adversely affect our sales and profitability. Each medical device that we wish to market in the U.S. must first receive either 510(k) clearance or PMA from the FDA unless an exemption applies. Either process can be lengthy and expensive. The FDA's 510(k) clearance process may take from three to 12 months, or longer, and may or may not require human clinical data. The PMA process is much more costly and lengthy. It may take from 11 months to three years, or even longer, and will likely require significant supporting human clinical data. Delays in obtaining regulatory clearance or approval could adversely affect our revenues and profitability. Although we have obtained 510(k) clearances for our XTRAC system for use in treating psoriasis, vitiligo, atopic dermatitis and leukoderma, these approvals and clearances may be subject to revocation if post-marketing data demonstrates safety issues or lack of effectiveness.

Many medical devices, such as medical lasers, are also regulated by the FDA as "electronic products." In general, manufacturers and marketers of "electronic products" are subject to certain FDA regulatory requirements intended to ensure the radiological safety of the products. These requirements include, but are not limited to, filing certain reports with the FDA about the products and defects/safety issues related to the products as well as complying with radiological performance standards.

The medical device industry is now experiencing greater scrutiny and regulation by federal, state and foreign governmental authorities. Companies in our industry are subject to more frequent and more intensive reviews and investigations, often involving the marketing, business practices, and product quality management. Such reviews and investigations may result in civil and criminal proceedings; the imposition of substantial fines and penalties; the receipt of warning letters, untitled letters, demands for recalls or the seizure of our products; the requirement to enter into corporate integrity agreements, stipulated judgments or other administrative remedies, and result in our incurring substantial unanticipated costs and the diversion of key personnel and management's attention from their regular duties, any of which may have an adverse effect on our financial condition, results of operations and liquidity, and may result in greater and continuing governmental scrutiny of our business in the future.

Additionally, federal, state and foreign governments and entities have enacted laws and issued regulations and other standards requiring increased visibility and transparency of our interactions with healthcare providers. For example, the U.S. Physician Payment Sunshine Act, now known as Open Payments, requires us to report to the Centers for Medicare & Medicaid Services, or CMS, payments and other transfers of value to all U.S. physicians and U.S. teaching hospitals, with the reported information made publicly available on a searchable website. Effective January 2022 we are also required to collect and report information on payments or transfers of value to physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists and certified nurse-midwives. Failure to comply with these legal and regulatory requirements could impact our business, and we have had and will continue to spend substantial time and financial resources to develop and implement enhanced structures, policies, systems and processes to comply with these legal and regulatory requirements, which may also impact our business and which could have a material adverse effect on our business, financial condition, and results of operations.

International regulatory approval processes may take more or less time than the FDA clearance or approval process. If we fail to comply with applicable FDA and comparable non-U.S. regulatory requirements, we may not receive regulatory clearances or approvals or may be subject to FDA or comparable non-U.S. enforcement actions. We may be unable to obtain future regulatory clearance or approval in a timely manner, or at all, especially if existing regulations are changed or new regulations are adopted. For example, the FDA clearance or approval process can take longer than anticipated due to requests for additional clinical data and changes in regulatory requirements. A failure or delay in obtaining necessary regulatory clearances or approvals would materially adversely affect our business, financial condition, and results of operations.

Further, more stringent regulatory requirements or safety and quality standards may be issued in the future with an adverse effect on our business. We have ceased manufacturing and marketing MelaFind but must still maintain records for FDA and foreign regulatory purposes.

If required, clinical trials necessary to support a 510(k) notice or PMA application, for new or modified products, will be expensive and will require the enrollment of large numbers of patients, and suitable patients may be difficult to identify and recruit. Delays or failures in our clinical trials will prevent us from commercializing any modified or new products and will adversely affect our business, operating results and prospects.

Initiating and completing clinical trials necessary to support a 510(k) notice or a PMA application will be time-consuming and expensive and the outcome uncertain. Moreover, the results of early clinical trials are not necessarily predictive of future results, and any product we advance into clinical trials may not have favorable results in early or later clinical trials.

Conducting successful clinical studies will require the enrollment of large numbers of patients, and suitable patients may be difficult to identify and recruit. Patient enrollment in clinical trials and completion of patient participation and follow-up depend on many factors, including the size of the patient population, the nature of the trial protocol, the attractiveness of, or the discomforts and risks associated with, the treatments received by patients enrolled as subjects, the availability of appropriate clinical trial investigators, support staff, and proximity of patients to clinical sites and ability to comply with the eligibility and exclusion criteria for participation in the clinical trial and patient compliance. For example, patients may be discouraged from enrolling in our clinical trials if the trial protocol requires them to undergo extensive post-treatment procedures or follow-up to assess the safety and effectiveness of our products or if they determine that the treatments received under the trial protocols are not attractive or involve unacceptable risks or discomforts. Patients may also not participate in our clinical trials if they choose to participate in contemporaneous clinical trials of competitive products. In addition, patients participating in clinical trials may die before completion of the trial or suffer adverse medical events unrelated to investigational products.

Development of sufficient and appropriate clinical protocols to demonstrate safety and efficacy may be required and we may not adequately develop such protocols to support clearance and approval. Further, the FDA may require us to submit data on a greater number of patients than we originally anticipated and/or for a longer follow-up period or change the data collection requirements or data analysis for any clinical trials. Delays in patient enrollment or failure of patients to continue to participate in a clinical trial may cause an increase in costs and delays in the approval and attempted commercialization of our products or result in the failure of the clinical trial. The FDA may not consider our data adequate to demonstrate safety and efficacy. Such increased costs and delays or failures could adversely affect our business, operating results and prospects.

Our medical device operations are subject to FDA regulatory requirements.

Medical devices regulated by the FDA are subject to “general controls” which include: registration with the FDA; listing commercially distributed products with the FDA; complying with good manufacturing practices under the quality system regulations; filing reports with the FDA and keeping records relative to certain types of adverse events associated with devices under the medical device reporting regulation; assuring that device labeling complies with device labeling requirements; reporting certain device field removals and corrections to the FDA; and obtaining premarket notification 510(k) clearance for devices prior to marketing. Some devices known as “510(k)-exempt” can be marketed without prior marketing clearance or approval from the FDA. In addition to the “general controls,” some Class II medical devices are also subject to “special controls,” including adherence to a particular guidance document and compliance with the performance standard. Instead of obtaining 510(k) clearance, some Class III devices are subject to PMA. In general, obtaining PMA to achieve marketing authorization from the FDA is a more onerous process than seeking 510(k) clearance.

Many medical devices, such as medical lasers, are also regulated by the FDA as “electronic products.” In general, manufacturers and marketers of “electronic products” are subject to certain FDA regulatory requirements intended to ensure the radiological safety of the products. These requirements include, but are not limited to, filing certain reports with the FDA about the products and defects/safety issues related to the products as well as complying with radiological performance standards.

The medical device industry is now experiencing greater scrutiny and regulation by federal, state and foreign governmental authorities. Companies in our industry are subject to more frequent and more intensive reviews and investigations, often involving the marketing, business practices, and product quality management including standards for device recalls and product labeling. Such reviews and investigations may result in civil and criminal proceedings; the imposition of substantial fines and penalties; the receipt of warning letters, untitled letters, demands for recalls or the seizure of our products; the requirement to enter into corporate integrity agreements, stipulated judgments or other administrative remedies, and result in our incurring substantial unanticipated costs and the diversion of key personnel and management’s attention from their regular duties, any of which may have an adverse effect on our financial condition, results of operations and liquidity, and may result in greater and continuing governmental scrutiny of our business in the future.

We must also have the appropriate FDA clearances and/or approvals from other governmental entities in order to lawfully market devices and/or drugs. The FDA, federal, state or foreign governments and agencies may disagree that we have such clearance and/or approvals for all of our products and may take action to prevent the marketing and sale of such devices until such disagreements have been resolved.

Additionally, federal, state and foreign governments and entities have enacted laws and issued regulations and other standards requiring increased visibility and transparency of our interactions with healthcare providers. For example, the U.S. Physician Payment Sunshine Act requires us to disclose payments and other transfers of value to all U.S. physicians and U.S. teaching hospitals at the U.S. federal level made. Failure to comply with these legal and regulatory requirements could impact our business, and we have had and will continue to spend substantial time and financial resources to develop and implement enhanced structures, policies, systems and processes to comply with these legal and regulatory requirements, which may also impact our business.

Healthcare policy changes may have a material adverse effect on us.

Healthcare costs have risen significantly over the past decade. As a result, there have been and continue to be proposals by federal, state and foreign governments and regulators as well as third-party insurance providers to limit the growth of these costs. Among these proposals are regulations that could impose limitations on the prices we will be able to charge for our products, the amounts of reimbursement available for our products from governmental agencies or third-party payers, requirements regarding the usage of comparative studies, technology assessments and healthcare delivery structure reforms to determine the effectiveness and select the products and therapies used for treatment of patients. While we believe our products provide favorable clinical outcomes, value and cost efficiency, the resources necessary to demonstrate this value to our customers, patients, payers, and regulators is significant and may require longer periods of time and effort in which to obtain acceptance of our products. There is no assurance that our efforts will be successful, and these limitations could have a material adverse effect on our financial position and results of operations.

These changes and additional proposed changes in the future could adversely affect the demand for our products as well as the way in which we conduct our business. For example, the ACA was enacted into law in the U.S. in March 2010. They imposed on medical device manufacturers, a requirement to research into the effectiveness of treatment modalities and institute changes to the reimbursement and payment systems for patient treatments. In addition, governments and regulatory agencies continue to study and propose changes to the laws governing the clearance or approval, manufacture and marketing of medical devices, which could adversely affect our business and results of operations.

FDA regulations and guidance are often revised or reinterpreted by the FDA in ways that may significantly affect our business and our products. The FDA is currently exploring ways to modify its 510(k) clearance process. In addition, due to changes at the FDA in general, it has become increasingly more difficult to obtain 510(k) clearance as data requirements have increased. It is impossible to predict whether legislative changes will be enacted or FDA regulations, guidance or interpretations changed, and what the impact of such changes, if any, may be. However, any changes could make it more difficult for us to maintain or attain clearance or approval to develop and commercialize our products and technologies.

Various healthcare reform proposals have also emerged at the state level. We cannot predict what healthcare initiatives, if any, will be implemented at the federal or state level, or the effect any future legislation or regulation will have on us. Furthermore, an expansion in government's role in the U.S. healthcare industry may lower reimbursements for our products, reduce medical procedure volumes and adversely affect our business, possibly materially. In addition, if the excise taxes contained in the House or Senate health reform bills are enacted into law, our loss from continuing operations resulting from such an excise tax and results of operations would be materially and adversely affected.

Our market acceptance in international markets requires regulatory approvals from foreign governments and may depend on third party reimbursement of participants' cost.

We have introduced our XTRAC and VTRAC products into markets in more than 30 countries in Europe, the Middle East, Asia, Australia, South Africa and parts of Central and South America through distributors. We cannot be certain that our salesforce and distributor network will be successful in marketing our products in these or other countries or that our distributors will purchase XTRAC or VTRAC systems beyond their current contractual obligations or in accordance with our expectations. Our TheraClear device has historically been sold in several foreign countries and is subject to similar international regulatory approval requirements.

Even if we obtain and maintain the necessary foreign regulatory registrations or approvals, market acceptance of our products in international markets may be dependent, in part, upon the availability of reimbursement within applicable healthcare payment systems. Reimbursement and healthcare payment systems in international markets vary significantly by country, and include both government-sponsored healthcare and private insurance. We may seek international reimbursement approvals for our products, but we cannot assure you that any such approvals will be obtained in a timely manner, if at all. Failure to receive international reimbursement approvals in any given market could have a material adverse effect on the acceptance or growth of our products in that market or others.

We face substantial competition, which may result in others discovering, developing or commercializing products more successfully than us.

The medical device industry is intensely competitive and subject to rapid and significant technological change. Many of our competitors have significantly greater financial, technical and human resources. Smaller and early-stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies.

Our competitors in medical device or pharmaceutical industries may also develop products that are more effective, more convenient, more widely used, less costly, or have a better safety profile than our products and these competitors may also be more successful than us in manufacturing and marketing their products.

Our competitors also compete with us in recruiting and retaining qualified scientific, management and commercial personnel, as well as in acquiring technologies complementary to, or necessary for, our programs. Competition for these people in the medical device industry is intense and we may face challenges in retaining and recruiting such individuals if, for example, other companies may provide more generous compensation and benefits, more diverse opportunities, and better chances for career advancement than we do. Some of these advantages may be more appealing to high-quality candidates and employees than those we have to offer. In addition, the decline in our stock price has created additional challenges by reducing the retention value of our equity awards. Because of the complex and technical nature of our systems and the dynamic market in which we compete, any failure to attract and retain a sufficient number of qualified employees could materially harm our ability to develop and commercialize our technology, which would have a material adverse effect on our business, financial condition, and results of operations.

Consolidation in the medical device industry could have an adverse effect on our revenue and results of operations.

Many medical device industry companies are consolidating to create new companies with greater market power. As the medical device industry consolidates, competition to provide goods and services to industry participants will become more intense. These industry participants may try to use their market power to bundle the sale of more products to our customers in return for lower prices. If we reduce our prices because of consolidation in the healthcare industry, our revenue would decrease and our earnings, financial condition, or cash flows would suffer, which would have a material adverse effect on our business, financial condition, and results of operations.

We actively employ social media as part of our marketing strategy, which could give rise to regulatory violations, liability, breaches of data security or reputational damage.

Despite our efforts to monitor evolving social media communication guidelines and comply with applicable rules, there is risk that the use of social media by us, our employees or our customers to communicate about our products or business may cause us to be found in violation of applicable requirements, including requirements of regulatory bodies such as the FDA and Federal Trade Commission. For example, promotional communications and endorsements on social media that, among other things, promote our products for uses or in patient populations that are not described in the product's approved labeling (known as "off-label uses"), do not contain a fair balance of information about risks associated with using our products, make comparative or other claims about our products that are not supported by sufficient evidence, and/or do not contain required disclosures could result in enforcement actions against us. In addition, adverse events, product complaints, off-label usage by physicians, unapproved marketing or other unintended messages posted on social media could require an active response from us, which may not be completed in a timely manner and could result in regulatory action by a governing body. Further, our employees may knowingly or inadvertently make use of social media in ways that may not comply with our corporate policies or other legal or contractual requirements, which may give rise to liability, lead to the loss of trade secrets or other intellectual property, or result in public exposure of personal information of our employees, clinical trial patients, customers and others. Furthermore, negative posts or comments about us or our products in social media could seriously damage our reputation, brand image and goodwill, which would have a material adverse effect on our business, financial condition, and results of operations.

Social media companies on which we rely for advertising may change their policies limiting our ability to reach our target markets.

We rely on social media companies, such as Facebook and Twitter, to reach our target markets. Facebook has announced that beginning in January 2022 it will limit the ability of advertisers to target certain markets. Any restrictions by Facebook or any other social media platform on which we depend to reach our target market could have a significant impact on our ability to develop customer awareness and generate new users for our physician partners.

We may become subject to claims of infringement or misappropriation of the intellectual property rights of others, which could prohibit us from shipping affected products, require us to obtain licenses from third parties or to develop non-infringing alternatives, and subject us to substantial monetary damages and injunctive relief. Our patents may also be subject to challenge on validity grounds, and our patent applications may be rejected.

Third parties could, in the future, assert infringement or misappropriation claims against us with respect to our current or future products. Whether a product infringes a patent involves complex legal and factual issues, the determination of which is often uncertain. Therefore, we cannot be certain that we have not infringed the intellectual property rights of such third parties. Our potential competitors may assert that some aspect of our products infringes their patents. There also may be existing patents of which we are unaware that one or more components of our products may inadvertently infringe.

Any infringement or misappropriation claim could cause us to incur significant costs, could place significant strain on our financial resources, divert management's attention from our business and harm our reputation. If the relevant patents were upheld as valid and enforceable and we were found to infringe, we could be prohibited from selling our product unless we could obtain licenses to use the technology covered by the patent or are able to design around the patent. We may be unable to obtain a license on terms acceptable to us, if at all, and we may not be able to redesign the affected product to avoid infringement.

A court could order us to pay compensatory damages for such infringement, plus prejudgment interest and could, in addition, treble the compensatory damages and award attorney fees. These damages could be substantial and could harm our reputation, business, financial condition and operating results. A court also could enter orders that temporarily, preliminarily or permanently enjoin us and our customers from making, using, selling, offering to sell or importing our products, and/or could enter an order mandating that we undertake certain remedial activities. Depending on the nature of the relief ordered by the court, we could become liable for additional damages to third parties.

We rely on our patents, patent applications and other intellectual property rights to give us a competitive advantage. Whether a patent is valid, or whether a patent application should be granted, is a complex matter of science and law. Therefore, we cannot be certain that, if challenged, our patents, patent applications and/or other intellectual property rights would be upheld. If one or more of those patents, patent applications and other intellectual property rights are invalidated, rejected or found unenforceable, those outcomes could reduce or eliminate any competitive advantage we might otherwise have had.

If we or our third-party manufacturers or suppliers fail to comply with the FDA's Quality System Regulation or any applicable state equivalent, our manufacturing operations could be interrupted and our potential product sales and operating results could suffer.

We and some of our third-party manufacturers and suppliers are required to comply with some or all of the FDA's Good Manufacturing Practices or its QSR, which delineates the design controls, document controls, purchasing controls, identification and traceability, production and process controls, acceptance activities, nonconforming product requirements, corrective and preventive action requirements, labeling and packaging controls, handling, storage, distribution and installation requirements, records requirements, servicing requirements, and statistical techniques potentially applicable to the production of our medical devices. We and our manufacturers and suppliers are also subject to the regulations of foreign jurisdictions regarding the manufacturing process if we market its products overseas. The FDA enforces the QSR through periodic and announced or unannounced inspections of manufacturing facilities. Our facilities have been inspected by the FDA and other regulatory authorities, and we anticipate that we and certain of our third-party manufacturers and suppliers will be subject to additional future inspections. If our facilities or those of our manufacturers or suppliers are found to be in non-compliance or fail to take satisfactory corrective action in response to adverse QSR inspectional findings, FDA could take legal or regulatory enforcement actions against us and/or our products, including but not limited to the cessation of sales or the recall of distributed products, which could impair our ability to produce our products in a cost-effective and timely manner in order to meet our customers' demands. We may also be required to bear other costs or take other actions that may have a negative impact on our future sales and our ability to generate profits.

Current regulations depend heavily on administrative interpretation. If the FDA does not believe that we are in substantial compliance with applicable FDA regulations, the agency could take legal or regulatory enforcement actions against us and/or our products. We are also subject to periodic inspections by the FDA, other governmental regulatory agencies, as well as certain third-party regulatory groups. Future interpretations made by the FDA or other regulatory bodies made during the course of these inspections may vary from current interpretations and may adversely affect our business and prospects. The FDA's and foreign regulatory agencies' statutes, regulations, or policies may change, and additional government regulation or statutes may be enacted, which could increase post-approval regulatory requirements, or delay, suspend, prevent marketing of any cleared/approved products or necessitate the recall of distributed products. We cannot predict the likelihood, nature or extent of adverse governmental regulation that might arise from future legislative or administrative action, either in the U.S. or abroad.

The medical device industry has been under heightened FDA scrutiny as the subject of government investigations and enforcement actions. If our operations and activities are found to be in violation of any FDA laws or any other governmental regulations that apply to us, we may be subject to penalties, including civil and criminal penalties, damages, fines and other legal and/or agency enforcement actions. Any penalties, damages, fines, or curtailment or restructuring of our operations or activities could adversely affect our ability to operate our business and our financial results. The risk of us being found in violation of FDA laws is increased by the fact that many of these laws are broad and their provisions are open to a variety of interpretations. Any action against us for violation of these laws, even if we successfully defend ourselves against that action and its underlying allegations, could cause us to incur significant legal expenses and divert management's attention from the operation of our business. Where there is a dispute with a federal or state governmental agency that cannot be resolved to the mutual satisfaction of all relevant parties, we may determine that the costs, both real and contingent, are not justified by the commercial returns to us from maintaining the dispute or the product.

Various claims, design features or performance characteristics of our medical devices, that we regarded as permitted by the FDA without marketing clearance or approval, may be challenged by the FDA or state regulators. The FDA or state regulatory authorities may find that certain claims, design features or performance characteristics, in order to be made or included in the products, may have to be supported by further studies and marketing clearances or approvals, which could be lengthy, costly and possibly unobtainable.

If we fail to comply with ongoing regulatory requirements, or if we experience unanticipated problems with products, these products could be subject to restrictions or withdrawal from the market.

We are also subject to similar state requirements and licenses. Failure by us to comply with statutes and regulations administered by the FDA and other regulatory bodies, discovery of previously unknown problems with our products (including unanticipated adverse events or adverse events of unanticipated severity or frequency), manufacturing problems, or failure to comply with regulatory requirements, or failure to adequately respond to any FDA observations concerning these issues, could result in, among other things, any of the following actions:

- warning letters or untitled letters issued by the FDA;
- fines, civil penalties, injunctions and criminal prosecution;
- unanticipated expenditures to address or defend such actions;
- delays in clearing or approving, or refusal to clear or approve, our products;
- withdrawal or suspension of clearance or approval of our products by the FDA or other regulatory bodies;
- product recall or seizure;
- orders for physician or customer notification or device repair, replacement or refund;
- interruption of production; and
- operating restrictions.

If any of these actions were to occur, it would harm our reputation and adversely affect our business, financial condition and results of operations.

Our medical products may in the future be subject to product recalls that could harm our reputation, business and financial results.

The FDA has the authority to require the recall of commercialized medical device products in the event of material deficiencies or defects in design or manufacture. In the case of the FDA, the authority to require a recall must be based on an FDA finding that there is a reasonable probability that the device would cause serious injury or death. Manufacturers may, under their own initiative, recall a product if any material deficiency in a device is found. A government-mandated or voluntary recall by us or one of our distributors could occur as a result of component failures, manufacturing errors, design or labeling defects or other deficiencies and issues. Recalls of any of our products would divert managerial and financial resources and have an adverse effect on our financial condition and results of operations. The FDA requires that certain classifications of recalls be reported to the FDA within ten working days after the recall is initiated. Companies are required to maintain certain records of recalls, even if they are not reportable to the FDA. We may initiate voluntary recalls involving our products in the future that we determine do not require notification of the FDA. If the FDA disagrees with our determinations, they could require us to report those actions as recalls. A future recall announcement could harm our reputation with customers and negatively affect sales. In addition, the FDA could take enforcement action for failing to report the recalls when they were conducted.

If any of our medical products cause or contribute to a death or a serious injury, or malfunction in certain ways, we will be subject to medical device reporting regulations, which can result in voluntary corrective actions or agency enforcement actions.

Under the FDA medical device reporting regulations, medical device manufacturers are required to report to the FDA information that a device has or may have caused or contributed to a death or serious injury or has malfunctioned in a way that would likely cause or contribute to death or serious injury if the malfunction of the device or one of our similar devices were to recur. If we fail to report these events to the FDA within the required timeframes, or at all, the FDA could take enforcement action against us. Any such adverse event involving our products also could result in future voluntary corrective actions, such as recalls or customer notifications, or agency action, such as inspection or enforcement action. Any corrective action, whether voluntary or involuntary, as well as defending ourselves in a lawsuit, will require our time and capital, distract management from operating our business, and may harm our reputation and financial results.

We may have a need for additional funds in the future and there is no guarantee that we will be able to generate those funds from our business.

Our existing cash position and ability to borrow funds and future revenue may not be sufficient to support the expenses of our operations in the near term, although based upon our cash and cash equivalents, current budgeting and projected cash flow models, we believe that we will be able to support our operations for at least the next 12 months following the filing of this Report. We plan to fund operations by the recurring revenue generated by the use of the XTRAC lasers in the U.S. and international markets, as well as domestic and international sales of our products. If revenues from the sale and use of our existing products are inadequate to fund our operations, we may need to raise additional financing. We cannot assure you that we will be able to raise additional capital or secure alternate financing to fund operations, if necessary, or that we will be able to raise additional capital under terms that are favorable to us. Further, we cannot assure that an acquisition will in any way negate or mitigate our need for future capital. Any additional financing may dilute the ownership interest of our existing stockholders and could adversely affect the market price of our common stock.

If we do not have enough capital to fund operations, then we will have to cut costs or raise funds.

If we are unable to raise additional funds, if necessary, under terms acceptable to us and in the interests of our stockholders, then we will have to take measures to cut operating costs or obtain funds using alternative methods, such as:

- Sell or license some of our technologies that we would not otherwise sell or license if we were in a stronger financial position;
- Sell or license some of our technologies under terms that are less favorable than they otherwise might have been if we were in a stronger financial position; and
- Consider further business combination transactions with other companies or positioning ourselves to be acquired by another company.

If it became necessary to take one or more of the above-listed actions, then our perceived valuation may be lower, which could impact the market price of our stock. Further, the effects on our operations, financial performance and stock price may be significant if we do not or cannot take one or more of the above-listed actions in a timely manner and when needed, and our ability to do so may be limited significantly due to the instability of the global financial markets and the resulting limitations on available financing to us and to potential licensees, buyers and investors. Additionally, these options may not be available to us as all of our assets have been pledged as security for the various financings.

If our actual liability for state sales and use taxes is higher than our accrued liability, it could have a material impact on our financial condition.

Included in accrued state sales and use taxes are certain known and estimated sales and use taxes and related penalties and interest to taxing authorities. In our recurring revenue model, we place the XTRAC system in the physician's office under an arrangement for no upfront charge and generate our revenue on a per-use basis.

In the ordinary course of business, we are, from time to time, subject to audits performed by state taxing authorities. These actions and proceedings are generally based on the state's position that the arrangements entered into by the Company are subject to state sales and use tax rather than exempt from applicable law. We are currently under audit by two taxing jurisdictions as it pertains to state sales and/or use tax. One jurisdiction has assessed us, in two assessments, an aggregate amount of $1.5 million for the period from March 2014 through February 2020 including penalties and interest. We have declined an informal offer to settle at a substantially lower amount and are currently in that jurisdiction's administrative process of appeal. In January 2021, we received notification that the administrative judge in this jurisdiction had issued an opinion finding in favor of us that the sale of XTRAC treatment codes were not taxable as sales tax with respect to the first assessment. The jurisdiction filed an appeal of the administrative law judge's finding and, following the submission of legal briefs by both sides and an oral argument held in January 2022, the appeal is still in process. The second jurisdiction has made an assessment of $0.7 million from June 2015 through March 2018 plus interest of $0.2 million through April 2020. We are in the administrative appeal process in this jurisdiction as well and the timing has been impacted by the COVID-19 pandemic. In the event there is a determination that the true object of the delivery of phototherapy under the recurring revenue model is a sale or lease of property and it is not a prescription medication or we do not have other defenses where we prevail, we may be subject to state sales taxes in those particular states for previous years and in the future, plus interest and penalties for failure to pay such taxes. If it was determined that our recurring revenue model was not exempt from sales taxes in all states where we do business, and taxes and penalties were imposed in each of those states for the entire period through the expiration of each state's statute of limitations, state sales and use tax, penalties and interest for such period would have a material negative impact on our financial condition and cash flow.

As of December 31, 2021 and 2020, we have estimated our sales and use tax liability to be approximately $3.7 million and $3.1 million, respectively. We believe our sales and use tax accruals have properly recognized that if our arrangements with customers are deemed more likely than not that we would not be exempt from sales tax in a particular state are the basis for measurement of the state sales and use tax is calculated in accordance with ASC 405, *Liabilities*, as a transaction tax. While we believe we have strong positions that our recurring revenue is exempt from sales tax, if it is found that we are subject to sales tax in those particular states where we believe it is more likely than not that we would be exempt from sales tax, then potential tax liabilities including interest and penalties would be higher than accrued amounts. If and when we are successful in defending ourselves or in settling the sales tax obligation for a lesser amount, the reversal of this liability is to be recorded in the period the settlement is reached. However, the precise scope, timing and time period at issue, as well as the final outcome of any audit and actual settlements remain uncertain.

We may be subject to disruptions or failures in our information technology systems and network infrastructures, including through cyber-attacks or other third-party breaches that could have a material adverse effect on our business.

We rely on efficient and uninterrupted operation of complex information technology systems and network infrastructures to operate our business. We also hold data in various data center facilities upon which our business depends. A disruption, infiltration or failure of our information technology systems or any of our data centers as a result of software or hardware malfunctions, system implementations or upgrades, computer viruses, third-party security breaches, employee error, theft or misuse, malfeasance, power disruptions, natural disasters or accidents could cause breaches of data security, loss of intellectual property and critical data and the release and misappropriation of sensitive competitive information.

While we have implemented a number of protective measures, including firewalls, antivirus, patches, data encryption, log monitors, routine back-ups with offsite retention of storage media, system audits, data partitioning, routine password modifications and disaster recovery procedures, such measures may not be adequate or implemented properly to prevent or fully address the adverse effect of such events. If our systems were to fail or we are unable to successfully expand the capacity of these systems, or we are unable to integrate new technologies into our existing systems, our operations and financial results could suffer.

We have also outsourced significant elements of our information technology infrastructure and as a result we depend on third parties who are responsible for maintaining significant elements of our information technology systems and infrastructure and who may or could have access to our confidential information. The size and complexity of our information technology systems, and those of our third-party vendors, make such systems potentially vulnerable to service interruptions and security breaches from inadvertent or intentional actions by its employees, partners or vendors. These systems are also vulnerable to attacks by malicious third parties, and may be susceptible to intentional or accidental physical damage to the infrastructure maintained by us or by third parties. A breach of our security measures or the accidental loss, inadvertent disclosure, unapproved dissemination, misappropriation or misuse of trade secrets, proprietary information, or other confidential information, whether as a result of theft, hacking, fraud, trickery or other forms of deception, or for any other cause, could enable others to produce competing products, use our proprietary technology or information, and/or adversely affect our business. Further, any such interruption, security breach, loss or disclosure of confidential information could result in financial, legal, business, and reputational harm to us and could have a material adverse effect on our business, results of operations and financial condition.

Environmental and health safety laws may result in liabilities, expenses and restrictions on our operations.

Federal, state, local and foreign laws regarding environmental protection, hazardous substances and human health and safety may adversely affect our business. Using hazardous substances in our operations exposes us to the risk of accidental injury, contamination or other liability from the use, storage, importation, handling, or disposal of hazardous materials. If our or our suppliers' operations result in the contamination of the environment or expose individuals to hazardous substances, we could be liable for damages and fines, and any liability could significantly exceed our insurance coverage and have a material adverse effect on our business, financial condition, and results of operations. Future changes to environmental and health and safety laws could cause us to incur additional expenses or restrict our operations, which could have a material adverse effect on our business, financial condition, and results of operations.

Risks Relating to Our Common Stock

In the event of certain contingencies, the investors in the May 2018 Equity Financing may receive additional shares issued pursuant to the Retained Risk Provisions as defined in the purchase agreements.

In the event of certain contingencies, the investors in the May 2018 equity financing may receive additional shares issued pursuant to the Retained Risk Provisions as defined in the Stock Purchase Agreements. At the closing, the Company determined certain contingencies had been met and, in July 2018, the Company issued 153,004 shares associated with those contingencies. There were additional contingencies included in the SPAs that expired in May 2020 and did not result in the issuance of shares.

Our stock price may be volatile, meaning purchasers of our common stock could incur substantial losses.

Our stock price has been and is likely to continue to be volatile. The stock market in general and the market for medical technology companies in particular have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. The following factors, in addition to other risk factors described in this section and general market and economic conditions, may have a significant impact on the market price of our common stock:

- failure of any of our products to achieve or continue to have commercial success;
- the timing of regulatory approval for our future products;
- adverse regulatory determinations with respect to our existing products;
- results of our research and development efforts and our clinical trials;
- the announcement of new products or product enhancements by us or our competitors;
- regulatory developments in the U.S. and foreign countries;
- our ability to manufacture our products to commercial standards;
- developments concerning our clinical collaborators, suppliers or marketing partners;
- changes in financial estimates or recommendations by securities analysts;
- public concern over our products;
- developments or disputes concerning patents or other intellectual property rights;
- product liability claims and litigation against us or our competitors;
- the departure of key personnel;
- the strength of our balance sheet and any perceived need to raise additional funds;
- variations in our financial results from expected financial results or those of companies that are perceived to be similar to us;
- changes in the structure of third-party reimbursement in the U.S. and other countries;
- changes in accounting principles or practices;
- general economic, industry and market conditions; and
- future sales of our common stock.

A decline in the market price of our common stock could cause you to lose some or all of your investment, limit your ability to sell your shares of stock and may adversely impact our ability to attract and retain employees and raise capital. In addition, stockholders have, and may in the future, initiate securities class action lawsuits if the market price of our stock drops significantly. Whether or not meritorious, litigation brought against us could result in substantial costs and could divert the time and attention of our management. Our insurance to cover claims of this sort may not be adequate.

Our charter documents and Delaware law may inhibit a takeover that stockholders consider favorable and could also limit the market price of our stock.

Provisions of our restated certificate of incorporation and bylaws and applicable provisions of Delaware law may make it more difficult for or prevent a third party from acquiring control of us without the approval of our board of directors. These provisions:

- limit who may call a special meeting of stockholders;
- establish advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon at stockholder meetings;
- do not permit cumulative voting in the election of our directors, which would otherwise permit less than a majority of stockholders to elect directors;
- prohibit stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of our stockholders; and
- provide our board of directors the ability to designate the terms of and issue a new series of preferred stock without stockholder approval.

In addition, Section 203 of the Delaware General Corporation Law generally limits our ability to engage in any business combination with certain persons who own 15% or more of our outstanding voting stock or any of our associates or affiliates who at any time in the past three years have owned 15% or more of our outstanding voting stock. In connection with the financing in May 2018, our board of directors exempted AGP SPVI, L.P. from the application of this provision in connection with its investment.

These provisions may have the effect of entrenching our management team and may deprive you of the opportunity to sell your shares to potential acquirers at a premium over prevailing prices. This potential inability to obtain a control premium could reduce the price of our common stock.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

We lease an 8,513 sq. ft. facility in Horsham, Pennsylvania that houses our executive offices and marketing. The term of the lease runs through January 2023.

We lease a 17,000 sq. ft. facility consisting of office, manufacturing and warehousing space in Carlsbad, California. The lease was set to expire on September 30, 2019. On May 1, 2019, we entered into the Fifth Amendment to the lease. The term of the lease commenced on October 1, 2019 and expires on September 30, 2024. Our Carlsbad facility houses the manufacturing and development operations for our excimer laser business, as well as the patient call center and reimbursement center.

ITEM 3. LEGAL PROCEEDINGS

From time to time in the ordinary course of our business, we may be a party to certain legal proceedings, incidental to the normal course of our business. These may include controversies relating to contract claims and employment related matters, some of which claims may be material, in which case, we will make separate disclosure as required.

We are currently under audit by two taxing jurisdictions, pertaining to sales and/or use tax. One jurisdiction has assessed us an amount of $1.5 million including penalties and interest, in two assessments, for the period from March 2014 through February 2020. We have declined an informal offer to settle the first assessment at a substantially lower amount and are currently in that jurisdiction's administrative process of appeal.

In January 2021, we received notification that the administrative law judge had issued an opinion finding in favor of us that the sale of XTRAC treatment codes are not taxable as sales tax with respect to the first assessment. The jurisdiction filed an appeal of the administrative law judge's finding and, following the submission of legal briefs by both sides and an oral argument held in January 2022, the appeal is in process.

A second jurisdiction has made an assessment of $0.7 million from June 2015 through March 2018 plus interest of $0.2 million through April 2020. We are in this jurisdiction's administrative process of appeal as well and the timing of the process has been impacted by the COVID-19 pandemic. If it is found we are not exempt from sales tax in these or other states then potential tax liabilities including interest and penalties would be higher than accrued amounts**.**

Effective August 10, 2020, we entered into a Settlement Agreement and Release ("Settlement Agreement") with Ra Medical Systems, Inc. ("Ra Medical"), under which the Company and Ra Medical agreed that within five business days of final execution of the Settlement Agreement, the parties are to file stipulations and/or documentation necessary to cause each of the pending lawsuits between them and with other third-parties to be dismissed with prejudice, with each party to bear its own attorneys' fees and costs. The pending lawsuits were: STRATA Skin Sciences, Inc. and Uri Geiger v. Ra Medical Systems, Inc., civil action no. 18-21421, Court of Common Pleas, Montgomery County, Pennsylvania; and Ra Medical Systems, Inc. v. Uri Geiger, STRATA Skin Sciences, Inc., and Accelmed Growth Partners, L.P., civil action no. 3:19-cv-00920, United States District Court for the Southern District of California.

Pursuant to the terms of the Settlement Agreement, each party agreed to release the opposing parties from any and all claims, demands, and causes of action of any kind whatsoever, whether known or unknown, fixed or contingent, asserted or unasserted, arising in contract, tort, statute, or operation of law, which they now have or ever had against any of the Ra Medical Releases, from the beginning of time to the date of the Settlement Agreement, in any way arising from or relating to the allegations, claims, causes of action, allegations and/or assertions set forth in the pending lawsuits.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

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

As of March 18, 2022, we had 34,723,046 shares of common stock issued and outstanding. This did not include (i) options to purchase 3,655,709 shares of common stock, of which 1,457,858 were vested as of March 18, 2022, (ii) unissued restricted stock units of 90,540, or (iii) 373,626 shares of common stock reserved for issuance pursuant to a warrant.

DIVIDEND POLICY

We have not declared or paid any dividend on our common stock, since our inception. We do not anticipate that any dividends on our common stock will be declared or paid in the future. Any future determination relating to our dividend policy will be made at the discretion of our board of directors and will depend on then existing conditions, including our earnings, financial condition, results of operations, level of indebtedness, contractual restrictions, capital requirements, business prospects and other factors our board of directors may deem relevant. Our board of directors' ability to declare a dividend is also subject to limits imposed by Delaware law and our credit facility.

SECURITIES AUTHORIZED FOR ISSUANCE UNDER EQUITY COMPENSATION PLANS

Equity Compensation Plan Information

The following is a summary of all of our equity compensation plans, including plans that were assumed through acquisitions and individual arrangements that provide for the issuance of equity securities as compensation, as of December 31, 2021. See Notes 1 and 14 to the consolidated financial statements for additional discussion.

Plan Category	Number of securities to be issued upon exercise of outstanding securities (#)	Weighted average exercise price of outstanding options ($)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column(a)) (#)
	(a)	(b)	(c)
Equity compensation plans approved by security holders	3,938,613	$ 1.90	3,932,271
Equity compensation plans not approved by security holders	—	—	—
	3,938,613	$ 1.90	3,932,271

RECENT SALES OF UNREGISTERED SECURITIES; USE OF PROCEEDS FROM REGISTERED SECURITIES

None.

ISSUER PURCHASES OF EQUITY SECURITIES

None.

ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA

Not applicable.

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

You should read the following discussion and analysis of our consolidated financial condition and results of operations together with our consolidated financial statements and the related notes and other financial information included in this Annual Report. Some of the information contained in this discussion and analysis or set forth elsewhere in this Annual Report, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties as described under the heading "Cautionary Note Regarding Forward-Looking Statements" elsewhere in this Annual Report. You should review the disclosure under the heading "Risk Factors" in this Annual Report for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

STRATA Skin Sciences, Inc. is a medical technology company in dermatology dedicated to developing, commercializing and marketing innovative products for the treatment of dermatologic conditions. Its products include the XTRAC® and now Pharos® excimer lasers and VTRAC® lamp systems utilized in the treatment of psoriasis, vitiligo and various other skin conditions.

The XTRAC ultraviolet light excimer laser system is utilized to treat psoriasis, vitiligo and other skin diseases. The XTRAC excimer laser system received clearance from the United States Food and Drug Administration in 2000 and has since become a widely recognized treatment among dermatologists. The system delivers targeted 308nm ultraviolet light to affected areas of skin, leading to psoriasis clearing and vitiligo repigmentation, following a series of treatments. As of December 31, 2021, there were 890 XTRAC systems placed in dermatologists' offices in the United States under our dermatology recurring procedures model, an increase from 832 at the end of December 31, 2020. Under the dermatology recurring procedures model, the XTRAC system is placed in a physician's office and fees are charged on a per procedure basis or a fee is charged on a periodic basis not to exceed an agreed upon number of procedures. The XTRAC system's use for psoriasis is covered by nearly all major insurance companies, including Medicare. The VTRAC Excimer Lamp system, offered internationally in addition to the XTRAC, provides targeted therapeutic efficacy demonstrated by excimer technology with the simplicity of design and reliability of a lamp system. We believe there are approximately 7.5 million people in the United States and up to 125 million people worldwide suffering from psoriasis, and 1% to 2% of the world's population suffers from vitiligo.

In September 2020, we signed a direct distribution agreement with our Japanese distributor for a combination of direct dermatology procedures equipment sales and recurring revenue for the country of Japan. In February 2021, we signed an agreement with our Chinese distributor for a combination of direct dermatology procedures equipment sales and recurring revenues for the country of China.

The Pharos excimer laser system holds FDA clearance to treat chronic skin diseases, including psoriasis, vitiligo, atopic dermatitis and leukoderma.

COVID-19 Pandemic

In late 2019, there was an outbreak of a new strain of coronavirus ("COVID-19") which became a global pandemic. The COVID-19 pandemic has negatively impacted the global economy, disrupted global supply chains, constrained work force participation and created significant volatility and disruption of financial markets. In addition, the pandemic led to the suspension of elective procedures in the U.S. and to the temporary closure of many physician practices which are our primary customers. While most offices have reopened, some physician practices closed and never reopened, and the impact of the ongoing COVID-19 pandemic and its variants on our operational and financial performance, including our ability to execute our business strategies and initiatives in the expected time frames, will depend on future developments, including the duration and ongoing spread of the COVID-19 outbreak and its variants, continued or renewed restrictions on business operations and transport, any governmental and societal responses thereto, including legislative or regulatory as well as the percentage of the populace vaccinated and effectiveness of COVID-19 vaccines and the continued impact on worldwide economic and geopolitical conditions, all of which are uncertain and cannot be predicted.

Domestically, as the procedures in which our devices are used are elective in nature; and as social distancing, travel restrictions, quarantines and other restrictions became prevalent in the United States, this had a negative impact on our recurring revenue model and its financial position and cash flow. The virus has disrupted the supply chains world-wide that we depend upon to provide a steady source of components to manufacture and repair our devices.

To mitigate the impact of COVID-19, we have taken a variety of measures to ensure the availability and functioning of our critical infrastructure by implementing business continuity plans to promote the safety and security of our employees, while complying with various government mandates, including work-from-home arrangements and social-distancing initiatives to reduce the transmission of COVID-19 and complying with federal and local regulations at our facilities. The Company implemented a policy whereby all Company employees are required to be vaccinated or complete weekly COVID-19 testing. In addition, we created and executed programs utilizing our direct to consumer advertising and call center to contact patients and partner clinics to restart our partners' businesses.

In the event our own employees are impacted through direct or ancillary contact with a person who has the virus, we may need to devise other methods of transacting business in our offices by working from home and or potentially ceasing operations for a period of time. Supply chain disruptions which began during the pandemic have continued and may continue for the foreseeable future. While the Company's operations have not been materially impacted by the general trends in supply chain problems, the Company continues to monitor and assess potential risks.

The ongoing COVID-19 pandemic has had a negative impact on our results of operations and financial performance through fiscal 2021, and we expect it will continue to have a negative impact on revenues, earnings and cash flows until such time as the pandemic ends or the country adjusts to its ramifications. Some physician offices continue to experience staffing issues, and we believe these shortages of trained personnel have negatively impacted our business. Accordingly, current results and financial conditions discussed herein may not be indicative of future operating results and trends.

Key Technologies

- *XTRAC® Excimer Laser.* XTRAC received FDA clearance in 2000 and has since become a widely recognized treatment among dermatologists for psoriasis and other skin diseases. The XTRAC System delivers ultra-narrowband ultraviolet B ("UVB"**)** light to affected areas of skin. Following a series of treatments typically performed twice weekly, psoriasis remission can be achieved, and vitiligo patches can be re-pigmented. XTRAC is endorsed by the National Psoriasis Foundation, and its use for psoriasis is covered by nearly all major insurance companies, including Medicare. We estimate that more than half of all major insurance companies now offer reimbursement for vitiligo as well, a figure that is increasing.

- In the third quarter of 2018, we announced the FDA granted clearance for our Multi Micro Dose (MMD) tip for our XTRAC excimer laser. The MMD Tip accessory is indicated for use in conjunction with the XTRAC laser system to filter the Narrow Band UVB ("NB-UVB") light at delivery in order to calculate and individualize the maximum non-blistering dose for a particular patient.

- In January 2020, we announced the FDA granted clearance of our XTRAC Momentum Excimer Laser Platform.

- *VTRAC® Lamp.* VTRAC received FDA clearance in 2005 and provides targeted therapeutic efficacy demonstrated by excimer technology with the simplicity of design and reliability of a lamp system.

Recent Developments

Asset Acquisitions

In August 2021 and January 2022, we acquired certain assets and certain liabilities related to the Pharos U.S. dermatology business of Ra Medical Systems, Inc. ("Ra Medical") and TheraClear Devices from Theravant Corporation, respectively. The Pharos asset acquisition provides us with the opportunity to market our full business solutions to Ra Medical's existing customer base of 400 dermatology practices and increase our recurring revenue base. The Pharos transaction also provides a highly synergistic path to gain additional placements for our XTRAC excimer laser system. The TheraClear asset acquisition will allow us to further develop, commercialize and market the TheraClear Devices that are used for acne treatment, as well as advance the TheraClear technology into multiple other devices that can be used to treat a range of additional indications.

We made upfront cash payments of $3.7 million and $0.5 million in connection with the Pharos and TheraClear asset acquisitions, respectively. In addition, Theravant Corporation received 358,367 shares of our common stock with an aggregate value of $0.5 million and is eligible to receive up to $3.0 million in future earnout payments upon the achievement of certain annual net revenue milestones, up to $20.0 million in future royalty payments based upon gross profit from future domestic sales, 25% of gross profit from international sales over the subsequent four-year period, and up to $1.0 million in future milestone payments upon the achievement of certain development and related net revenue targets.

MidCap Financing

In September 2021, we entered into an $8.0 million secured borrowing facility with MidCap Financial Trust, or MidCap. The facility bears interest at LIBOR plus 7.50%, with a LIBOR floor of 0.50%, and matures on September 1, 2026. We are obligated to make interest-only payments through September 2024. From October 2024 to maturity, we will make payments of principal and interest in 24 equal installments. The loan is senior to all other indebtedness and is secured by substantially all of our assets. We are subject to customary affirmative and negative covenants including a financial covenant based on minimum revenue thresholds. Upon an event of default, including a covenant violation, all principal and interest are due on demand.

Proceeds from our MidCap facility were used to repay, in their entirety, the outstanding principal and interest associated with our Economic Injury Disaster Loan. In September 2021, we also repaid our note payable with the proceeds from the pledged time deposit held by the lender.

Equity Distribution Agreement

In October 2021, we entered into an equity distribution agreement under which we may sell up to $11.0 million of our shares of common stock in registered "at-the-market" offerings. The shares will be offered at prevailing market prices, and we will pay commissions of up to 3.0% of the gross proceeds from the sale of shares sold through our agent, which may act as an agent and/or principal. We have no obligation to sell any shares under this agreement and may, at any time, suspend solicitations under this agreement. No shares of our common stock have been sold under this distribution agreement during fiscal 2021.

Components of Results of Operations

Revenues

To date, we have generated revenues primarily from the placement of our lasers in physicians' offices and the related sales and rentals and the recurring revenues from our sale of treatment sessions.

Dermatology Recurring Procedures Segment: we have primarily two types of arrangements for our phototherapy treatment equipment as follows: (i) we place our lasers in a physician's office at no charge to the physician, and generally charge the physician a fee for an agreed upon number of treatments; or (ii) we place our lasers in a physician's office and charge the physician a fixed fee for a specified period of time not to exceed an agreed upon number of treatments; if that number is exceeded additional fees will have to be paid.

Dermatology Procedures Equipment Segment: we sell our products internationally through distributors and domestically, directly to a physician. We also derive revenues from service and repair extended warranty contracts with our existing customers.

We refer you to the section titled "—Critical Accounting Policies and Use of Estimates—Revenue Recognition" appearing elsewhere in this Annual Report on Form 10-K for additional information regarding how we account for revenues.

Sales in the United States represented 77% of our total revenues for each of the years ending December 31, 2021 and 2020, and have been generated by our direct sales force. Outside the United States, our sales are made through third-party distributors. International revenues were 23% for each of the years ended December 31, 2021 and 2020. We expect that both our United States and international revenues will increase in the near term as we continue to expand our product offerings and increase the related patient utilization in the United States, as well as grow our presence in Asia.

Cost of Revenues and Gross Margin

Cost of revenues primarily consists of the costs of components and the manufacture of our XTRAC and VTRAC systems. Cost of revenues also includes costs related to personnel, depreciation, warranty, shipping, and our operations and field service departments.

Our gross profit is calculated by subtracting our cost of revenues from our revenues. We calculate our gross margin as our gross profit divided by our revenues. Our gross margin has been and will continue to be affected by a variety of factors, primarily product sales mix, pricing manufacturing costs. Our gross margins on revenues from sales of dermatology procedures equipment are lower than our gross margins on revenues from sales of dermatology recurring procedures and, as a result, the sales mix between dermatology recurring procedures and dermatology procedures equipment can affect the gross margin in any reporting period.

Engineering and Product Development

Engineering and product development expenses consist primarily of personnel expenses, including salaries and related benefits for employees in engineering, product development, regulatory and quality assurance functions. We typically use our employee, consultant and infrastructure resources across our engineering and product development programs.

We plan to incur engineering and product development expenses for the near future as we expect to continue our development that focuses on the application of our XTRAC system for the treatment of inflammatory skin disorders. As a result, we expect our engineering and product development expenses to remain similar to our fiscal year 2021 expenses.

Selling and Marketing

Selling and marketing expenses consist of market research and commercial activities related to the sale of our dermatology recurring procedures and dermatology procedures equipment sales, and salaries and related benefits and sales commissions for employees focused on these efforts. Other significant sales and marketing costs include conferences and trade shows, promotional and marketing activities, including direct and online marketing to the consumer and dermatologists, practice support programs, travel and training expenses.

We anticipate that our selling and marketing expenses will increase as we continue to execute on our growth initiatives and expand our business in the United States.

General and Administrative

General and administrative expenses consist primarily of personnel expenses, including salaries and related benefits, share-based compensation and travel expenses, for employees in executive, finance, information technology, legal and human resource functions. General and administrative expenses also include the cost of insurance, outside legal fees, accounting and other consulting services, audit fees from our independent registered public accounting firm, board of directors' fees and other administrative costs, such as corporate facility costs, including rent, utilities, depreciation and maintenance not otherwise included in cost of revenues.

We anticipate that our general and administrative expenses will increase modestly in fiscal year 2022.

Gain of Forgiveness of Debt

In fiscal 2021, we recognized a gain on forgiveness of debt associated with our Paycheck Protection Program ("PPP") loan.

Interest Expense

Interest expense consists of cash interest payable under our debt facilities and non-cash interest attributable to the amortization of deferred financing costs related to our indebtedness.

Interest Income

Interest income is earned on our cash and cash equivalent account balances.

Income Taxes

As of December 31, 2021, we had federal and state NOL carryforwards of $204.3 million and $60.7 million, respectively. The net operating loss carryforwards generated prior to 2018 begin expiring in 2022 for federal and 2030 for state income tax purposes. Federal and many state net operating losses generated in 2018 and into the future now have an indefinite life.

In general, under Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, a corporation that undergoes an "ownership change" is subject to limitations on its ability to utilize its NOLs to offset future taxable income. We have not completed a study to assess whether an ownership change has occurred in the past. Our existing NOLs may be subject to limitations arising from previous ownership changes, and if we undergo an ownership change, our ability to utilize NOLs could be further limited by Section 382 of the Code. Future changes in our stock ownership, some of which are outside of our control, could result in an ownership change under Section 382 of the Code. Our NOLs are also subject to international regulations, which could restrict our ability to utilize our NOLs. Furthermore, our ability to utilize NOLs of companies that we may acquire in the future may be subject to limitations. There is also a risk that due to regulatory changes, such as suspensions on the use of NOLs, or other unforeseen reasons, our existing NOLs could expire or otherwise be unavailable to offset future income tax liabilities.

Results of Operations

Comparison of the Years ended December 31, 2021 and 2020

(in thousands)	**Year Ended December 31,**		**Change**	
	2021	**2020**	**Dollar**	**Percentage**
Revenues, net	$ 29,977	$ 23,090	$ 6,887	30%
Cost of revenues	10,127	8,956	1,171	13
Gross profit	19,850	14,134	5,716	40
Operating expenses:				
Engineering and product development	1,434	1,274	160	13
Selling and marketing	13,106	9,038	4,068	45
General and administrative	9,712	7,898	1,814	23
	24,252	18,210	6,042	33
Loss from operations	(4,402)	(4,076)	(326)	8
Other income (expense):				
Interest expense	(314)	(211)	(103)	49
Interest income	15	150	(135)	(90)
Gain on forgiveness of debt	2,029	—	2,029	100
	1,730	(61)	1,791	2,936
Loss before income tax expense	$ (2,672)	$ (4,137)	$ 1,465	35%

Revenues

Revenues by Geography

The following tables present revenues by geography for the periods presented below:

(in thousands)	**Year Ended December 31,**		**Change**	
	2021	**2020**	**Dollar**	**Percentage**
Domestic	$ 23,197	$ 17,804	$ 5,393	30%
International	6,780	5,286	1,494	28
Total Revenues	$ 29,977	$ 23,090	$ 6,887	30%

Revenues by Product Type

The following tables present revenues by segment for the periods presented below:

(in thousands)	Year Ended December 31,		Change	
	2021	2020	Dollar	Percentage
Dermatology recurring	$ 22,528	$ 17,409	$ 5,119	29%
Dermatology equipment	7,449	5,681	1,768	31
Total Revenues	$ 29,977	$ 23,090	$ 6,887	30%

Dermatology Recurring Procedures

The ongoing COVID-19 pandemic has had a negative impact on our results for 2021 and 2020, and we expect it will have a negative impact on revenue for as long as the pandemic continues. Recognized treatment revenue for the years ended December 31, 2021, was $22.5 million, which we estimate is approximately 321,000 treatments with prices between $65 and $95 per treatment compared to recognized treatment revenue for the year ended December 31, 2020, of $17.4 million, which is approximately 249,000 treatments with prices between $65 and $95 per treatment.

Increases in procedures are dependent upon building market acceptance through marketing programs with our physician partners and their patients to show that the XTRAC procedures will be of clinical benefit and will be generally reimbursed by insurers. We believe that several factors have an impact on the prescribed use of XTRAC treatments for psoriasis and vitiligo patients. Specifically, we believe that there is a lack of awareness of the positive effects of XTRAC treatments among both sufferers and providers; and the treatment regimen, which can sometimes require up to 12 or more treatments, has limited XTRAC use to certain patient populations. Therefore, our strategy is to continue to execute a direct-to-patient program for XTRAC advertising in the United States, targeting psoriasis and vitiligo patients through a variety of media and through our use of social media such as Facebook and Twitter. We monitor the results of our advertising expenditures in this area to reach the more than 10 million patients in the United States we believe are afflicted with these diseases. During 2020, we reduced our direct to consumer advertising spend, however, as the country began to adapt to COVID-19 and vaccines became available during 2021, we increased spending in the direct-to-patient programs to drive patients to our partner clinics to increase recurring revenue and increase spend in marketing activities as well. The increase in spending on these programs usually precedes the recurring revenue in our past experience as there is a lag between our advertising and patients then receiving treatment, which we estimate to be three to nine months. Subject to governmental responses to variants of COVID-19, we may curtail spending again in certain areas or redirect spending to less impacted areas. Revenues from Dermatology Recurring Procedures are recognized as revenue over the estimated usage period of the agreed upon number of treatments, as the treatments are being used. As of December 31, 2021 and 2020, we deferred net revenues of $1.9 million and $1.8 million, respectively, which will be recognized as revenue over the remaining usage period for domestic placements. Lower deferred revenue from the fourth quarter 2020 negatively impacted the first half of 2021 as compared to the first half of 2020 when higher deferred revenue favorably impacted that period.

We have recently signed direct distribution contracts with our international distributors for a combination of direct dermatology procedures equipment sales and recurring revenue. If the recurring model is accepted in these countries and the business model can be executed by these distributors, these agreements are expected to increase recurring revenue over time, but will have an initial impact of reducing sales of dermatology procedures equipment.

Dermatology Procedures Equipment

The ongoing COVID-19 pandemic has had a negative impact on our results for 2021 and 2020, and we expect it will have a negative impact on its revenue for as long as the pandemic continues. For the year ended December 31, 2021, dermatology procedures equipment revenues were $7.5 million. Internationally, we sold 38 systems (30 XTRAC and 8 VTRAC).

For the year ended December 31, 2020, dermatology procedures equipment revenues were $5.7 million. Internationally, we sold 36 systems (14 XTRAC and 22 VTRAC). Domestically, we sold 2 XTRAC systems for the year ended December 31, 2020.

Cost of Revenues and Gross Profit

The following tables present changes in our gross margin, by segment, for the periods presented below:

Dermatology Recurring Procedures

(in thousands)	**Year Ended December 31,**		**Change**	
	2021	**2020**	**Dollar**	**Percentage**
Revenues	$ 22,528	$ 17,409	$ 5,119	29%
Cost of revenues	6,418	5,832	586	10
Gross profit	$ 16,110	$ 11,577	$ 4,533	39%
Gross profit percentage	72%	67%		

The primary reasons for the increase in gross profit for the year ended December 31, 2021 were the result of higher sales, partially offset by higher depreciation expenses in 2021 and an unfavorable impact of deferred revenue in 2021 as compared to 2020.

Dermatology Procedures Equipment

(in thousands)	**Year Ended December 31,**		**Change**	
	2021	**2020**	**Dollar**	**Percentage**
Revenues	$ 7,449	$ 5,681	$ 1,768	31%
Cost of revenues	3,709	3,124	585	19
Gross profit	$ 3,740	$ 2,557	$ 1,183	46%
Gross profit percentage	50%	45%		

The primary reasons for the increase in gross profit for the year ended December 31, 2021 were higher equipment sales and deferred revenue assumed in the Pharos acquisition.

Engineering and Product Development

For the year ended December 31, 2021, engineering and product development expenses were $1.4 million as compared to $1.3 million for the year ended December 31, 2020. Engineering and product development costs during the year ended December 31, 2021 were higher primarily as a result of consulting costs associated with certain development projects.

Selling and Marketing

As of December 31, 2021, our sales and marketing personnel consisted of 63 full-time positions, inclusive of a vice president of sales and a vice president of marketing, direct sales organization as well as an in-house call center staffed with patient advocates and a reimbursement group that provides necessary insurance information to our physician partners and their patients.

For the year ended December 31, 2021, sales and marketing expenses were $13.1 million as compared to $9.0 million for the year ended December 31, 2020. Sales and marketing expenses for the year ended December 31, 2021 were higher, as compared to the same period in 2020, as we made investments in sales and marketing and direct to consumer advertising, while in 2020 we managed our costs due to the downturn in business as a result of the COVID-19 pandemic, with lower tradeshow costs, compensation costs, commissions, travel and direct-to-consumer advertising costs.

General and Administrative

For the year ended December 31, 2021, general and administrative expenses increased to $9.7 million from $7.9 million for the year ended December 31, 2020. General and administrative expenses were higher for the year ended December 31, 2021, as compared to the same period in 2020. The increase is primarily due to higher compensation, severance and recruiting expenses as a result of the CEO transition in the first quarter of 2021, in addition to an increase in XTRAC usage that has led to an increase in sales tax expense.

Gain on Forgiveness of Debt

During the year ended December 31, 2021, we received notification our PPP loan had been forgiven and we recorded a gain on forgiveness of debt of $2.0 million.

Interest Expense

Interest expense is primarily attributable to our debt obligations.

Interest Income

Interest income relates to the interest we receive on our cash, cash equivalents and restricted cash held with financial institutions.

Income Tax Expense

We recognized an income tax expense of $34 thousand for the year ended December 31, 2021 as compared to $0.3 million for the year ended December 31, 2020, all of which were comprised primarily of changes in deferred tax liability related to goodwill.

Non-GAAP adjusted EBITDA

We have determined to supplement our consolidated financial statements, prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”), presented elsewhere within this report, with certain non-GAAP measures of financial performance. These non-GAAP measures include non-GAAP adjusted EBITDA, “Earnings Before Interest, Taxes, Depreciation, and Amortization.”

This non-GAAP disclosure has limitations as an analytical tool, should not be viewed as a substitute for Net Earnings (Loss) determined in accordance with U.S. GAAP, and should not be considered in isolation or as a substitute for analysis of the Company’s results as reported under U.S. GAAP, nor is it necessarily comparable to non-GAAP performance measures that may be presented by other companies. We consider these non-GAAP measures in addition to our results prepared under current accounting standards, but they are not a substitute for, nor superior to, U.S. GAAP measures. These non-GAAP measures are provided to enhance readers’ overall understanding of our current financial performance and to provide further information for comparative purposes. This supplemental presentation should not be construed as an inference that the Company’s future results will be unaffected by similar adjustments to Net Earnings (Loss) determined in accordance with U.S. GAAP. Specifically, we believe the non-GAAP measures provide useful information to management and investors by isolating certain expenses, gains and losses that may not be indicative of our core operating results and business outlook. In addition, we believe non-GAAP measures enhance the comparability of results against prior periods.

Reconciliation to the most directly comparable U.S. GAAP measure of all non-GAAP measures included in this report is as follows:

(in thousands)	Year Ended December 31, 2021	2020
Net loss	$ (2,706)	$ (4,412)
Adjustments:		
Depreciation and amortization	3,736	3,585
Amortization of right-of-use asset	350	326
Loss on disposal of property and equipment	140	24
Income taxes	34	275
Gain on forgiveness of debt	(2,029)	—
Interest income	(15)	(150)
Interest expense	314	211
Non-GAAP EBITDA	(176)	(141)
Stock-based compensation	1,643	1,633
Non-GAAP adjusted EBITDA	$ 1,467	$ 1,492

Liquidity and Capital Resources

In September 2021, we entered into an $8.0 million secured borrowing facility with MidCap Financial Trust, or MidCap. The facility bears interest at LIBOR plus 7.50% with a LIBOR floor of 0.50%, and matures on September 1, 2026. We are obligated to make interest-only payments through September 2024. From October 2024 to Maturity, we will make principal payments in 24 equal installments. The loan is senior to all other indebtedness and is secured by substantially all of our assets. We are subject to customary affirmative and negative covenants including a financial covenant based on minimum revenue thresholds. Upon an event of default, including a covenant violation, all principal and interest are due on demand.

Proceeds from our MidCap facility were used to repay, in their entirety, the outstanding principal and interest associated with our Economic Injury Disaster Loan. In September 2021, we also repaid our note payable with the proceeds from the pledged time deposit held by the lender.

As of December 31, 2021, we had cash and cash equivalents of $12.6 million and an accumulated deficit of $221.7 million. We received cash flows from operating activities of $1.5 million and $2.1 million for the years ended December 31, 2021 and 2020, respectively. We have historically incurred operating losses, and we anticipate that our operating losses will continue in the near term as we seek to expand our sales and marketing initiatives to support our growth in existing and new markets, invest funds in additional engineering and product development activities and utilize cash for other corporate purposes. Our primary sources of capital have been from borrowings under our debt facilities and sales of our products. As of December 31, 2021, we had $8.0 million of borrowings outstanding under our debt facility with MidCap, which has a final maturity in September 2026.

In October 2021, we entered into an equity distribution agreement under which we may sell up to $11.0 million of our shares of common stock in registered “at-the-market” offerings. The shares will be offered at prevailing market prices, and we will pay commissions of up to 3.0% of the gross proceeds from the sale of shares sold through our agent, which may act as an agent and/or principal. We have no obligation to sell any shares under this agreement and may, at any time, suspend solicitations under this agreement. No shares of our common stock have been sold under this distribution agreement during fiscal 2021.

We cannot predict our revenues and expenses in the short term as a result of the COVID-19 pandemic and related governmental responses. Based on our current business plan, we believe that our cash and cash equivalents as of December 31, 2021 and anticipated revenues from sales of our products will be sufficient to meet our cash requirements for at least 12 months from the date of issuance of the Annual Report. However, if these sources are insufficient to satisfy our liquidity requirements, we may seek to sell additional debt or equity securities or enter into a new credit facility or another form of third-party funding or seek other debt financing. If we raise additional funds by issuing equity or equity-linked securities, our stockholders would experience dilution and any new equity securities could have rights, preferences and privileges superior to those of holders of our common stock. Debt financing, if available, may involve covenants restricting our operations or our ability to incur additional debt. We cannot be assured that additional equity, equity-linked or debt financing will be available on terms favorable to us or our stockholders, or at all. It is also possible that we may allocate significant amounts of capital towards products or technologies for which market demand is lower than expected and, as a result, abandon such efforts. If we are unable to maintain our current financing or obtain adequate additional financing when we require it, or if we obtain financing on terms which are not favorable to us, or if we expend capital on products or technologies that are unsuccessful, our ability to continue to support our business growth and to respond to business challenges could be significantly limited, or we may be required to delay the development, commercialization and marketing of our products.

The following table summarizes our sources and uses of cash for each of the periods presented:

	Year Ended December 31,	
(in thousands)	**2021**	**2020**
Cash provided by (used in)		
Operating activities	$ 1,508	$ 2,096
Investing activities	(7,126)	(2,159)
Financing activities	92	2,546
Net (decrease) increase in cash, cash equivalents and restricted cash	$ (5,526)	$ 2,483

Operating Activities

Net cash, cash equivalents and restricted cash provided by operating activities was $1.5 million for the year ended December 31, 2021, compared to cash, cash equivalents and restricted cash provided by operating activities of $2.1 million for the year ended December 31, 2020. The decrease in cash flows provided by operating activities for the year ended December 31, 2021 was the result of a decrease in deferred taxes of $0.2 million and a decrease in the source of cash from net assets of $0.3 million primarily attributable to COVID-19 and its impact on billings and delayed vendor payments.

Investing Activities

Net cash, cash equivalents and restricted cash used in investing activities was $7.1 million for the year ended December 31, 2021, compared to cash, cash equivalents and restricted cash used in investing activities of $2.2 million for the year ended December 31, 2020. The increase is the result of the asset purchase of Ra Medical ($3.5 million) and higher costs of lasers placed into service in 2021 versus 2020 ($1.5 million).

Financing Activities

During the year ended December 31, 2021, we received proceeds of $8.0 million from our senior term facility with MidCap, offset by debt repayments of $7.8 million associated with our note payable and EIDL Loan. For the year ended December 31, 2020, we received $2.5 million in proceeds from borrowings under our PPP Loan and EIDL Loan.

Contractual Obligations and Commitments

The following summarizes our significant contractual obligations as of December 31, 2021:

	Payments due by period				
(in thousands)	Total	Less than 1 year	1-3 years	4-5 years	More than 5 years
Debt obligations (excluding interest)	$ 8,000	$ —	$ 1,000	$ 7,000	$ —
Operating lease obligations (1)	799	371	428	—	—
Total	$ 8,799	$ 371	$ 1,428	$ 7,000	$ —

(1) Reflects obligations related to our leased executive offices in Horsham, PA and our leased manufacturing and warehouse space in Carlsbad, CA.

Impact of Inflation

We have not operated in a highly inflationary period, and we do not believe that inflation has had a material effect on our revenues or expenses. If we enter an inflationary period, it could have a material impact on our expenses.

Critical Accounting Policies and Estimates

The preparation of our financial statements in accordance with accounting principles generally accepted in the United States of America, or GAAP, and the rules and regulations of the SEC requires us to make estimates and assumptions, based on judgments considered reasonable, which affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. We base our estimates and assumptions on historical experience, known trends and events and various other factors that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Although we believe our estimates and assumptions are reasonable when made, they are based upon information available to us at the time they are made. We evaluate our estimates and assumptions on an ongoing basis and, if necessary, make adjustments. Due to the risks and uncertainties involved in our business and evolving market conditions and given the subjective element of the estimates and assumptions made, actual results may differ from estimated results.

We define our critical accounting policies as those accounting policies that are most important to the portrayal of our financial condition and results of operations and require our most difficult and subjective judgments. While our significant accounting policies are more fully described in “Note 2. Summary of Significant Accounting Policies” in our audited financial statements and related notes thereto appearing elsewhere in this Annual Report on Form 10-K, we believe the following discussion addresses our most critical accounting policies.

Revenue Recognition

We have primarily two types of arrangements for our phototherapy treatment equipment from which we earn revenues from dermatology recurring procedures: (i) we place our lasers in a physician’s office at no charge to the physician, and generally charge the physician a fee for an agreed upon number of treatments; or (ii) we place our lasers in a physician’s office and charge the physician a fixed fee for a specified period of time not to exceed an agreed upon number of treatments; if that number is exceeded additional fees will have to be paid. Revenues attributable to these types of arrangements are accounted for under the guidance applicable to leases. These arrangements are similar to operating leases since we provide the customers limited arrangement rights to use the treatment equipment, the treatment equipment resides in the physician’s office and we may exercise the right to remove the equipment upon notice, under certain circumstances, while the physician controls the utility and output of such equipment during the term of the arrangement as it pertains to the use of access codes to treat the patients. For the first type of arrangement, sales of access codes are considered variable treatment code payments and are recognized as revenue over the estimated usage period of the agreed upon number of treatments. For the second type of arrangement, customers purchase access codes and revenue is recognized on a straight-line basis as the lasers are being used over the term specified in the agreement. Variable treatment code payments that will be paid only if the customer exceeds the agreed upon number of treatments are recognized only when such treatments are being exceeded and used.

We recognize revenue from dermatology procedures equipment sales when control of the promised good or service is transferred to our customers in an amount that reflects the consideration to which we expect to be entitled in exchange for those good or services. Accordingly, we determine revenue recognition by applying the following steps:

- identification of the contract, or contracts, with a customer;
- identification of the performance obligations in the contract;
- determination of the transaction price;
- allocation of the transaction price to the performance obligations in the contract; and
- recognition of revenues when, or as, we satisfy a performance obligation.

A contract's transaction price is allocated to each performance obligation and recognized as revenue when, or as, the performance obligation is satisfied, which is generally the point in time when the product is shipped or control is transferred for our dermatology procedures equipment sales. We sell to physicians in the United States and to third-party distributors outside the United States and do not provide return rights. Sales to distributors outside the United States are made in U.S. dollars. In addition, we provide a one to two-year warranty for systems sold in the United States. Terms of the of the product warranty differ amongst our third-party distributors outside the United States but are generally two years. These assurance-type warranties are not considered a separate performance obligation. We provide for the estimated cost to repair or replace products under any warranty at the time of sale. We also earn revenue from customers from services outside of their warranty term or annual service contracts. Revenue from these service-type warranties is recognized as the services are provided.

Asset Acquisitions

Accounting for transactions as asset acquisitions is significantly different than business combinations. Goodwill is only recognized in business combination transactions. The fair value of contingent consideration is recognized in business combination transactions and may be recognized in asset acquisitions if payment is probable and the amount can be estimated. As a result, it is important to determine whether a business or an asset or a group of assets is acquired. A business is defined in ASC 805, *Business Combinations*, as an integrated set of inputs and processes that are capable of generating outputs that have the ability to provide a return to its investors or owners. Typical inputs include long-lived assets (including intangible assets or rights to use long-lived assets), intellectual property and the ability to obtain access to required resources. Typical processes include strategic, operational and resource management processes that are typically documented or evident through an organized workforce.

When substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets, the acquired set is not a business. We considered all of the above factors when determining whether a business was acquired. In evaluating our acquisition of Pharos in 2021, we concluded that the fair value of consideration given to Ra Medical was concentrated in the acquired customer list intangible. As such, we accounted for the transaction as an asset acquisition. The fair value was allocated to the acquired intangible and is being amortized over its estimated useful life.

Goodwill and Intangible Impairments

As of December 31, 2021, we had $8.8 million of goodwill related to the acquisitions of XTRAC and VTRAC businesses in fiscal 2015. We evaluate the carrying value of goodwill during the fourth quarter of each year and whenever circumstances indicate the carrying value of goodwill may not be recoverable. The determination of the fair value of the reporting units to which the goodwill relates requires management to make estimates and assumptions. We organized our business into two operating segments, which also serve as our goodwill reporting units and are defined as Dermatology Recurring Procedures and Dermatology Procedures Equipment. Our analysis employed the use of both a market and income approach, with the market approach given a 25% weighting and the income approach given a 75% weighting. Significant assumptions used in the income approach include growth and discount rates, profit margins and our weighted average cost of capital. We used historical performance and management estimates of future performance to determine profit margins and growth rates. Discount rates selected for each reporting unit varied. Our weighted average cost of capital included a review and assessment of market and capital structure assumptions. For both reporting units the fair value was in excess of the carrying value. Considerable management judgment is necessary to evaluate the impact of operating changes and to estimate future cash flows. Changes in our actual results and/or estimates or any of our other assumptions used in our analysis could result in a different conclusion.

All of our intangibles are definite lived assets, with amortization recorded over the estimated useful life on a straight-line basis. As of December 31, 2021 we had $10.1 million of intangible assets. The definite lived assets are tested for impairment when events or changes in circumstances indicate that the carrying value of the asset group may not be recoverable. Our intangible assets are grouped into five categories: core technology, product technology, customer relationships, trade names and Pharos customer lists. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset group to the undiscounted cash flows attributable to the asset group. If the carrying amount of an asset group exceeds its undiscounted cash flows, an impairment charge is recognized in the amount by which the carrying amount of the asset group exceeds its fair value of the asset group.

Considerable management judgment is necessary to assess recoverable amounts of intangible assets and measure fair value of the intangible assets that were impaired as such measurements involve estimation of future revenues, royalty rates, profit margins and other cash flows. Changes in our actual results and/or estimates or any of our other assumptions used in our analysis could result in a different conclusion.

Sales and Use Taxes

We record state sales tax collected and remitted for our customers on dermatology procedures equipment sales on a net basis, excluded from revenue. Our sales tax expense that is not presently being collected and remitted for the recurring revenue business is recorded in general and administrative expenses within the consolidated statements of operations.

We believe that our state sales and use tax accruals have been properly recognized such that, if our arrangements with customers are deemed more likely than not that we would not be exempt from sales tax in a particular state, the basis for measurement of the state sales and use tax is calculated in accordance with ASC 405, *Liabilities*, as a transaction tax. If and when we are successful in defending ourselves or in settling the sales tax obligation for a lesser amount, the reversal of this liability is to be recorded in the period the settlement is reached. However, the precise scope, timing and time period at issue, as well as the final outcome of any audit and actual settlement, remains uncertain.

In the ordinary course of business, we are, from time to time, subject to audits performed by state taxing authorities. These actions and proceedings are generally based on the position that the arrangements into which we have entered are subject to sales and use tax rather than exempt from tax under applicable law. Several states have assessed us an aggregate of $2.4 million including penalties and interest for the period from March 2014 through April 2020. We received notification that an administrative state judge issued an opinion finding in our favor that the sale of XTRAC treatment codes was not taxable as sales tax with respect to that state’s first assessment. This ruling covers $1.5 million of the total $2.4 million of assessments. The jurisdiction filed an appeal of the administrative law judge’s finding and, following the submission of legal briefs by both sides and oral argument held in January 2022, the appeal is still in process.

We are also in another jurisdiction’s administrative process of appeal with respect to the remaining $0.9 million of assessments, and the timing of the process has been impacted by the COVID-19 pandemic. If there is a determination that the true object of our recurring revenue model is not exempt from sales taxes and is not a prescription medicine, or we do not have other defenses where we prevail, we may be subject to sales taxes in those particular states for previous years and in the future, plus potential interest and penalties.

Recently Issued Accounting Pronouncements

A description of recently issued accounting pronouncements that may potentially impact our financial position and results of operations is disclosed in Note 2 to our audited financial statements appearing elsewhere in this Annual Report.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are a smaller reporting company as defined by Rule 12b-2 of the Exchange Act and are not required to provide the information required under this item.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements required by this Item 8 are included in this Report and begin on page F-1.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Limitations of Internal Control System

Because of the inherent limitations in a cost-effective control system, no evaluation of internal control over financial reporting can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within our company have been detected. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all errors and all fraud.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the design and operation of our disclosure controls and procedures, (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act"), as of December 31, 2021. Based on that evaluation, management has concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

In designing and evaluating our disclosure controls and procedures, management recognized that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Additionally, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure controls and procedures also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Management's Report on Internal Control over Financial Reporting

Our Management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Our management conducted an assessment of the effectiveness of our internal control over financial reporting based on the framework established in the 2013 *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this assessment, our management has determined that our internal control over financial reporting was effective as of December 31, 2021.

Changes in Internal Control over Financial Reporting

There has been no change in our internal control over financial reporting in our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS, AND CORPORATE GOVERNANCE

The information required by this item is incorporated by reference to our Proxy Statement for the 2022 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended December 31, 2021.

Our Board has adopted a written Code of Conduct applicable to all officers, directors and employees, which is available on our website (www.strataskinsciences.com) under “Corporate Governance” within the “Investors” section. We intend to satisfy the disclosure requirement under Item 5.05 of Form 8-K regarding amendment to, or waiver from, a provision of this Code of Conduct by posting such information on the website address and location specified above.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated by reference to our Proxy Statement for the 2022 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended December 31, 2021.

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

The information required by this item is incorporated by reference to our Proxy Statement for the 2022 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended December 31, 2021.

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

The information required by this item is incorporated by reference to our Proxy Statement for the 2022 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended December 31, 2021.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by this item is incorporated by reference to our Proxy Statement for the 2022 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission within 120 days of the fiscal year ended December 31, 2021.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(1) Financial Statements

Consolidated balance sheets of STRATA Skin Sciences, Inc. and subsidiary as of December 31, 2021 and 2020, and the related consolidated statements of operations, changes in stockholders' equity and cash flows for each of the years ended December 31, 2021 and 2020.

(a)(2) Financial Statement Schedules

None, as all information required in these schedules is included in the Notes to the Consolidated Financial Statements.

(a)(3) Exhibits

The exhibits listed under subsection (b) of this Item 15 are hereby incorporated by reference.

(b) Exhibits

3.1	Fifth Amended and Restated Certificate of Incorporation of the Company (Incorporated by reference to Exhibit 3.1 contained in our Registration Statement on Form S-3 (File No. 333-258814), as filed on August 13, 2021).
3.2	Fourth Amended and Restated Bylaws of the Company (Incorporated by reference to Exhibit 3.2 contained in our Form 8-K current report as filed on January 8, 2016).
4.1	Specimen Stock Certificate Incorporated by reference to our Registration Statement on Form S-1, as amended (File No. 333-125517), as filed on August 8, 2005).
4.2	Warrant dated May 7, 2009 issued by Electro-Optical Sciences, Inc. to Kingsbridge Capital Limited (Incorporated by reference to our Current Report on Form 8-K filed on May 8, 2009).
4.3	Warrant Agreement, dated as of April 26, 2013, by and between MELA Sciences, Inc. and Hercules Technology Growth Capital, Inc. (Incorporated by reference to our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2013 filed on April 30, 2013).

4.4	Form of Series A Warrant (Incorporated by reference to our Current Report on Form 8-K filed on October 30, 2013).
4.5	Form of Series B Prefunded Warrant (Incorporated by reference to our Current Report on Form 8-K filed on October 30, 2013).
4.6	Form of Common Stock Purchase Warrant (Incorporated by reference to our Current Report on Form 8-K filed on February 3, 2014).
4.7	Form of Series [A/B] Common Stock Purchase Warrant (Incorporated by reference to our Current Report on Form 8-K filed on July 23, 2014).
4.8	Form of 4% Senior Secured Convertible Debenture Due July 24, 2019 (Incorporated by reference to our Current Report on Form 8-K filed on July 23, 2014).
4.9	Form of Common Stock Purchase Warrant (Incorporated by reference to Exhibit 4.1 contained in our Form 8-K current report, filed on June 23, 2015).
4.10	Form of 9.0% Senior Secured Notes (Incorporated by reference to Exhibit 4.2 contained in our Form 8-K current report, filed on June 23, 2015).
4.11	Form of 2.25% Series A Senior Secured Convertible Debenture (Incorporated by reference to Exhibit 4.3 contained in our Form 10-Q quarterly report for the quarter ended June 30, 2015 filed on August 14, 2015).
4.12	Form of 2.25% Series B Senior Unsecured Convertible Debenture (Incorporated by reference to Exhibit 4.4 contained in our Form 10-Q quarterly report for the quarter ended June 30, 2015 filed on August 14, 2015).
4.13	Form of Warrant Amendment Agreement (Incorporated by reference to Exhibit 4.1 contained in our Current Report on Form 8-K, filed on January 22, 2016).
4.14*	Form of Incentive Stock Option Agreement. (Incorporated by reference to our Annual Report on Form 10-K for the year ended December 31, 2015 filed on March 15, 2016)
4.15*	Form of Nonqualified Stock Option Agreement. (Incorporated by reference to our Annual Report on Form 10-K for the year ended December 31, 2015 filed on March 15, 2016)
4.16	Description of Common Stock (attached hereto)
10.1*	Form of Indemnification Agreement for directors and executive officers. (Incorporated by reference to our Annual Report on Form 10-K for the year ended December 31, 2013 filed on March 17, 2014).
10.2*	2005 Stock Incentive Plan (Incorporated by reference to our Registration Statement on Form S-1, as amended (File No. 333-125517), filed on August 8, 2005.
10.3	Form of Securities Purchase Agreement dated as of June 22, 2015 by and among the company and the purchasers (Incorporated by reference to our Form 8-K current report, as filed on June 23, 2015).
10.4	Registration Rights Agreement dated as of June 22, 2015 by and among the Company and the purchasers (Incorporated by reference to our Form 8-K current report, as filed on June 23, 2015).
10.5	Security Agreement dated as of June 22, 2015 by and among the Company and parties thereto (Incorporated by reference to our Form 8-K current report, as filed on June 23, 2015).
10.6	Licensing Agreement between the Registrant and KaVo Dental GmbH, dated as of December 5, 2006. (Incorporated by reference to our Current Report on Form 8-K filed on December 11, 2006).
10.7	Securities Purchase Agreement dated as of July 21, 2014 between MELA Sciences, Inc. and the purchasers identified on the signature pages thereto (Incorporated by reference to our Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2014 filed on November 14, 2014).
10.8	Registration Rights Agreement dated as of July 21, 2014 between MELA Sciences, Inc. and the purchasers identified on the signature pages thereto (Incorporated by reference to our Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2014 filed on November 14, 2014).
10.9	Security Agreement dated as of July 21, 2014 among MELA Sciences, Inc., all of the Subsidiaries of the Registrant and the holders of the Registrant's 4% Senior Secured Convertible Debentures (Incorporated by reference to our Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2014 filed on November 14, 2014).
10.10	Agreement of Lease, dated as of July 14, 2009, by and between Stanford Bridge LLC and Electro-Optical Sciences, Inc. (Incorporated by reference to our Current Report on Form 8-K filed on July 14, 2009).
10.11	Supply Agreement with Arrow Electronics, Inc., dated April 8, 2011 (Incorporated by reference to our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2011 filed on August 5, 2011).
10.12	Production Agreement, dated as of January 6, 2012, by and between MELA Sciences, Inc. and Askion GmbH (Incorporated by reference to our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2012 filed on May 3, 2012).

10.13	Service Agreement, dated March 21, 2012, by and between MELA Sciences, Inc. and QUINTILES Commercial Germany GmbH (Incorporated by reference to our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2012 filed on May 3, 2012).
10.14	Asset Purchase Agreement dated as of June 22, 2015 by and among the Company and parties identified on the signature pages thereto. (Incorporated by reference to our Form 8-K current report, as filed on June 23, 2015.)
10.15	Amended and Restated Security Agreement dated as of August 3, 2015 by and among the Company and the parties thereto. (Included in Exhibit 10.8 filed incorporated by reference to our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2015, filed on August 14, 2015).
10.16	MELA Sciences, Inc. Amended and Restated 2013 Stock Incentive Plan (Incorporated by reference to the Registrant's Proxy Statement on Schedule 14A filed on August 24, 2015).
10.17	Loan and Security Agreement, dated as of March 15, 2013, by and between MELA Sciences, Inc. and Hercules Technology Growth Capital, Inc. (Incorporated by reference to our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2013 filed on April 30, 2013).
10.18	Intentionally Omitted
10.19	Form of Securities Purchase Agreement, dated as of October 29, 2013, by and among MELA Sciences, Inc. and the purchasers identified on the signature pages thereto (Incorporated by reference to our Current Report on Form 8-K filed on October 30, 2013).
10.20	Omnibus Amendment to 2014 Transaction Documents dated as of August 3, 2015 by and among the Company and the purchases identified therein. (Incorporated by reference to our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2015, filed on August 14, 2015.).
10.21	Form of Securities Purchase Agreement, dated as of January 31, 2014, by and among MELA Sciences, Inc. and the purchasers identified on the signature pages thereto (Incorporated by reference to our Current Report on Form 8-K filed on February 3, 2014).
10.22	Form of Registration Rights Agreement, dated as of February 5, 2014, by and among MELA Sciences, Inc. and the purchasers identified on the signature pages thereto (Incorporated by reference to our Current Report on Form 8-K filed on February 3, 2014).
10.23	Intentionally omitted.
10.24	Warrant Amendment Agreement dated as of June 22, 2015 (effective September 30, 2015) by and among the Company and parties identified on the signature pages thereto (Incorporated by reference to Exhibit 10.5 contained in our Form 8-K current report filed on June 23, 2015).
10.25*	Consulting Agreement, dated as of November 4, 2015 between the Company and Jeffrey F. O'Donnell, Sr. (Incorporated by reference to our Form 10-Q quarterly report for the quarter ended September 30, 2015 filed on November 16, 2015).
10.26*	Consulting Agreement, dated as of November 4, 2015 between the Company and Samuel E. Navarro (Incorporated by reference to our Form 10-Q quarterly report for the quarter ended September 30, 2015 filed on November 16, 2015).
10.27*	Transition Agreement and Release dated as of November 9, 2015 between the Company and Robert W. Cook (Incorporated by reference to our Form 10-Q quarterly report for the quarter ended September 30, 2015 filed on November 16, 2015).
10.28*	Employment Agreement dated as of November 9, 2015 between the Company and Christina L. Allgeier (Incorporated by reference to our Form 10-Q quarterly report for the quarter ended September 30, 2015 filed on November 16, 2015).
10.31	Amended and Restated Employment Agreement, dated as of December 15, 2015 by and between the Company and Michael R. Stewart (Incorporated by reference to Exhibit 10.1 contained in our Current Report on Form 8-K, as filed on December 15, 2015).
10.32	Restricted Stock Award Agreement, dated as of December 15, 2015 by and between the Company and Michael R. Stewart (Incorporated by reference to Exhibit 10.2 contained in our Current Report on Form 8-K, as filed on December 15, 2015).
10.33	Warrant to purchase shares of the Company's common stock issued December 30, 2015 to Lender under the Credit Agreement. (Incorporated by reference to Exhibit 10.3 contained in our Current Report on Form 8-K, as filed on January 5, 2016).

10.34	Subordination Agreements dated as of December 30, 2015 among subordinated lenders, the Company and Midcap. (Incorporated by reference to Exhibit 10.4 contained in our Current Report on Form 8-K, as filed on January 5, 2016).
10.35	Omnibus Amendment to 2014 Transaction Documents and 2015 Transaction Documents dated as of December 30, 2015 among the Company and the holders of outstanding debentures under the 2014 and 2015 security purchase agreements. (Incorporated by reference to Exhibit 10.5 contained in our Current Report on Form 8-K, as filed on January 5, 2016).
10.36	Warrant to purchase shares of the Company's common stock issued January 29, 2016 to Lenders under the Credit Agreement. (Incorporated by reference to Exhibit 10.1 contained in our Current Report on Form 8-K, as filed on February 1, 2016).
10.37	Omnibus Amendment to 2015 Transaction Documents dated as of August 3, 2015 by and among the Company and the purchases identified therein. (Incorporated by reference to our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2015, filed on August 14, 2015.).
10.38	Amended and Restated Intellectual Property Security Agreement dated as of August 3, 2015 by and among the Company and the parties thereto. (Included in Exhibit 10.8 filed incorporated by reference to our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2015, filed on August 14, 2015.).
10.39	Intercreditor Agreement dated as of August 3, 2015 by and among the Company and the parties thereto. (Incorporated by reference to our Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2015, filed on August 14, 2015.).
10.40*	Extension Agreement dated as of July 20, 2016 between Strata Skin Sciences, Inc. and Jeffrey F. O'Donnell, Sr. (Incorporated by reference to Exhibit 10.1 contained in our Current Report on Form 8-K, as filed on July 22, 2016).
10.41*	Extension Agreement dated as of July 20, 2016 between Strata Skin Sciences, Inc. and Samuel E. Navarro. (Incorporated by reference to Exhibit 10.2 contained in our Current Report on Form 8-K, as filed on July 22, 2016).
10.42	First Amendment to Credit and Security Agreement dated as of August 9, 2016 among MidCap Financial Trust, as administrative agent, the Lenders as listed on the signature pages thereto and the Company. (Incorporated by reference to our Form 10-Q quarterly report for the quarter ended September 30, 2015 filed on August 12, 2016).
10.43	Amended and Restated Fee Letter Agreement dated as of August 9, 2016, by and between Midcap Financial Trust as Agent and the Company. (Incorporated by reference to our Form 10-Q quarterly report for the quarter ended September 30, 2015 filed on August 12, 2016).
10.44*	STRATA Skin Sciences 2016 Omnibus Option Plan. (Incorporated by reference to our Form 10-Q quarterly report for the quarter ended September 30, 2015 filed on November 14, 2016).
10.45*	Employment Agreement between the Company and Frank J. McCaney dated as of October 31, 2016. . (Incorporated by reference to our Form 10-Q quarterly report for the quarter ended September 30, 2015 filed on November 14, 2016).
10.46*	Stock Option Agreement between the Company and Frank J. McCaney dated as of October 31, 2016. (Incorporated by reference to our Form 10-Q quarterly report for the quarter ended September 30, 2015 filed on November 14, 2016).
10.50*	Severance and Release Agreement between the Company and Michael R. Stewart dated as of October 31, 2016. (Incorporated by reference to our Form 10-Q quarterly report for the quarter ended September 30, 2015 filed on November 14, 2016).
10.51	Second Amendment to Credit and Security Agreement dated as of November 10, 2017, among MidCap Financial Trust, as administrative agent, the Lenders as listed on the signature pages thereto and the Company. Second Amendment to Credit and Security Agreement dated as of November 10, 2017, among MidCap Company (Incorporated by reference to our Form 10-Q quarterly report for the quarter ended September 30, 2017, filed on November 14, 2017).
10.52	Amended and Restated Fee Letter Agreement dated as of November 10, 2017, by and between MidCapFinancial Trust as Agent and the Company. (Incorporated by reference to our Form 10-Q quarterly report for the quarter ended September 30, 2017 filed on November 14, 2017).
10.53	Securities Purchase Agreement dated as of March 30, 2018, between the Company and Accelmed (Incorporated by reference to Exhibit 10.1 contained in our Current Report on Form 8-K, as filed on April 2, 2018)

10.54	Securities Purchase Agreement dated as of March 30, 2018, between the Company and Broadfin (Incorporated by reference to Exhibit 10.2 contained in our Current Report on Form 8-K, as filed on April 2, 2018).
10.55	Securities Purchase Agreement dated as of March 30, 2018, between the Company and Sabby (Incorporated by reference to Exhibit 10.3 contained in our Current Report on Form 8-K, as filed on April 2, 2018).
10.56	Form of Registration Rights Agreement (Incorporated by reference to Exhibit 10.4 contained in our Current Report on Form 8-K, as filed on April 2, 2018).
10.57	Form of Leak-Out Agreement (Incorporated by reference to Exhibit 10.5 contained in our Current Report on Form 8-K, as filed on April 2, 2018).
10.58	Form of Voting Undertaking (Incorporated by reference to Exhibit 10.6 contained in our Current Report on Form 8-K, as filed on April 2, 2018).
10.59	Form of Subscription Agreement (Incorporated by reference to Exhibit 10.7 contained in our Current Report on Form 8-K, as filed on April 2, 2018).
10.60*	Employment Agreement dated March 30, 2018, between the Company and Dr. Dolev Rafaeli (Incorporated by reference to Exhibit 10.8 contained in our Current Report on Form 8-K, as filed on April 2, 2018).
10.61	Third Amendment to Credit and Security Agreement, dated as of March 26, 2018, among the Company, MidCap Financial Trust and the lenders signatory thereto (Incorporated by reference to Exhibit 10.1 contained in our Current Report on Form 8-K, as filed on April 2, 2018).
10.62*	Employment Agreement effective as of May 15, 2018, between the Company and Matthew C. Hill (Incorporated by reference to Exhibit 10.1 contained in our Current Report on Form 8-K, as filed on May 15, 2018).
10.63*	Amended and Restated Strata Skin Sciences, Inc. 2016 Omnibus Incentive Plan (Incorporated by reference to Appendix A to our Definitive Proxy Statement on Schedule 14A, as filed on June 2, 2021).
10.64	Fourth Amendment to Credit and Security Agreement, dated as of May 29, 2018, among the Company, MidCap Financial Trust and the lenders signatory thereto (Incorporated by reference to Exhibit 10.1 contained in our Current Report on Form 8-K, as filed on May 29, 2018).
10.65	Sublease Agreement between Luigi Bormioli Corporation and the Company for office space at 5 Walnut Grove Drive, Horsham, PA 19044 (Incorporated by reference to Exhibit 10.1 contained in our Current Report on Form 8-K, as filed on October 3, 2018).
10.66	Fixed Rate – Term Promissory Note with Israel Discount Bank of New York as of December 31, 2019 (Incorporated by reference to Exhibit 10.1 contained in our Current Report on Form 8-K, as filed on January 6, 2019).
10.67	Promissory Note Fixed Rate-Term Note, dated December 30, 2019, by STRATA Skin Sciences, Inc. in favor of Israel Discount Bank of New York (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on January 6, 2020)
10.68	Assignment and Pledge of Time Deposit, dated December 30, 2019, by STRATA Skin Sciences, Inc., as assignor, and Israel Discount Bank of New York, as assignee (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed on January 6, 2020)
10.69	Paycheck Protection Program Term Note, Disbursement Request & Authorization, and Errors and Omissions Agreement, dated April 22, 2020, between STRATA Skin Sciences, Inc. and Republic First Bank D/B/A Republic Bank (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on April 27, 2020)
10.70	U.S. Small Business Administration Loan Authorization and Agreement, dated as of March 26, 2020 and executed May 22, 2020, between the Small Business Administration and STRATA Skin Sciences, Inc. (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on May 26, 2020)
10.71	U.S. Small Business Administration Note (Secured Disaster Loans), dated as of March 26, 2020 and executed May 22, 2020, by STRATA Skin Sciences, Inc. for the benefit of the Small Business Administration (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed on May 26, 2020)
10.72	U.S. Small Business Administration Security Agreement, dated as of March 26, 2020 and executed May 22, 2020, between the Small Business Administration and STRATA Skin Sciences, Inc. (incorporated by reference to Exhibit 10.3 to our Current Report on Form 8-K filed on May 26, 2020)
10.73	Settlement Agreement and Release, dated as of August 10, 2020, between STRATA Skin Sciences, Inc. and Ra Medical Systems, Inc. (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on August 11, 2020)
10.74	First Amendment to Promissory Note, dated as of December 21, 2020, between STRATA Skin Sciences, Inc. and Israel Discount Bank of New York (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on December 28, 2020)
10.75	Employment Separation Agreement and Release, dated as of February 24, 2021, between Dolev Rafaeli and STRATA Skin Sciences, Inc. (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed on March 1, 2021)

10.76	Employment Agreement, dated as of March 1, 2021, between Robert Moccia and STRATA Skin Sciences, Inc. (incorporated by reference to Exhibit 10.3 to our Current Report on Form 8-K filed on March 1, 2021)
10.77	Form of Stock Option Agreement, dated as of March 1, 2021, between Robert Moccia and STRATA Skin Sciences, Inc. (incorporated by reference to Exhibit 10.4 to our Current Report on Form 8-K filed on March 1, 2021)
10.78*	Employment Agreement, dated as of October 4, 2021, between Christopher Lesovitz and STRATA Skin Sciences, Inc. (incorporated by reference to Exhibit 10.5 to our Current Report on Form 8-K filed on October 4, 2021)
10.79	Form of management change of control severance agreement (attached hereto).
10.80	Credit and Security Agreement, dated as of September 30, 2021, among STRATA Skin Sciences, Inc., MidCap Financial Trust, as administrative agent, and the lenders identified therein. (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on October 4, 2021)
10.81	Intellectual Property Security Agreement, dated as of September 30, 2021, between STRATA Skin Sciences, Inc. and MidCap Financial Trust. (incorporated by reference to Exhibit 10.2 to our Current Report on Form 8-K filed on October 4, 2021)
10.82	Warrant Agreement to Purchase Shares of the Common Stock of STRATA Skin Sciences, Inc., dated as of September 30, 2021, between STRATA Skin Sciences, Inc. and MidCap Funding XXVII Trust. (incorporated by reference to Exhibit 10.3 to our Current Report on Form 8-K filed on October 4, 2021)
10.83	Registration Rights Agreement, dated as of September 30, 2021, between STRATA Skin Sciences, Inc. and MidCap Funding XXVII Trust (incorporated by reference to Exhibit 10.4 to our Current Report on Form 8-K filed on October 4, 2021)
10.84	Limited Consent and Amendment No. 1 to Credit and Security Agreement , between STRATA Skin Sciences, Inc. and MidCap Financial Trust as Agent for Lenders (attached hereto).
10.85	Asset Purchase Agreement, dated as of January 10, 2022, between STRATA Skin Sciences, Inc., Theravant Corporation and certain other parties thereto (incorporated by reference as Exhibit 10.1 to our Current Report on Form 8-K dated January 10, 2022)
10.86	Asset Purchase Agreement, dated as of August 16, 2021, between STRATA Skin Sciences, Inc. and Ra Medical Systems, Inc. (incorporated by reference to Exhibit 10.1 to our Current Report on Form 8-K filed on August 17, 2021)
23.1	Consent of Marcum, LLP
31.1	Rule 13a-14(a) Certificate of Chief Executive Officer
31.2	Rule 13a-14(a) Certificate of Chief Financial Officer
32.1**	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

* Indicates management contract or compensatory plan

** The certifications attached as Exhibit 32.1 accompany this Annual Report on Form 10-K pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed “filed” by the Registrant for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

ITEM 16. FORM 10-K SUMMARY

None.

SIGNATURES

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

STRATA SKIN SCIENCES, INC.

Date: March 21, 2022

By: /s/ Robert J. Moccia
Robert J. Moccia
Chief Executive Officer and Director
(principal executive officer)

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

Signature	Title	Date
/s/ Robert J. Moccia Robert J. Moccia	President, Chief Executive Officer, and Director (*Principal Executive Officer)*	March 21, 2022
/s/ Christopher Lesovitz Christopher Lesovitz	Chief Financial Officer (*Principal Financial Officer and Financial Officer*)	March 21, 2022
/s/ William D. Humphries William D. Humphries	Director and Chairperson of the Board of Directors	March 21, 2022
/s/ Uri Geiger Uri Geiger	Director	March 21, 2022
/s/ Samuel Rubinstein Samuel Rubinstein	Director	March 21, 2022
/s/ Nachum Shamir Nachum Shamir	Director	March 21, 2022
/s/ Douglas Strang Douglas Strang	Director	March 21, 2022
/s/ Patricia Walker Patricia Walker	Director	March 21, 2022

STRATA SKIN SCIENCES, INC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

	Page
Report of Independent Registered Public Accounting Firm (PCAOB ID #688)	F-2
Consolidated Balance Sheets	F-4
Consolidated Statements of Operations	F-5
Consolidated Statements of Changes in Stockholders' Equity	F-6
Consolidated Statements of Cash Flows	F-7
Notes to Consolidated Financial Statements	F-8

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors of
STRATA Skin Sciences, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of STRATA Skin Sciences, Inc. and Subsidiary (the "Company") as of December 31, 2021 and 2020, the related consolidated statements of operations, changes in stockholders' equity and cash flows for each of the two years in the period ended December 31, 2021, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

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

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

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

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Sales and Use Tax Liabilities:

As discussed in Note 12 to the consolidated financial statements, the Company recognizes sales tax liabilities, including interest and penalties, for its domestic recurring revenue in those states which management determines are more-likely-than-not ("MLTN") non-exempt from sales tax. Such amounts are accounted for as transaction tax liabilities that are extinguished upon payment or settlement. The Company recognizes use tax liabilities, including interest and penalties, for those states that management determines are MLTN to be exempt from sales tax obligations. The Company's sales tax expense that is not presently being collected and remitted for its domestic recurring revenue are recorded as general and administrative expenses. The Company is currently undergoing sales tax audits in two state jurisdictions which are each in the administrative process of appeal.

We identified the accounting for sales and use tax liabilities as a critical audit matter due to the audit effort relating to the following:

- The Company utilized specialists in prior years to assist in determining MLTN conclusions, and such analysis has been updated in the current year by management and counsel.
- Complexity in the interpretation of relevant tax laws in various states requires significant management and auditor judgment.
- The extent of specialized skill and knowledge and consultation outside of the engagement team required to assess the appropriateness of management's determinations.

Our principal audit procedures related to the Company's accounting for sales and use tax liabilities included the following:

- We evaluated management's significant accounting policies related to accounting for sales and use tax liabilities for reasonableness.
- We involved our firm's tax professionals and subject-matter-experts, with specialized skills and knowledge, who assisted in assessing the Company's interpretation of the relevant tax laws.
- We inspected correspondence and determinations from relevant state taxing authorities for those states undergoing sales tax audits.
- We tested the underlying data of management's calculations and analyzed the expiration of statutes of limitations and tax rates.

Goodwill:

As discussed in Note 2 to the consolidated financial statements, goodwill represents the excess of the purchase price over the fair value of the net tangible and identifiable intangible assets acquired and liabilities assumed in a business combination. Goodwill is tested for impairment at least annually at the reporting unit level. Management bypassed the qualitative impairment assessment (step zero) and performed a quantitative impairment assessment. The Company used a combination of the market and income approaches to determine the estimated fair value of its reporting units as of December 31, 2021.

We identified the annual goodwill impairment test as a critical audit matter due to the audit effort relating to the following:

- The determination of the fair value of the reporting unit requires management to make significant estimates and assumptions related to forecasted revenue growth rates, estimated expenses and discount rates. Such estimates and assumptions were challenging to test as they required forward looking assumptions with a high degree of subjectivity.
- The extent of specialized skill and knowledge and consultation outside of the engagement team required to assess the appropriateness of management's valuation assumptions.

Our principal audit procedures related to the Company's goodwill impairment test included the following:

- We evaluated management's significant accounting policies related to goodwill impairment for reasonableness.
- We obtained an understanding and evaluated the reasonableness of management's forecasts of future revenue and estimated expenses by comparing these forecasts to historical operating results of the Company by applying procedures to test the financial inputs used in the income approach, including sensitizing management's cash flow forecasts.
- We involved our firm's valuation professionals, with specialized skills and knowledge, who assisted in assessing assumptions utilized under the income and market approaches. Such assumptions that were evaluated included the discount rate, selected comparable companies, market multiples, control premium and market capitalization reconciliation.

Intangible asset acquisition:

As discussed in Note 3 to the consolidated financial statements, in August 2021, the Company acquired certain assets and liabilities related to the U.S. dermatology Pharos business from Ra Medical Systems, Inc. ("Ra Medical"). The purchase price of $3.7 million was paid in cash at the time of acquisition. In addition, the Company assumed certain extended warranty service contracts associated with acquired laser system products. The Company determined this transaction represented an asset acquisition as substantially all of the value was in the acquired customer list intangible asset as defined by ASC 805, *Business Combinations* ("ASC 805").

We identified the valuation of the acquired intangible asset as a critical audit matter due to the audit effort relating to the following:

- The determination of the fair value of the intangible asset requires management to make significant estimates and assumptions related to forecasted revenue growth rates, estimated expenses and discount rates. Such estimates and assumptions were challenging to test as they required forward looking assumptions with a high degree of subjectivity.
- The extent of specialized skill and knowledge and consultation outside of the engagement team required to assess the appropriateness of management's valuation assumptions.

Our principal audit procedures related to the Company's valuation of the acquired intangible asset included the following:

- We evaluated management's determinations of the assets acquired, liabilities assumed and the consideration paid under the asset purchase agreement for reasonableness.
- We evaluated management's significant accounting policies related to accounting for asset acquisitions and intangible assets for reasonableness.
- We obtained an understanding and evaluated the reasonableness of management's forecasts of future revenue and estimated expenses by applying procedures to test the financial inputs used in the income approach, including sensitizing management's cash flow forecasts.
- We involved our firm's valuation professionals, with specialized skills and knowledge, who assisted in assessing assumptions utilized under the income approach. Such assumptions that were evaluated included the appropriateness of valuation model used, discount rate, selected comparable companies, and customer attrition rate.
- We tested the existence, completeness and valuation of the tangible assets acquired and liabilities assumed, to assess the consideration paid reconciliation.

/s/ Marcum LLP

Marcum LLP

We have served as the Company's auditor since 2019.

Philadelphia, Pennsylvania
March 21, 2022

STRATA Skin Sciences, Inc. and Subsidiary
Consolidated Balance Sheets
(in thousands except share and per share data)

	December 31, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 12,586	$ 10,604
Restricted cash	—	7,508
Accounts receivable, net of allowance for doubtful accounts of $275 and $274 at December 31, 2021 and 2020, respectively	3,433	2,944
Inventories	3,489	3,444
Prepaid expenses and other current assets	462	331
Total current assets	19,970	24,831
Property and equipment, net	6,883	5,529
Operating lease right-of-use assets	638	988
Intangible assets, net	10,083	6,345
Goodwill	8,803	8,803
Other assets	216	282
Total assets	$ 46,593	$ 46,778
Liabilities and Stockholders' Equity		
Current liabilities:		
Note payable	$ —	$ 7,275
Current portion of long-term debt	—	1,478
Accounts payable	2,822	2,764
Accrued expenses and other current liabilities	6,377	4,690
Deferred revenues	3,285	2,262
Current portion of operating lease liabilities	318	369
Total current liabilities	12,802	18,838
Long-term debt, net of current portion	7,319	1,050
Deferred revenues and other liabilities	400	34
Deferred tax liability	266	254
Operating lease liability, net of current portion	392	710
Total liabilities	21,179	20,886
Commitments and contingencies (Note 12)		
Stockholders' equity:		
Series C convertible preferred stock, $0.10 par value; 10,000,000 shares authorized, no shares issued and outstanding	—	—
Common stock, $0.001 par value; 150,000,000 shares authorized; 34,364,679 and 33,801,045 shares issued and outstanding at December 31, 2021 and 2020, respectively	34	34
Additional paid-in capital	247,059	244,831
Accumulated deficit	(221,679)	(218,973)
Total stockholders' equity	25,414	25,892
Total liabilities and stockholders' equity	$ 46,593	$ 46,778

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

STRATA Skin Sciences, Inc. and Subsidiary
Consolidated Statements of Operations
(in thousands except share and per share data)

	Year Ended December 31,	
	2021	**2020**
Revenues, net	$ 29,977	$ 23,090
Cost of revenues	10,127	8,956
Gross profit	19,850	14,134
Operating expenses:		
Engineering and product development	1,434	1,274
Selling and marketing	13,106	9,038
General and administrative	9,712	7,898
	24,252	18,210
Loss from operations	(4,402)	(4,076)
Other income (expense):		
Interest expense	(314)	(211)
Interest income	15	150
Gain on forgiveness of debt	2,029	—
	1,730	(61)
Loss before income tax expense	(2,672)	(4,137)
Income tax expense	(34)	(275)
Net loss	$ (2,706)	$ (4,412)
Net loss attributable to common shares	$ (2,706)	$ (4,394)
Net loss attributable to Preferred Series C shares	$ —	$ (18)
Net loss per share of common stock, basic and diluted	$ (0.08)	$ (0.13)
Weighted average shares of common stock outstanding, basic and diluted	34,050,274	33,609,922
Net loss per share of Preferred Series C stock, basic and diluted	$ —	$ (48.59)
Weighted average shares of Preferred Series C stock outstanding, basic and diluted	—	368

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

STRATA Skin Sciences, Inc. and Subsidiary
Consolidated Statements of Changes in Stockholders' Equity
(in thousands except share data)

	Series C Convertible Preferred Stock		Common Stock				
	Shares	Amount	Shares	Amount	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
Balance at January 1, 2020	2,103	$ 1	32,932,273	$ 33	$ 243,180	$ (214,561)	$ 28,653
Conversion of Series C convertible preferred stock into common stock	(2,103)	(1)	782,089	1	—	—	—
Stock-based compensation expense	—	—	—	—	1,633	—	1,633
Exercise of stock options	—	—	15,000	—	18	—	18
Issuance of restricted stock	—	—	71,683	—	—	—	—
Net loss	—	—	—	—	—	(4,412)	(4,412)
Balance at December 31, 2020	—	$ —	33,801,045	$ 34	$ 244,831	$ (218,973)	$ 25,892
Stock-based compensation expense	—	—	—	—	1,643	—	1,643
Exercise of stock options	—	—	329,076	—	—	—	—
Issuance of restricted stock	—	—	234,558	—	—	—	—
Issuance of common stock warrants in connection with Senior Term Facility	—	—	—	—	585	—	585
Net loss	—	—	—	—	—	(2,706)	(2,706)
Balance at December 31, 2021	—	$ —	34,364,679	$ 34	$ 247,059	$ (221,679)	$ 25,414

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

STRATA Skin Sciences, Inc. and Subsidiary
Consolidated Statements of Cash Flows
(in thousands)

	Year Ended December 31,	
	2021	**2020**
Cash flows from operating activities:		
Net loss	$ (2,706)	$ (4,412)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	3,736	3,585
Amortization of right-of-use assets	350	326
Amortization of deferred financing costs and debt discount	37	—
Provision for doubtful accounts	1	90
Stock-based compensation	1,643	1,633
Loss on disposal of property and equipment	140	24
Gain on forgiveness of debt	(2,029)	—
Deferred taxes	12	254
Changes in operating assets and liabilities:		
Accounts receivable	(490)	1,352
Inventories	(45)	(417)
Prepaid expenses and other assets	(65)	247
Accounts payable	58	884
Accrued expenses and other liabilities	1,679	(588)
Deferred revenues	(444)	(570)
Operating lease liabilities	(369)	(312)
Net cash provided by operating activities	1,508	2,096
Cash flows from investing activities:		
Cash paid in connection with asset acquisition	(3,473)	—
Purchase of property and equipment	(3,653)	(2,159)
Net cash used in investing activities	(7,126)	(2,159)
Cash flows from financing activities:		
Proceeds from exercise of stock options	—	18
Proceeds from long-term debt	8,000	2,528
Payment of deferred financing costs	(133)	—
Repayment of note payable	(7,275)	—
Repayment of long-term debt	(500)	—
Net cash provided by financing activities	92	2,546
Net (decrease) increase in cash, cash equivalents and restricted cash	(5,526)	2,483
Cash, cash equivalents and restricted cash at beginning of year	18,112	15,629
Cash, cash equivalents and restricted cash at end of year	$ 12,586	$ 18,112
Supplemental disclosure of cash flow information:		
Cash paid during the year for interest	$ 222	$ 211
Supplemental schedule of non-cash investing and financing activities:		
Issuance of common stock warrants in connection with Senior Term Facility	$ 585	$ —
Assumed deferred revenues in connection with asset acquisition	$ 1,841	$ —

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

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

1. Organization and Nature of Business

STRATA Skin Sciences, Inc. (the "Company") is a medical technology company in dermatology dedicated to developing, commercializing and marketing innovative products for the treatment of dermatologic conditions. Its products include the XTRAC® and Pharos® excimer lasers and VTRAC® lamp systems utilized in the treatment of psoriasis, vitiligo and various other skin conditions. In January 2022, the Company acquired the TheraClear acne treatment device to broaden its opportunities with expansion potential into the acne care market.

COVID-19 Pandemic

In late 2019, there was an outbreak of a new strain of coronavirus ("COVID-19") which became a global pandemic. The COVID-19 pandemic has negatively impacted the global economy, disrupted global supply chains, constrained work force participation and created significant volatility and disruption of financial markets. In addition, the pandemic led to the suspension of elective procedures in the U.S. and to the temporary closure of many physician practices which are the Company's primary customers. While most offices reopened, some physician practices closed and never reopened, and the ongoing impact of the COVID-19 pandemic and its variants on the Company's operational and financial performance, including its ability to execute its business strategies and initiatives in the expected time frames will depend on future developments, including the duration and ongoing spread of the COVID-19 outbreak and its variants, continued or renewed restrictions on business operations and transport, any governmental and societal responses thereto, including legislative or regulatory changes as well as the percentage of the populace vaccinated and the effectiveness of COVID-19 vaccines and the continued impact on worldwide economic and geopolitical conditions, all of which are uncertain and cannot be predicted.

Domestically, as the procedures for which the Company's devices are used are elective in nature; and as social distancing, travel restrictions, quarantines and other restrictions became prevalent in the United States, this had a negative impact on the Company's recurring revenue model and its financial position and cash flow. The virus has disrupted the supply chains world-wide which the Company depends upon to provide a steady source of components to manufacture and repair the Company's devices. To mitigate the impact of COVID-19 the Company took a variety of measures to ensure the availability and functioning of its critical infrastructure by implementing business continuity plans. To promote the safety and security of its employees, while complying with various government mandates including work-from-home arrangements and social-distancing initiatives to reduce the transmission of COVID-19, the Company is complying with federal and local regulations at its facilities. In addition, the Company created and executed programs utilizing its direct to consumer advertising and call center to contact patients and partner clinics to restart the Company's partners' businesses. In October 2021, the Company implemented a policy whereby all Company employees are required to be vaccinated or complete weekly COVID-19 testing. To conserve its cash in order to mitigate the ongoing impact of the COVID-19 pandemic, in the second quarter of 2020 the Company furloughed employees, who returned to work after the Company received proceeds from the Paycheck Protection Program ("PPP") (Note 11). The Company also reduced discretionary spending in 2020.

Supply chain disruptions which began during the pandemic have continued and may continue for the foreseeable future. While the Company's operations have not been materially impacted by the general trends in supply chain problems, the Company continues to monitor and assess potential risks.

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

Liquidity and Going Concern

The Company has been negatively impacted by the ongoing COVID-19 pandemic, has historically experienced recurring losses, has been dependent on raising capital from the sale of securities in order to continue to operate and refinanced its debt at a lower interest rate. During the COVID-19 pandemic, the Company received cash proceeds from the PPP Loan, which was forgiven, and the Economic Injury Disaster Loan (the "EIDL Loan") that was repaid at the time the Senior Term Facility was entered into with MidCap Financial Trust in September 2021 (Note 11). Additionally, in October 2021, the Company entered into an equity distribution agreement with an investment bank under which the Company may sell up to $11.0 million of its common stock in registered "at-the-market" offerings (Note 13). Management believes that the Company's cash and cash equivalents, combined with the anticipated revenues from the sale or use of its products, will be sufficient to satisfy the Company's working capital needs, capital asset purchases, outstanding commitments and other liquidity requirements associated with its existing operations for at least the next 12 months following the date of the issuance of these consolidated financial statements. However, the negative impact of the ongoing COVID-19 outbreak on the financial markets and supply chain disruptions could interfere with the Company's ability to access financing or financing on favorable terms.

2. Basis of Presentation and Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

The accompanying consolidated financial statements are presented in U.S. dollars and have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP"). Any reference in these notes to applicable guidance is meant to refer to the authoritative GAAP as found in the Accounting Standards Codification ("ASC") and as amended by Accounting Standards Updates ("ASUs") of the Financial Accounting Standards Board ("FASB"). The accompanying consolidated financial statements include the accounts of the Company and Photomedex India Private Limited, its wholly-owned subsidiary in India. No operating activities have occurred within the Company's subsidiary as of and during the years ended December 31, 2021 and 2020.

Use of Estimates

The preparation of the consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and reported amounts of revenue and expenses during the reporting period. The Company's significant estimates and judgments involve revenue recognition with respect to deferred revenues and the contract term and valuation allowances of accounts receivable, inputs used when evaluating goodwill for impairment, inputs used in the valuation of acquired intangible assets, state sales and use tax accruals, the estimated useful lives of intangible assets, and the valuation allowance related to deferred tax assets. Actual results could differ from those estimates.

Reclassifications

Certain reclassifications from the prior year presentation have been made to conform to the current year presentation.

Concentrations of Credit Risk and Major Customers

The Company's cash is held on deposit in demand accounts at a large financial institution in amounts in excess of the Federal Deposit Insurance Corporation, or FDIC, insurance coverage limit of $0.3 million per depositor, per FDIC-insured bank, per ownership category. Management has reviewed the financial statements of this institution and believes it has sufficient assets and liquidity to conduct its operations in the ordinary course of business with little credit risk to the Company.

Financial instruments that potentially subject the Company to concentrations of credit risk principally consist of cash equivalents and accounts receivable. The Company limits its credit risk associated with cash equivalents by placing investments in highly-rated money market funds. The Company limits its credit risk with respect to accounts receivable by performing credit evaluations when deemed necessary, but it does not require collateral to secure amounts owed by its customers.

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

The Company had one customer, an international distributor from which it earns dermatology recurring procedures and dermatology procedures equipment revenues, that accounted for more than 10% of the Company's revenues for the year ended December 31, 2021, and its former international master distributor from which it earned dermatology procedures equipment revenues that accounted for more than 10% of the Company's revenues for the year ended December 31, 2020. Revenues from this customer and the former international master distributor were $3.4 million and $2.7 million, or 11% and 12%, of total net revenues during the years ended December 31, 2021 and 2020, respectively. Accounts receivable associated with the Company's customer and former international master distributor were less than 10% of total accounts receivable as of December 31, 2021 and 2020, respectively. No other customer represented more than 10% of total accounts receivable as of December 31, 2021 or 2020.

Cash and Cash Equivalents

The Company considers all highly-liquid investments purchased with an original maturity of three months or less to be cash equivalents. As of December 31, 2021 and 2020, cash equivalents consisted of credit card transactions with settlement terms of less than five days.

Restricted Cash

Restricted cash represents amounts held on deposit at a commercial bank used to secure the Company's Note Payable. The Note Payable was repaid during the year ended December 31, 2021. The following table provides a reconciliation of the components of cash, cash equivalents and restricted cash reported in the Company's consolidated balance sheets to the total of the amount presented in the consolidated statements of cash flows (in thousands):

	December 31,	
	2021	2020
Cash and cash equivalents	$ 12,586	$ 10,604
Restricted cash	—	7,508
Total cash and restricted cash presented in the consolidated statements of cash flows	$ 12,586	$ 18,112

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable primarily relates to amounts due from customers, which are typically due within 30 to 90 days from invoice date. The Company provides credit to its customers in the normal course of business and maintains allowances for potential credit losses. The Company does not require collateral or other security for accounts receivable. The Company maintains allowances for doubtful accounts for estimated losses resulting from amounts deemed to be uncollectible from its customers. These allowances are for specific amounts on certain customer accounts based on facts and circumstances determined on a case-by-case basis. The Company writes off accounts receivable when they are considered uncollectible, and payments subsequently received on such receivables are credited to bad debt expense. The Company does not recognize interest accruing on accounts receivable past due.

Inventories

Inventories are stated at the lower of cost or net realizable value. Cost is determined based on purchased cost for raw materials and all production cost related to the laser manufacturing process (labor and indirect manufacturing cost, including sub-contracted work components) for work-in-process and finished goods is classified as inventory. For the Company's products, cost is determined on the first-in, first-out method. Work-in-process is immaterial, given the typically short manufacturing cycle and therefore, is disclosed in conjunction with raw materials.

The Company's equipment for the treatment of skin disorders (e.g. the XTRAC) will either (i) be placed in a physician's office and remain the property of the Company (at which date such equipment is transferred to property and equipment) or (ii) be sold to distributors or physicians directly. The cost to build a laser, whether for sale or for placement, is accumulated in inventory.

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

Reserves for slow-moving and obsolete inventories are provided based on historical experience and product demand. Management evaluates the adequacy of these reserves periodically based on forecasted sales and market trends.

Property and Equipment

Property and equipment are recorded at cost less accumulated depreciation. Maintenance and repairs are charged to expense as incurred and costs of improvements and renewals are capitalized. Upon retirement or disposition, the applicable property and equipment amounts are deducted from the accounts and any gain or loss is recorded in the consolidated statements of operations. Depreciation and amortization are recognized using the straight-line method based on the estimated useful lives of the related assets. The Company uses an estimated useful life of three years for computers, hardware and software, five years for machinery and equipment and seven years for furniture and fixtures and the lesser of the useful life or lease term for leasehold improvements.

Intangible Assets

Intangible assets consist of core technology, product technology, customer relationships, trademarks and distribution rights. Intangible assets are amortized over the period of estimated benefit using the straight-line method and estimated useful lives ranging from three to 12 years.

Goodwill

Goodwill is the excess of the cost of an acquired entity over the net amounts assigned to tangible and intangible assets acquired and liabilities assumed. Goodwill is not amortized, but is subject to an annual impairment test. The Company has two reporting units and goodwill is allocated to the reporting units.

The Company performs its goodwill impairment test on an annual basis in the fourth quarter of each fiscal year or more frequently if changes in circumstances or the occurrence of events suggest that an impairment exists. If the fair value of the reporting unit is less than its carrying value, an impairment loss is recorded to the extent that the implied fair value of the reporting unit’s goodwill is less than the carrying value of the reporting unit’s goodwill. The Company bypassed the qualitative assessment and did a quantitative assessment by comparing the fair value of a reporting unit with its carrying amount.The Company’s annual goodwill impairment test resulted in no impairment charges during the years ended December 31, 2021 and 2020.

Impairment of Long-Lived Assets and Intangibles

The Company reviews its long-lived assets and intangible assets subject to amortization for impairment whenever events or changes in circumstances indicate the carrying amount of an asset group may not be recoverable. Recoverability of assets held and used is measured by comparison of the carrying amount of an asset group to future net cash flows expected to be generated by the asset group. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the asset group exceeds the fair value of the asset group, less costs to sell. The Company did not record any charges related to asset impairment during the years ended December 31, 2021 and 2020.

Fair Value Measurements

The Company measures financial assets and liabilities at fair value at each reporting period using a fair value hierarchy that requires the use of observable inputs and minimizes the use of unobservable inputs. The Company defines fair value as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

- Level 1 – quoted market prices in active markets for identical assets or liabilities.
- Level 2 – observable inputs other than quoted prices in active markets for identical assets and liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3 – inputs that are generally unobservable and typically reflect the Company's estimate of assumptions that market participants would use in pricing the asset or liability.

Accrued Warranty Costs

The Company offers a standard warranty on product sales generally for a one to two-year period, however, the Company has offered longer warranty periods, ranging from three to four years, in order to meet competition or to meet customer demands. The Company provides for the estimated cost of the future warranty claims on the date the product is sold. The activity in the warranty accrual during the years ended December 31, 2021 and 2020 is summarized as follows (in thousands):

	December 31,	
	2021	2020
Balance, beginning of year	$ 113	$ 232
Additions	71	67
Expirations and claims satisfied	(105)	(186)
Total	79	113
Less current portion within accrued expenses and other current liabilities	(59)	(87)
Balance within deferred revenues and other liabilities	$ 20	$ 26

Debt Issuance Costs

The Company capitalizes direct costs incurred to obtain debt financing and amortizes these costs to interest expense over the term of the debt using the effective interest method. These costs are recorded as a debt discount and are netted against the related debt on the Company's consolidated balance sheets.

Revenue Recognition

Revenues from the Company's dermatology recurring procedures customers are earned by providing physicians with its laser products and charging the physicians a fee for a fixed number of treatment sessions or a fixed fee for a specified period of time not to exceed an agreed upon number of treatments; if that number is exceeded additional fees will have to be paid. The placement of the laser products at physician locations represents embedded leases which are accounted for as operating leases. For the lasers placed-in service under these arrangements, the terms of the domestic arrangements are generally 36 months with automatic one-year renewals and include a termination clause that can be effected at any time by either party with 30 to 60 day notice. Amounts paid are generally non-refundable. Sales of access codes for a fixed number of treatment sessions are considered variable treatment code payments and are recognized as revenue over the estimated usage period of the agreed upon number of treatments. Sales of access codes for a specified period of time are recognized as revenue on a straight-line basis as the lasers are being used over the term period specified in the agreement. Variable treatment code payments that will be paid only if the customer exceeds the agreed upon number of treatments are recognized only when such treatments are being exceeded and used. Internationally, the Company generally sells access codes for a fixed amount on a monthly basis to its distributors and the terms are generally 48 months, with termination in the event of the customers' failure to remit payments timely, and include a potential buy-out at the end of the term of the contract. Currently, this is the only foreign recurring revenue. Prepaid amounts recorded in deferred revenue and customer deposits recorded in accounts payable are recognized as revenue over the lease term in the patterns described above. Pricing is fixed with the customer. With respect to lease and non-lease components, the Company adopted the practical expedient to account for the arrangement as a single lease component.

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

Revenues from the Company's dermatology procedures equipment are recognized when control of the promised goods or services is transferred to its customers or distributors, in an amount that reflects the consideration to which it expects to be entitled in exchange for those goods or services. Accordingly, the Company determines revenue recognition through the following steps:

- identification of the contract, or contracts, with a customer;
- identification of the performance obligations in the contract;
- determination of the transaction price;
- allocation of the transaction price to the performance obligations in the contract; and
- recognition of revenue when, or as, performance obligations are satisfied.

Accounting for the Company's contracts involves the use of significant judgments and estimates including determining the separate performance obligations, allocating the transaction price to the different performance obligations and determining the method to measure the entity's performance toward satisfaction of performance obligations that most faithfully depicts when control is transferred to the customer. The Company allocates the contract's transaction price to each performance obligation using the Company's best estimate of the standalone selling price for each distinct good or service in the contract. The Company maximizes the use of observable inputs by beginning with average historical contractual selling prices and adjusting as necessary and on a consistent and rational basis for other inputs such as pricing trends, customer types, volumes and changing cost and margins.

Revenues from dermatology procedures equipment are recognized when control of the promised products is transferred to either the Company's distributors or end-user customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those products (the transaction price). Control transfers to the customer at a point in time. To indicate the transfer of control, the Company must have a present right to payment and legal title must have passed to the customer. The Company ships most of its products FOB shipping point, and as such, the Company primarily transfers control and records revenue upon shipment. From time to time the Company will grant certain customers, for example governmental customers, FOB destination terms, and the transfer of control for revenue recognition occurs upon receipt. The Company has elected to recognize the cost of freight and shipping activities as fulfillment costs. Amounts billed to customers for shipping and handling are included as part of the transaction price and recognized as revenue when control of the underlying goods are transferred to the customer. The related shipping and freight charges incurred by the Company are included in cost of revenues.

The following table presents the Company's net revenues disaggregated by dermatology recurring procedures and dermatology procedures equipment (in thousands):

	Year Ended December 31,	
	2021	**2020**
Dermatology recurring procedures	$ 22,528	$ 17,409
Dermatology procedures equipment	7,449	5,681
Total net revenues	$ 29,977	$ 23,090

The following table summarizes the Company's expected future undiscounted fixed treatment code payments from dermatology recurring procedures (in thousands):

Years ending December 31:	
2022	$ 1,680
2023	1,624
2024	1,303
2025	530
2026	4
	$ 5,141

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

Remaining performance obligations related to ASC 606 represent the aggregate transaction price allocated to performance obligations with an original contract term greater than one year, which are fully or partially unsatisfied at the end of the period. Remaining performance obligations include the potential obligation to perform under extended warranties but exclude any dermatology procedures equipment accounted for as leases. As of December 31, 2021 and 2020, the aggregate amount of the transaction price allocated to remaining performance obligations was $26 thousand and $115 thousand, respectively, and the Company expects to recognize $12 thousand and $108 thousand, respectively, of the remaining performance obligations within one year and the remainder over one to three years. Contract assets primarily relate to the Company's rights to consideration for work completed in relation to its services performed but not billed at the reporting date. The contract assets are transferred to receivables when the rights become unconditional. Currently, the Company does not have any contract assets which have not transferred to a receivable.

Contract liabilities primarily relate to extended warranties where the Company has received payments but has not yet satisfied the related performance obligations. The allocations of the transaction price are based on the price of stand-alone warranty contracts sold in the ordinary course of business. The advance consideration received from customers for the warranty services is a contract liability that is recognized ratably over the warranty period. As of December 31, 2021 and 2020, the $12 thousand and $108 thousand of short-term contract liabilities, respectively, is presented as deferred revenues and the $14 thousand and $7 thousand of long-term contract liabilities, respectively, is presented within deferred revenues and other liabilities on the consolidated balance sheets, respectively. For the years ended December 31, 2021 and 2020, the Company recognized $0.1 million and $0.2 million, respectively, as revenue from amounts classified as contract liabilities (i.e. deferred revenues) as of December 31, 2020 and 2019.

With respect to contract acquisition costs, the Company applied the practical expedient and expenses these costs immediately.

Engineering and Product Development

Engineering and product development costs associated with research, new product development and product redesign are expensed as incurred.

Advertising Costs

Advertising costs are expensed as incurred and included in selling and marketing expenses within the Company's consolidated statement of operations. The Company recognized advertising costs of $1.6 million and $0.7 million during the years ended December 31, 2021 and 2020, respectively.

Stock-Based Compensation

The Company measures share-based awards at their grant-date fair value and records compensation expense on a straight-line basis over the requisite service period of the awards.

Estimating the fair value of share-based awards requires the input of subjective assumptions, including the expected life of the options and stock price volatility. The Company accounts for forfeitures of stock option awards as they occur. The estimated fair value of restricted stock awards is equal to the Company's common stock price at the grant date. The Company uses the Black-Scholes option pricing model to value its stock option awards. The assumptions used in estimating the fair value of stock-option awards represent management's estimate and involve inherent uncertainties and the application of management's judgment. As a result, if factors change and management uses different assumptions, share-based compensation expense could be materially different for future awards.

Income Taxes

The Company accounts for income taxes using the asset and liability method. Under this method, deferred tax assets and liabilities are determined based on differences between the financial reporting and tax basis of assets and liabilities, as well as on net operating loss carryforwards, and are measured using enacted tax rates and laws that are expected to be in effect when the differences reverse. Any resulting net deferred tax assets are evaluated for recoverability and, accordingly, a valuation allowance is provided when it is not more likely than not that all or some portion of the deferred tax asset will be realized.

The Company recognizes the tax effects of uncertain tax positions only if the position is "more-likely-than-not" to be sustained were it to be challenged by a taxing authority. The assessment of the tax position is based solely on the technical merits of the position, without regard to the likelihood that the tax position may be challenged. If an uncertain tax position meets the "more-likely-than-not" threshold, the largest amount of tax benefit that is more than 50% likely to be recognized upon ultimate settlement with the taxing authority is recorded. The Company has no uncertain tax positions as of December 31, 2021. The Company includes interest and penalties related to income tax obligations within income tax expense. The Company's tax years are still under open status from 2017 to present.

Net Loss Per Share

Basic net loss per share of common stock is computed by dividing net loss attributable to common stockholders by the weighted-average number of shares of common stock outstanding during each period. Diluted loss per share of common stock includes the effect, if any, from the potential exercise or conversion of securities such as unvested restricted stock awards, stock options and warrants for common stock which would result in the issuance of incremental shares of common stock. For diluted net loss per share, the weighted-average number of shares of common stock is the same as for basic net loss per share due to the fact that when a net loss exists, dilutive securities are not included in the calculation as the impact is anti-dilutive.

Shares of the Company's Series C convertible preferred stock are subordinate to all other securities at the same subordination level as common stock and they participate in all dividends and distributions declared or paid with respect to common stock of the Company, on an as-converted basis. Therefore, the Series C convertible preferred stock meets the definition of common stock. Net loss per share is presented for each class of security meeting the definition of common stock. The net loss is allocated to each class of security meeting the definition of common stock based on their contractual terms.

The following potentially dilutive securities have been excluded from the computation of diluted weighted-average shares of common stock outstanding, as they would be anti-dilutive:

	December 31,	
	2021	2020
Unvested restricted stock units	90,540	—
Stock options	3,938,613	5,292,888
Common stock warrants	373,626	19,812
	4,402,779	5,312,700

Recent Accounting Pronouncements

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, as amended subsequently by ASUs 2018-19, 2019-04, 2019-05, 2019-10, 2019-11 and 2020-03. The guidance in the ASUs requires that credit losses be reported using an expected losses model rather than the incurred losses model that is currently used. The standard also establishes additional disclosures related to credit risks. This standard is effective for fiscal years beginning after December 15, 2022 and early adoption is permitted. The Company does not believe this will have a material effect on its consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. ASU 2019-12 eliminated certain exceptions and changed guidance on other matters. The exceptions relate to the allocation of income taxes in separate company financial statements, tax accounting for equity method investments and accounting for income taxes when the interim period year-to-date loss exceeds the anticipated full year loss. The changes relate to the accounting for franchise taxes that are income-based and non-income-based, determining if a step up in tax basis is part of a business combination or if it is a separate transaction, when enacted tax law changes should be included in the annual effective tax rate computation, and the allocation of taxes in separate company financial statements to a legal entity that is not subject to income tax. The new standard is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted. The adoption of ASU 2019-12 on January 1, 2021 did not have a material effect on the Company's consolidated financial statements.

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

In March 2020, the FASB issued ASU 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting* and in January 2021, the FASB issued ASU 2021-01, *Reference Rate Reform (Topic 848): Scope*. These pronouncements provide temporary optional expedients and exceptions for applying GAAP principles to contract modifications and hedging relationships to ease the financial reporting burdens of the expected market transition from LIBOR and other interbank offered rates to alternative reference rates. The transition period for adopting these ASUs is March 2020 through December 31, 2022. The Company continues to evaluate the temporary expedients and options available under this guidance and the effects of these pronouncements and, as the Company does not have any hedging activities, does not believe this will have a material effect on its consolidated financial statements.

In August 2020, the FASB issued ASU 2020-06, *Debt with Conversion and Other Options (Subtopic 470-20) and Derivative and Hedging – Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's own Equity*. The pronouncement simplifies the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity's own equity. Specifically, the ASU simplifies accounting for convertible instruments by removing major separation models required under current GAAP. In addition, the ASU removes certain settlement conditions that are required for equity contracts to qualify for it and simplifies the diluted earnings per share (EPS) calculations in certain areas. The guidance is effective for fiscal years beginning after December 15, 2023 and early adoption is permitted. The Company does not currently engage in contracts covered by this guidance and does not believe it will have a material effect on the Company's consolidated financial statements, but it could in the future.

In May 2021, the FASB issued ASU 2021-04, *Earnings per Share (Topic 260), Debt – Modifications and Extinguishments (Subtopic 470-50), Compensation – Stock Compensation (Topic 718), and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815-40): Issuer's Accounting for Certain Modifications or Exchanges or Freestanding Equity-Classified Written Call Options.* The pronouncement outlines how an entity should account for modifications made to equity-classified written call options, including stock options and warrants to purchase the entity's own common stock. The guidance in the ASU requires an entity to treat a modification of an equity-classified written call option that does not cause the option to become liability-classified as an exchange of the original option for a new option. This guidance applies whether the modification is structured as an amendment to the terms and conditions of the equity-classified written call option or as termination of the original option and issuance of a new option. The guidance is effective prospectively for fiscal years beginning after December 15, 2021 and early adoption is permitted. The adoption of this guidance on January 1, 2022 did not have a material effect on the consolidated financial statements.

3. Pharos Asset Acquisition

In August 2021, the Company acquired certain assets and liabilities related to the U.S. dermatology Pharos business from Ra Medical Systems, Inc. ("Ra Medical"). Ra Medical's Pharos excimer laser system holds FDA clearance to treat chronic skin diseases, including psoriasis, vitiligo, atopic dermatitis and leukoderma. The acquisition of these assets and liabilities allows the Company to market its full business solutions to Ra Medical's existing customer base comprised of 400 dermatology practices offering opportunities to increase its recurring revenue base and a pathway to gain additional placements for the Company's XTRAC excimer laser system.

The purchase price of $3.7 million was paid in cash at the time of acquisition. In addition, the Company assumed certain extended warranty service contracts associated with acquired laser system products. Concurrent with the purchase of the net assets, the Company and Ra Medical entered into a services agreement whereby Ra Medical will provide certain transitional services for the Company as it integrates the acquired assets into the Company. The Company determined this transaction represented an asset acquisition as substantially all of the value was in the acquired customer list intangible asset as defined by ASC 805, *Business Combinations* ("ASC 805").

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

The purchase price was allocated, on a relative fair value basis, to the acquired inventory, customer lists and deferred revenues as follows (in thousands):

Consideration:	
Cash payment	$ 3,700
Transaction costs	57
Total consideration	$ 3,757
Assets acquired:	
Inventory	$ 284
Customer lists	5,314
Total assets acquired	$ 5,598
Liabilities assumed:	
Deferred revenues – service contracts	$ 1,841
Total liabilities assumed	$ 1,841
Net assets acquired	$ 3,757

The customer lists intangible asset is being amortized on a straight-line basis over a period of 12 years. As the transaction was accounted for as an asset acquisition, the Company allocated consideration paid to the inventory acquired and the deferred revenues assumed, with the remaining consideration paid allocated to the customer lists intangible asset, which also equals its estimated fair value. The intangible asset was valued using an excess earnings model. Significant assumptions used in the excess earnings model include estimated customer sales growth, customer attrition and weighted average cost of capital of 3%, 5% and 17%, respectively.

4. Fair Value Measurements

The carrying values of cash equivalents, restricted cash, accounts receivable, prepaid expenses and other current assets, and accounts payable on the Company's consolidated balance sheets approximated their fair values as of December 31, 2021 and 2020 due to their short-term nature. The carrying value of the Company's current Senior Term Facility approximated its fair value as of December 31, 2021 due to its variable interest rate.

5. Inventories

Inventories consist of the following (in thousands):

	December 31,	
	2021	**2020**
Raw materials and work-in-process	$ 3,201	$ 2,949
Finished goods	288	495
	$ 3,489	$ 3,444

Work-in-process is immaterial given the Company's typically short manufacturing cycle and therefore, is included in with raw materials.

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

6. Property and Equipment

Property and equipment consist of the following (in thousands):

	December 31,	
	2021	2020
Lasers placed-in-service	$ 25,949	$ 22,942
Equipment, computer hardware and software	238	146
Furniture and fixtures	213	243
Leasehold improvements	254	43
	26,654	23,374
Less: accumulated depreciation and amortization	(19,771)	(17,845)
	$ 6,883	$ 5,529

The Company recorded depreciation and amortization expense of $2.1 million and $2.0 million during the years ended December 31, 2021 and 2020, respectively.

7. Leases

The Company recognizes right-of-use assets (“ROU assets”) and operating lease liabilities when it obtains the right to control an asset under a leasing arrangement with an initial term greater than 12 months. The Company adopted the short-term accounting election for leases with a duration of less than one year. The Company leases its facilities and certain IT and office equipment under non-cancellable operating leases. All of the Company’s leasing arrangements are classified as operating leases with remaining lease terms ranging from 1 to 3 years, and one facility lease has a renewal option for two years. Renewal options have been excluded from the determination of the lease term as they are not reasonably certain of exercise.

Operating lease costs were $0.4 million for each of the years ended December 31, 2021 and 2020. Cash paid for amounts included in the measurement of operating lease liabilities was $0.5 million and $0.4 million for the years ended December 31, 2021 and 2020, respectively. As of December 31, 2021 and 2020, the incremental borrowing rate was 9.76% and the weighted average remaining lease term was 2.3 years and 3.1 years, respectively.

The following table summarizes the Company’s operating lease maturities as of December 31, 2021 (in thousands):

Years ending December 31:	
2022	$ 371
2023	242
2024	186
Total remaining lease payments	799
Less: imputed interest	(89)
Total lease liabilities	$ 710

With respect to lease and non-lease components, the Company adopted the practical expedient to account for the lessee arrangement as a single lease component.

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

8. Intangible Assets and Goodwill

Intangible assets consist of the following (in thousands):

December 31, 2021	Balance	Accumulated Amortization	Net Book Value
Core technology	$ 5,700	$ (3,705)	$ 1,995
Product technology	2,000	(2,000)	—
Customer relationships	6,900	(4,485)	2,415
Tradenames	1,500	(975)	525
Pharos customer lists	5,314	(166)	5,148
	$ 21,414	$ (11,331)	$ 10,083

December 31, 2020	Balance	Accumulated Amortization	Net Book Value
Core technology	$ 5,700	$ (3,135)	$ 2,565
Product technology	2,000	(2,000)	—
Customer relationships	6,900	(3,795)	3,105
Tradenames	1,500	(825)	675
	$ 16,100	$ (9,755)	$ 6,345

The Company recorded amortization expense of $1.6 million during each of the years ended December 31, 2021 and 2020.

The following table summarizes the estimated future amortization expense for the above intangible assets for the next five years (in thousands):

Years ending December 31:	
2022	$ 1,853
2023	1,853
2024	1,853
2025	1,148
2026	443

Goodwill consists of the following (in thousands):

	December 31, 2021	December 31, 2020
Dermatology recurring procedures segment	$ 7,958	$ 7,958
Dermatology procedures equipment segment	845	845
	$ 8,803	$ 8,803

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

9. Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consist of the following (in thousands):

	December 31,	
	2021	2020
Warranty obligations	$ 59	$ 87
Compensation and related benefits	2,052	891
State sales, use and other taxes	3,697	3,105
Professional fees and other	569	607
	$ 6,377	$ 4,690

10. Note Payable

In December 2020, the Company had renewed its $7.3 million loan with a commercial bank pursuant to a one-year Fixed Rate – Term Promissory Note (the "Note"). The Company's obligations under the Note were secured by an Assignment and Pledge of Time Deposit ("Time Deposit"), under which the Company had pledged to the commercial bank the proceeds of a time deposit account in the amount of the loan and recorded the time deposit and accrued interest as restricted cash on the balance sheet. The principal was due on December 30, 2021 with no penalties for prepayments. The interest rate was fixed at 1.40%. The secured time deposit had a fixed interest rate of 0.40%. The Company repaid the Note with the proceeds from the Time Deposit in September 2021.

11. Long-Term Debt

Senior Term Facility

On September 30, 2021, the Company entered into a credit and security agreement with MidCap Financial Trust, also acting as the administrative agent, and the lenders identified therein ("Senior Term Facility"). The Senior Term Facility provides for an $8.0 million senior term loan that was drawn upon by the Company upon executing the agreement. On September 30, 2021, the Company also repaid the outstanding principal and interest for its Note (Note 10) and the Economic Injury Disaster Loan. Borrowings under the Senior Term Facility bear interest at LIBOR (with a LIBOR floor rate of 0.50%) plus 7.50% per year and mature on September 1, 2026, unless terminated earlier. The interest rate was 8.00% as of December 31, 2021. The Company is obligated to make monthly interest-only payments through September 30, 2024. From October 1, 2024 to the date of maturity, the Company will make 24 equal monthly principal payments plus interest, and all borrowings are secured by substantially all of the Company's assets. The Senior Debt Facility was amended on January 10, 2022 to provide MidCap Financial Trust's consent to the acquisition of TheraClear (Note 18).

The Company may voluntarily prepay the outstanding term loan, with such prepayment of at least $5.0 million, at any time upon 30 days' written notice. Upon prepayment, the Company will be required to pay a prepayment fee equal to (i) 4.00% of the outstanding principal prepaid or required to be prepaid (whichever is greater), if the prepayment is made within 12 months of September 30, 2021, (ii) 3.00% of the outstanding principal prepaid or required to be prepaid (whichever is greater), if the prepayment is made between 12 months and 24 months after September 30, 2021, (iii) 2.00% of the outstanding principal prepaid or required to be prepaid (whichever is greater), if the prepayment is made between 24 months and 36 months after September 30, 2021, or (iv) 1.00% of the outstanding principal prepaid or required to be prepaid (whichever is greater), if the prepayment is made after 36 months after September 30, 2021 and prior to the maturity date.

The Senior Term Facility contains certain customary representations and warranties, affirmative covenants and conditions. The Senior Term Facility also contains a number of negative covenants that subject the Company to certain exceptions and waivers and restrictions, as defined in the agreement. In addition, the Senior Term Facility contains a quarterly financial covenant that requires the Company to not have less than $24.0 million of net revenue for the trailing 12-month period, with compliance measured on the last day of each fiscal quarter beginning on September 30, 2021. At December 31, 2021, the minimum net revenue threshold was $25.0 million. The minimum net revenue threshold will increase to $30.0 million by December 31, 2023. At December 31, 2021, the Company was in compliance with all financial and nonfinancial covenants within the Senior Term Facility.

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

The Senior Term Facility contains customary indemnification obligations and customary events of default, including, among other things, (i) nonpayment, (ii) breach of warranty, (iii) nonperformance of covenants and obligations, (iv) default on other indebtedness, (v) judgments, (vi) change of control, (vii) bankruptcy and insolvency, (viii) impairment of security, (ix) regulatory matters, (x) failure to remain a publicly traded company, and (xi) material adverse event. Where an event of default arises from certain bankruptcy events, the commitments shall automatically and immediately terminate and the principal of, and interest then outstanding on, all of the loans shall become immediately due and payable. Subject to certain notice requirements and other conditions, upon the occurrence of other events of default, including the occurrence of a condition having or reasonably likely to have a material adverse effect, commitments may be terminated and the principal of, and interest then outstanding on, all of the loans may become immediately due and payable. At December 31, 2021, no event of default had occurred and the Company believed that events or conditions having a material adverse effect, giving rise to an acceleration of any amounts outstanding under the Senior Term Facility, had not occurred and was remote.

In connection with entering into the Senior Term Facility, the Company issued an affiliate of the lender a warrant to purchase 373,626 shares of the Company's common stock at an initial exercise price of $1.82 per share. The warrant is equity classified and is exercisable at any time on or prior to the tenth anniversary of its issue date. The estimated fair value of the warrants was $0.6 million and determined using the Black-Scholes option pricing model. The key assumptions used in the Black-Scholes option pricing model were (i) an expected term of ten years, (ii) expected volatility of 88.6%, (iii) a risk-free rate of 1.50% and (iv) no estimated dividend yield. In addition, the Company incurred third party costs and lender fees of $0.1 million. The proceeds were allocated on a basis that approximates the relative fair value method. The fair value of the warrants and fees incurred were recorded as a debt discount and are being recognized as interest expense over the life of the Senior Term Facility using the effective-interest method. The unamortized debt discount was $0.7 million as of December 31, 2021. The Company recognized interest expense of $0.3 million during the year ended December 31, 2021, of which $37 thousand was related to the amortization of the debt discount.

Future minimum principal payments at December 31, 2021 are as follows (in thousands):

Years ending December 31:	
2024	$ 1,000
2025	4,000
2026	3,000
	$ 8,000

Paycheck Protection Program Loan

On April 22, 2020, the Company closed a loan of $2.0 million (the "PPP Loan") from a commercial bank, pursuant to the Paycheck Protection Program ("PPP") administered by the Small Business Administration (the "SBA") pursuant to the CARES Act. The PPP Loan would have matured on May 1, 2022 and bore an interest rate of 1% per year. Payments of principal and interest of any unforgiven balance was scheduled to commence December 1, 2020, but was deferred until the SBA approved of the forgiveness amount. In the second quarter of 2021, the Company received notification that the PPP Loan had been forgiven. Accordingly, the Company recorded a gain on forgiveness of debt in the amount of the loan of $2.0 million.

Economic Injury Disaster Loan

On May 22, 2020, the Company secured the EIDL Loan from the SBA under its Economic Injury Disaster Loan ("EIDL") assistance program in light of the impact of the COVID-19 pandemic on the Company's business. The principal amount of the EIDL Loan is up to $0.5 million, with proceeds to be used for working capital purposes, and is collateralized by all the Company's assets. On June 12, 2020, the Company received these funds from the SBA. Interest accrued at the rate of 3.75% per year. Installment payments, including principal and interest, were originally due monthly beginning March 26, 2021 (12 months from the date of the promissory note) in the amount of $2 thousand. In March 2021, the SBA deferred payments on the EIDL loans by an additional 12 months. The balance of principal and interest was payable over the next 30 years from the date of the promissory note. There were no penalties for prepayment. Based upon guidance issued by the SBA on June 19, 2020, the EIDL Loan was not required to be refinanced by the PPP Loan. On September 30, 2021, the Company repaid this loan in full.

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

12. Commitments and Contingencies

Legal Matters

In the ordinary course of business, the Company is routinely a defendant in or party to pending and threatened legal actions and proceedings, including actions brought on behalf of various classes of claimants. These actions and proceedings are generally based on alleged violations of employment, contract and other laws. In some of these actions and proceedings, claims for substantial monetary damages are asserted against the Company. In the ordinary course of business, the Company is also subject to regulatory and governmental examinations, information gathering requests, inquiries, investigations, and threatened legal actions and proceedings. In connection with formal and informal inquiries by federal, state, local and foreign agencies, the Company receives numerous requests, subpoenas and orders for documents, testimony and information in connection with various aspects of its activities.

Sales and Use Tax Matters

The Company records state sales tax collected and remitted for its customers on dermatology procedures equipment sales on a net basis, excluded from revenue. The Company's sales tax expense that is not presently being collected and remitted for the recurring revenue business is recorded in general and administrative expenses within the consolidated statements of operations.

The Company believes its state sales and use tax accruals have been properly recognized such that, if the Company's arrangements with customers are deemed more likely than not that the Company would not be exempt from sales tax in a particular state, the basis for measurement of the state sales and use tax is calculated in accordance with ASC 405, *Liabilities*, as a transaction tax. If and when the Company is successful in defending itself or in settling the sales tax obligation for a lesser amount, the reversal of this liability is to be recorded in the period the settlement is reached. However, the precise scope, timing and time period at issue, as well as the final outcome of any audit and actual settlement, remains uncertain.

In the ordinary course of business, the Company is, from time to time, subject to audits performed by state taxing authorities. These actions and proceedings are generally based on the position that the arrangements entered into by the Company are subject to sales and use tax rather than exempt from tax under applicable law. Several states have assessed the Company an aggregate of $2.4 million including penalties and interest for the period from March 2014 through April 2020. The Company received notification that an administrative state judge issued an opinion finding in favor of the Company that the sale of XTRAC treatment codes was not taxable as sales tax with respect to that state's first assessment. This ruling covers $1.5 million of the total $2.4 million of assessments. The jurisdiction filed an appeal of the administrative law judge's finding and, following the submission of legal briefs by both sides and oral argument held in January 2022, the appeal is still in process.

The Company is also in another jurisdiction's administrative process of appeal with respect to the remaining $0.9 million of assessments, and the timing of the process has been impacted by the COVID-19 pandemic. If there is a determination that the true object of the Company's recurring revenue model is not exempt from sales taxes and is not a prescription medicine, or the Company does not have other defenses where the Company prevails, the Company may be subject to sales taxes in those particular states for previous years and in the future, plus potential interest and penalties.

Employee 401(k) Savings Plan

The Company sponsors a 401(k) defined contribution retirement savings plan that covers all eligible employees who have met the minimum age and service requirements. Under the plan, eligible employees may contribute a portion of their annual compensation into the plan up to IRS annual limits. The Company has elected to make matching contributions to the plan based on percentage of the employee's contribution. For the years ended December 31, 2021 and 2020, the Company's contributions to the plan were $0.3 million and $0.2 million, respectively.

Contingent Shares

In the event of certain contingencies, the investors in the equity financing in May 2018 may receive additional shares issued pursuant to the Retained Risk Provisions as defined in the Stock Purchase Agreements ("SPAs"). There were additional contingencies included in the SPAs that expired in May 2020 did not result in the issuance of shares.

13. Stockholders' Equity

Preferred Stock

The Company is authorized to issue preferred stock with such designation, rights and preferences as may be determined from time to time by the Company's Board of Directors. Other than the limitations on conversions to keep each such holder's beneficial ownership below 9.99%, the terms of the Series C convertible preferred stock generally bestow the same rights to each holder as such holder would receive if they were common stock shareholders and are not redeemable by the holders, except that the Series C convertible preferred stock shares do not have voting rights. Each share of Series C convertible preferred stock has a stated value of $1,000 and is convertible into shares of common stock at a conversion price equal to $2.69. During the year ended December 31, 2020, the Series C convertible preferred investors converted 2,103 shares of Series C preferred stock into 782,089 shares common stock. No preferred shares were outstanding as of December 31, 2021 and 2020.

Common Stock

The Company issued 329,076 shares and 15,000 shares upon the exercise of options and issued 234,558 shares and 71,683 shares upon the vesting of restricted stock units during the years ended December 31, 2021 and 2020, respectively.

In October 2021, the Company entered into an equity distribution agreement under which the Company may sell up to $11.0 million of its shares of common stock in registered "at-the-market" offerings. The shares will be offered at prevailing market prices, and the Company will pay commissions of up to 3.0% of the gross proceeds from the sale of shares sold through the Company's agent, which may act as an agent and/or principal. The Company has no obligation to sell any shares under this agreement and may, at any time, suspend solicitations under this agreement. No shares of the Company's common stock have been sold under this distribution agreement during fiscal 2021**.**

Common Stock Warrants

In September 2021 and in connection with entering into the Company's Senior Term Facility (Note 11), the Company issued a warrant to purchase 373,626 shares of the Company's common stock at an initial exercise price of $1.82 per share. The warrant is equity classified and is exercisable at any time on or prior to the tenth anniversary of its issue date. As of December 31, 2021, the warrant remains outstanding in its entirety.

14. Stock-Based Compensation

The Company's 2016 Omnibus Incentive Stock Plan ("2016 Plan"), as amended, has reserved up to 7,832,651 shares of common stock for future issuance. As of December 31, 2021, there were 3,932,271 shares of common stock remaining available for issuance for awards under the 2016 Plan.

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

The Company measures share-based awards at their grant-date fair value and records compensation expense on a straight-line basis over the requisite service period of the awards. The Company recorded share-based compensation expense of $1.6 million (for all awards and modifications, if any) for each of the years ended December 31, 2021 and 2020, within general and administrative expenses in the accompanying consolidated statements of operations.

In connection with the separation of the Company's Chief Executive Officer in February 2021, the Company accelerated the vesting of all unvested options to purchase shares of common stock and extended the period to exercise to August 22, 2021. This acceleration and the extension of the period to vest met the modification criteria for accounting purposes. For these modifications, the Company calculated and recorded additional compensation expense of $0.2 million.

Stock Options

The following table summarizes stock option activity for the years ended December 31, 2021 and 2020:

	Number of Shares under Option Plan	Weighted-Average Exercise Price per Option	Weighted-Average Remaining Contractual Life (in years)
Outstanding at January 1, 2020	4,908,038	$ 1.90	
Granted	400,000	1.46	
Exercised	(15,000)	1.29	
Forfeited and expired	(150)	170.00	
Outstanding at January 1, 2021	5,292,888	$ 1.87	7.69
Granted	2,463,714	1.70	
Exercised	(1,557,628)	1.12	
Forfeited and expired	(2,260,361)	2.10	
Outstanding at December 31, 2021	3,938,613	$ 1.90	7.91
Exercisable at December 31, 2021	1,216,564	$ 2.32	4.86

The weighted-average grant date fair value of options granted was $1.27 and $1.11 per share during the years ended December 31, 2021 and 2020, respectively. As of December 31, 2021, the total unrecognized compensation expense related to unvested stock option awards was $2.8 million, which the Company expects to recognize over a weighted-average period of approximately 2.6 years. The aggregate intrinsic value of options outstanding and options exercisable at December 31, 2021 was $26 thousand and $4 thousand, respectively, and the aggregate intrinsic value of options that were exercised during the year ended December 31, 2021 was $0.5 million. The aggregate intrinsic value of options outstanding and options exercisable at December 31, 2020 was $0.6 million and $0.5 million, respectively, and the aggregate intrinsic value of options that were exercised during the year ended December 31, 2020 was $3 thousand.

During the year ended December 31, 2021, there were 1,557,628 options that were exercised on a cashless basis at $1.12 per share resulting in the net issuance of 329,076 shares of common stock.

The fair value of options is estimated using the Black Scholes option pricing model which takes into account inputs such as the exercise price, the value of the underlying common stock at the grant date, expected term, expected volatility, risk free interest rate and dividend yield. The fair value of each grant of options during the year ended December 31, 2021 and 2020 was determined using the methods and assumptions discussed below.

- The expected term of employee options is based on the observed and expected time to full-vesting, forfeiture and exercise. Groups of employees that have similar historical exercise behavior are considered separately for valuation purposes. Options expire up to a maximum of ten years from the date of grant.

- The expected volatility is based on historical volatility of the Company's common stock.
- The risk-free interest rate is based on the interest rate payable on U.S. Treasury securities in effect at the time of grant for a period that is commensurate with the assumed expected term.
- The expected dividend yield is none because the Company has not historically paid and does not expect for the foreseeable future to pay a dividend on its ordinary shares.

For the years ended December 31, 2021 and 2020, the grant date fair value of all option grants was estimated at the time of grant using the Black-Scholes option-pricing model using the following weighted average assumptions:

	Year Ended December 31,	
	2021	2020
Expected term (in years)	5.96	6.00
Expected volatility	90.03%	94.00%
Risk-free rate	1.08%	0.53%
Dividend rate	0.00%	0.00%

Restricted Stock Units

Restricted stock units have been issued to certain board members. Restricted stock units unvested are summarized in the following table:

	Number of Units	Weighted-Average Grant Date Fair Value
Outstanding at January 1, 2020	77,237	$ 2.46
Granted	—	—
Vested	(68,091)	2.46
Forfeited and expired	(9,146)	2.46
Unvested at January 1, 2021	—	$ —
Granted	290,861	1.44
Vested	(146,364)	1.42
Forfeited and expired	(53,957)	1.45
Unvested at December 31, 2021	90,540	$ 1.45

As of December 31, 2021, the total unrecognized compensation expense related to unvested restricted stock units was less than $0.1 million, which the Company expects to recognize over a weighted-average period of approximately 0.5 years.

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

15. Income Taxes

Income tax expense consists of the following (in thousands):

	Year Ended December 31,	
	2021	2020
Current:		
Federal	$ —	$ —
State	22	21
	22	21
Deferred:		
Federal	23	129
State	(11)	125
	12	254
Income tax expense	$ 34	$ 275

Deferred tax assets and liabilities are determined based on the differences between the consolidated financial statement carrying amounts and tax bases of assets and liabilities using enacted tax rates in effect for years in which differences are expected to reverse.

Significant components of the Company's deferred tax liability for federal income taxes consisted of the following:

	December 31,	
	2021	2020
Deferred tax assets (liabilities) (in thousands)		
Net operating loss carryforwards	$ 46,596	$ 45,819
Intangible assets	1,039	1,450
Inventory	26	51
Reserves and accrued expenses	1,230	896
Property and equipment	441	(178)
Stock-based compensation	458	808
Operating lease right-of-use assets	(159)	(249)
Goodwill	(950)	(815)
Operating lease liability	177	272
481(a) adjustment	(667)	—
Less: valuation allowance	(48,457)	(48,308)
Net deferred tax liability	$ (266)	$ (254)

In assessing the need for a valuation allowance, management must determine that there will be sufficient taxable income to allow for the realization of deferred tax assets. Based upon the historical and anticipated future losses, management has determined that the deferred tax assets do not meet the more likely than not threshold for realizability. Accordingly, a nearly full valuation allowance has been recorded against the Company's deferred tax assets as of December 31, 2021 and 2020. The valuation allowance increased by $0.1 million and $1.2 million during the years ended December 31, 2021 and 2020, respectively. The Company does not have unrecognized tax benefits as of December 31, 2021 or 2020. The Company recognizes interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense.

The Company had net operating loss ("NOL") carryforwards for federal and state income tax purposes as follows (in thousands):

	December 31,	
Combined NOL carryforwards:	2021	2020
Federal	$ 204,314	$ 200,976
State	$ 60,654	$ 43,501

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

The NOL carryforwards generated prior to 2018 begin expiring in 2022 for federal and 2030 for state income tax purposes. Federal and many state NOLs generated in 2018 and into the future now have an indefinite life.

The NOL carryforwards are subject to review and possible adjustment by the Internal Revenue Service and state tax authorities. NOL carryforwards may become subject to an annual limitation in the event of certain cumulative changes in the ownership interest of significant stockholders over a three year period in excess of 50%, as defined under Sections 382 and 383 of the Internal Revenue Code, respectively, as well as similar state provisions. This could limit the amount of tax attributes that can be utilized annually to offset future taxable income or tax liabilities. The amount of the annual limitation is determined based on the value of the Company immediately prior to the ownership change. Subsequent ownership changes may further affect the limitation in future years. To date, the Company has not performed an analysis to determine whether or not ownership changes have occurred since inception.

A reconciliation of income tax expense at the statutory federal income tax rate and income taxes as reflected in the consolidated financial statements is as follows:

	December 31,	
Rate reconciliation:	**2021**	**2020**
Federal tax expense at statutory rate	21.00%	21.00%
State tax, net of federal benefit	(0.33)%	6.59%
Permanent differences	8.90%	(2.75)%
Other difference and true ups	(25.27)%	(2.58)%
Change in valuation allowance	(5.57)%	(28.90)%
Tax provision	(1.27)%	(6.64)%

16. Business and Geographical Reporting Segments

The Company organized its business into two operating segments to better align its organization based upon the Company's management structure, products and services offered, markets served and types of customers, as follows. The Dermatology Recurring Procedures segment derives its revenues from the usage of its equipment by dermatologists to perform XTRAC procedures. The Dermatology Procedures Equipment segment generates revenues from the sale of equipment, such as lasers and lamp products. Management reviews financial information presented on an operating segment basis for the purposes of making certain operating decisions and assessing financial performance.

Unallocated operating expenses include costs that are not specific to a particular segment but are general to the group; included are expenses incurred for administrative and accounting staff, general liability and other insurance, professional fees and other similar corporate expenses. Interest and other financing income (expense) is also not allocated to the operating segments.

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

The following tables reflect results of operations from our business segments for the periods indicated below:

Year Ended December 31, 2021	Dermatology Recurring Procedures	Dermatology Procedures Equipment	Total
Revenues	$ 22,528	$ 7,449	$ 29,977
Cost of revenues	6,418	3,709	10,127
Gross profit	16,110	3,740	19,850
Gross profit %	71.5%	50.2%	66.2%
Allocated expenses:			
Engineering and product development	1,251	183	1,434
Selling and marketing	12,257	849	13,106
Unallocated expenses	—	—	9,712
	13,508	1,032	24,252
Income (loss) from operations	2,602	2,708	(4,402)
Interest expense	—	—	(314)
Interest income	—	—	15
Gain on debt extinguishment	—	—	2,029
Income (loss) before income tax expense	$ 2,602	$ 2,708	$ (2,672)

Year Ended December 31, 2020	Dermatology Recurring Procedures	Dermatology Procedures Equipment	Total
Revenues	$ 17,409	$ 5,681	$ 23,090
Cost of revenues	5,832	3,124	8,956
Gross profit	11,577	2,557	14,134
Gross profit %	66.5%	45.0%	61.2%
Allocated expenses:			
Engineering and product development	1,101	173	1,274
Selling and marketing	8,437	601	9,038
Unallocated expenses	—	—	7,898
	9,538	774	18,210
Income (loss) from operations	2,039	1,783	(4,076)
Interest expense	—	—	(211)
Interest income	—	—	150
Income (loss) before income tax expense	$ 2,039	$ 1,783	$ (4,137)

The following table presents the Company’s revenue disaggregated by geographical region for the years ended December 31, 2021 and 2020. Domestic refers to revenue from customers based in the United States, and foreign recurring revenue is derived from the Company’s distributors primarily in Asia.

STRATA Skin Sciences, Inc. and Subsidiary
Notes to Consolidated Financial Statements

Year Ended December 31, 2021	Dermatology Recurring Procedures	Dermatology Procedures Equipment	Total
Domestic	$ 21,215	$ 1,982	$ 23,197
Foreign	1,313	5,467	6,780
Total	$ 22,528	$ 7,449	$ 29,977

Year Ended December 31, 2020	Dermatology Recurring Procedures	Dermatology Procedures Equipment	Total
Domestic	$ 16,848	$ 956	$ 17,804
Foreign	561	4,725	5,286
Total	$ 17,409	$ 5,681	$ 23,090

As of December 31, 2021 and 2020, total assets by reportable segment were as follows:

	December 31, 2021	December 31, 2020
Assets:		
Dermatology recurring procedures	$ 30,897	$ 25,112
Dermatology procedures equipment	2,662	3,052
Other unallocated assets	13,034	18,614
Consolidated total	$ 46,593	$ 46,778

Long-lived assets of $1.0 million and $0.5 million were located in international markets as of December 31, 2021 and 2020, respectively, with the remainder located in domestic markets.

17. Subsequent Events

TheraClear

In January 2022, the Company acquired certain assets related to the TheraClear Devices from Theravant Corporation. The TheraClear asset acquisition will allow the Company to further develop, commercialize and market the TheraClear Devices that are used for acne treatment, as well as advance the TheraClear technology into multiple other devices that can be used to treat a range of additional indications.

The Company made an upfront cash payment of $0.5 million and issued to Theravant Corporation 358,367 shares of common stock with an aggregate value of $0.5 million in connection with the TheraClear asset acquisition. Theravant Corporation is eligible to receive up to $3.0 million in future earnout payments upon the achievement of certain annual net revenue milestones, up to $20.0 million in future royalty payments based upon gross profit from future domestic sales, 25% of gross profit from international sales over the subsequent four-year period, and up to $1.0 million in future milestone payments upon the achievement of certain development and related net revenue targets.

Exhibit 4.16

DESCRIPTION OF OUR COMMON STOCK

General

The following description of the material provisions of our capital stock (which includes a description of securities we may offer pursuant to the registration statement of which this prospectus, as the same may be supplemented, forms a part) does not purport to be complete and is based on and qualified by our Certificate of Incorporation, as amended and restated (the "Charter"), our Bylaws, and our Warrant Agreement to Purchase Shares of the Common Stock of STRATA Skin Sciences, Inc., dated as of September 30, 2021, between us and MidCap Funding XXVII Trust ("Warrant Agreement"), each of which is incorporated by reference in the registration statement of which this prospectus is a part. The summary below is also qualified by reference to provisions of the Delaware General Corporation Law ("DGCL").

Our authorized capital stock consists of 160,000,000 shares, consisting of 150,000,000 shares of common stock, $0.001 par value per share, and 10,000,000 shares of preferred stock, $0.10 par value per share. As of December 31, 2021, our outstanding capital stock consists of 34,364,679 shares of common stock, and no shares of preferred stock. These figures do not include (i) securities that may be issued upon exercise or vesting of our outstanding derivative securities including our options to purchase shares of common stock and restricted stock units under our equity incentive plans and a stock purchase warrant, and (ii) 358,367 shares of common stock issued to Theravant Corporation, a Delaware corporation ("Theravant"), pursuant to the terms and conditions of an Asset Purchase Agreement entered into between us, Theravant and certain other parties thereto.

We, directly or through agents, dealers or underwriters designated from time to time, may offer, issue and sell, together or separately, up to $25,000,000 in the aggregate of:

- common stock;
- preferred stock;
- secured or unsecured debt securities consisting of notes, debentures or other evidences of indebtedness which may be senior debt securities, senior subordinated debt securities or subordinated debt securities, each of which may be convertible into equity securities;
- warrants to purchase our securities;
- rights to purchase our securities; or
- units comprised of, or other combinations of, the foregoing securities.

We may issue the debt securities as exchangeable for or convertible into shares of common stock, preferred stock or other securities. The preferred stock may also be exchangeable for and/or convertible into shares of common stock, another series of preferred stock or other securities. The debt securities, the preferred stock, the common stock and the warrants are collectively referred to in this prospectus as the "securities." When a particular series of securities is offered, a supplement to this prospectus will be delivered with this prospectus, which will set forth the terms of the offering and sale of the offered securities.

Common Stock

As of December 31, 2021, there were 34,364,679 shares of common stock issued and outstanding. The outstanding shares of common stock are duly authorized, validly issued, fully paid and non-assessable.

Voting Power

Except as otherwise required by law or as provided in any certificate of designation for any series of Preferred Stock, the holders of common stock possess all the voting power for the election of our directors and all other matters requiring stockholder action. Holders of common stock are entitled to one vote per share held of record on matters to be voted on by stockholders.

Dividends

Holders of common stock will be entitled to receive such dividends, if any, as may be declared from time to time by our board of directors in its discretion out of funds legally available therefor and shall share equally on a per share basis in such dividends and distributions, provided that such holder is not an Unsuitable Person (as defined below).

Liquidation, Dissolution and Winding-Up

In the event of our voluntary or involuntary liquidation, dissolution, distribution of assets or winding-up, the holders of our common stock will be entitled to receive an equal amount per share of all of our assets of whatever kind available for distribution to stockholders, after the rights of our creditors and the rights of holders of Preferred Stock, if any, have been satisfied.

Preemptive or Other Rights

There are no sinking fund provisions applicable to the common stock. Our stockholders have no preemptive or other subscription rights.

Preferred Stock

Our board of directors has the authority to issue up to an aggregate of 10,000,000 shares of Preferred Stock in one or more series, and to fix the designations, preferences, rights, qualifications, limitations and restrictions thereof or thereon, without any further vote or action by the stockholders. No shares of Preferred Stock are outstanding as of the date hereof.

You should refer to any filing with the SEC relating to the series of preferred stock being offered for the specific terms of that series, including:

- the title of the series and the number of shares in the series;
- the price at which the preferred stock will be offered;
- the dividend rate or rates or method of calculating the rates, the dates on which the dividends will be payable, whether or not dividends will be cumulative or noncumulative and, if cumulative, the dates from which dividends on the preferred stock being offered will cumulate;
- the voting rights, if any, of the holders of shares of the preferred stock being offered;
- the provisions for a sinking fund, if any, and the provisions for redemption, if applicable, of the preferred stock being offered, including any restrictions on the foregoing as a result of arrearage in the payment of dividends or sinking fund installments;
- the liquidation preference per share;
- the terms and conditions, if applicable, upon which the preferred stock being offered will be convertible into our common stock, including the conversion price, or the manner of calculating the conversion price, and the conversion period;
- the terms and conditions, if applicable, upon which the preferred stock being offered will be exchangeable for debt securities, including the exchange price, or the manner of calculating the exchange price, and the exchange period;

- any listing of the preferred stock being offered on any securities exchange;
- a discussion of any material federal income tax considerations applicable to the preferred stock being offered;
- any preemptive rights;
- the relative ranking and preferences of the preferred stock being offered as to dividend rights and rights upon liquidation, dissolution or the winding up of our affairs;
- any limitations on the issuance of any class or series of preferred stock ranking senior or equal to the series of preferred stock being offered as to dividend rights and rights upon liquidation, dissolution or the winding up of our affairs; and
- any additional rights, preferences, qualifications, limitations and restrictions of the series.

Upon issuance, the shares of preferred stock will be fully paid and nonassessable, which means that its holders will have paid their purchase price in full and we may not require them to pay additional funds.

Any preferred stock terms selected by our board of directors could decrease the amount of earnings and assets available for distribution to holders of our common stock or adversely affect the rights and power, including voting rights, of the holders of our common stock without any further vote or action by the stockholders. The rights of holders of our common stock will be subject to, and may be adversely affected by, the rights of the holders of any preferred stock that may be issued by us in the future. The issuance of preferred stock could also have the effect of delaying or preventing a change in control of our company or make removal of management more difficult.

Certain Anti-Takeover Provisions of Our Charter and Bylaws and Certain Provisions of Delaware Law

Our Charter and Bylaws contain provisions that could have the effect of delaying or preventing changes in control or changes in our management without the consent of our board of directors. These provisions include:

- no cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- the exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of the board of directors or the resignation, death, or removal of a director with or without cause by stockholders, which prevents stockholders from being able to fill vacancies on our board of directors;
- the ability of our board of directors to determine whether to issue shares of our Preferred Stock and to determine the price and other terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquirer;
- limiting the liability of, and providing indemnification to, our directors and officers;
- specifying the Court of Chancery of the State of Delaware as the exclusive forum for adjudication of disputes;
- controls over the procedures for the conduct and scheduling of stockholder meetings; and
- advance notice procedures that stockholders must comply with in order to nominate candidates to our board of directors or to propose matters to be acted upon at a stockholders' meeting, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of us.

These provisions, singly or together, could delay hostile takeovers and changes in control of us or changes in our board of directors and management.

As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the DGCL, which prevents some stockholders holding more than 15% of our outstanding common stock from engaging in certain business combinations without approval of the holders of substantially all of our outstanding common stock. Any provision of our Charter or Bylaws, or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock and could also affect the price that some investors are willing to pay for our common stock.

MidCap Warrant

As of the date of this prospectus, there is a warrant outstanding exercisable for 373,626 shares of common stock (the "Warrant").

The Warrant was originally issued in connection with a loan and security agreement between us and MidCap. Pursuant to the terms of the Warrant Agreement, the Warrant entitles the registered holder to purchase 373,626 shares of our common stock at a per share price of $1.82, subject to adjustment as discussed below. The Warrant may be exercised only for a whole number of shares of our common stock. The Warrant is exercisable and will expire on September 30, 2031, which shall be automatically exercised on a "cashless" basis upon expiration if the fair market value of our common stock is greater than the exercise price of the Warrant on the expiration date of the Warrant.

The Warrant provides that the holder thereof may elect to exercise the warrant on a net "cashless" basis at any time prior to the expiration thereof. Pursuant to a registration rights agreement, we agreed to file a registration statement covering the resale of the shares underlying the Warrant by November 14, 2021.

In connection with a Merger Event (defined below) that is a Liquid Sale (defined below) where the value per share of our common stock is greater than the exercise price then in effect, the Warrant shall, on and after the closing of the Merger Event, automatically and without further action on the part of any party or other person, represent the right to receive, in lieu of the shares of our common stock that are issuable under the Warrant Agreement as of immediately prior to the closing of such Merger Event, the consideration payable on or in respect of such shares of our common stock less the amount equal to then-effective exercise price multiplied by the number of shares of our common stock as to which the Warrant is then exercised (such amount being the "purchase price") for all such shares of our common stock (such consideration to include both the consideration payable at the closing of such Merger Event and all deferred consideration payable thereafter, if any, including, but not limited to, payments of amounts deposited at such closing into escrow and payments in the nature of earn-outs, milestone payments or other performance-based payments), and such Merger Event consideration shall be paid to the holder of the Warrant as and when it is paid to the holders of the outstanding shares of our common stock; provided, however, in the event of a Merger Event that is an arm's length sale of all or substantially all of our assets (and only its assets) to a third party that is not an affiliate of us (a "True Asset Sale"), the holder of the Warrant may either (a) exercise its conversion or purchase right under the Warrant and such exercise will be deemed effective immediately prior to the consummation of such Merger Event, or (b) permit the Warrant to continue for the term of the Warrant Agreement if we continue as a going concern following the closing of any such True Asset Sale. In connection with a Merger Event that is not a Liquid Sale, we shall cause the successor or surviving entity to assume the Warrant Agreement and our obligations thereunder on the closing thereof, and thereafter the Warrant shall be exercisable for the same number, class, and type of securities or other property as the holder of the Warrant would have received in consideration for the shares of our common stock issuable under the Warrant Agreement had it exercised the Warrant in full as of immediately prior to such closing, at an aggregate exercise price no greater than the aggregate exercise price in effect as of immediately prior to such closing, and subject to further adjustment from time to time in accordance with the provisions of this Agreement. This provision shall similarly apply to successive Merger Events. For purposes of this section of the Prospectus:

- A “Merger Event” means any of the following: (i) a sale, lease or other transfer of all or substantially all of our assets, (ii) any merger or consolidation involving us in which we are not the surviving entity or in which our outstanding shares of capital stock are otherwise converted into or exchanged for shares of capital stock or other securities or property of another entity or converted into the right to receive cash, or (iii) any sale by holders of our outstanding voting equity securities in a single transaction or series of related transactions of shares constituting a majority of the outstanding combined voting power of us; and

- A “Liquid Sale” means the closing of a Merger Event in which the consideration received by us and/or our stockholders, as applicable, consists solely of cash and/or securities meeting all of the following requirements:

  - the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act and is then current in its filing of all required reports and other information under the Act and the Exchange Act;

  - the class and series of shares or other security of the issuer that would be received by the holder of the Warrant in connection with the Merger Event were the holder to exercise the Warrant on or prior to the closing thereof is then traded on a national securities exchange or over-the-counter market; and

  - following the closing of such Merger Event, the holder of the Warrant would not be restricted from publicly re-selling all of the issuer’s shares and/or other securities that would be received by the holder in such Merger Event were the holder to exercise the Warrant in full on or prior to the closing of such Merger Event, except to the extent that any such restriction (x) arises solely under federal or state securities laws, rules or regulations, and (y) does not extend beyond six (6) months from the closing of such Merger Event.

Except for Merger Events discussed above, if we at any time shall, by combination, reclassification, exchange or subdivision of securities or otherwise, change any of the securities as to which purchase rights under the Warrant Agreement exist into the same or a different number of securities of any other class or classes of securities, the Warrant Agreement shall thereafter represent the right to acquire such number and kind of securities as would have been issuable as the result of such change with respect to the securities which were subject to the purchase rights under the Warrant Agreement immediately prior to such combination, reclassification, exchange, subdivision or other change. This provision shall similarly apply to successive combination, reclassification, exchange, subdivision or other change.

If we at any time shall combine or subdivide our common stock, (i) in the case of a subdivision, the exercise price of the Warrant shall be proportionately decreased and the number of shares for which the Warrant is exercisable shall be proportionately increased, or (ii) in the case of a combination, the exercise price of the Warrant shall be proportionately increased and the number of shares for which the Warrant is exercisable shall be proportionately decreased.

If we at any time while the Warrant Agreement is outstanding and unexpired shall pay a dividend with respect to the outstanding shares of our common stock payable in additional shares of our common stock, then the exercise price of the Warrant shall be adjusted to that price determined by multiplying the exercise price in effect immediately prior to such date of determination by a fraction (i) the numerator of which shall be the total number of shares of our common stock outstanding immediately prior to such dividend or distribution, and (ii) the denominator of which shall be the total number of shares of our common stock outstanding immediately after such dividend or distribution, and the number of shares of our common stock for which the Warrant is exercisable shall be proportionately increased.

If we at any time while the Warrant Agreement is outstanding and unexpired shall make any other dividend or distribution on or with respect to our common stock, except any dividend or distribution (i) in cash, or (ii) specifically provided for in any other clause of the Warrant Agreement, then, in each such case, provision shall be made by us such that the holder of the Warrant shall receive upon exercise or conversion of the Warrant a proportionate share of any such distribution as though it were the holder of our common stock (or other stock for which our common stock is convertible) as of the record date fixed for the determination of our stockholders entitled to receive such distribution.

MidCap Credit Facility

On September 30, 2021, we entered into an $8.0 million senior secured credit facility (the "Credit Facility") with MidCap pursuant to that certain Credit and Security Agreement with MidCap as agent and the lenders party thereto (the "MidCap Credit Agreement"), of which the full amount was drawn by us on September 30, 2021. Borrowings under the Credit Facility bear interest at a rate per annum equal to LIBOR (with a LIBOR floor rate of 0.50%) plus 7.50%. We are obligated to make only interest payments (payable monthly in arrears) through September 30, 2024. Commencing on October 1, 2024 and continuing for the remaining twenty-four months of the facility, we will be required to make monthly interest payments and monthly principal payments based on the amortization schedule set forth in the MidCap Credit Agreement, subject to certain adjustments as described in the MidCap Credit Agreement. The final maturity date under the MidCap Credit Agreement is September 1, 2026, unless earlier terminated.

Further, the MidCap Credit Agreement contains a quarterly financial covenant that requires us to not have less than $24.0 million of net revenue (raised to $30.0 million by December 31, 2023) for the trailing 12-month period as of September 30, 2021, with compliance measured on the last day of each fiscal quarter beginning on September 30, 2021. Further, there are additional covenants that, among other things, restrict our ability and certain of our subsidiaries to (i) incur, assume or guarantee additional indebtedness; (ii) pay dividends or redeem or repurchase capital stock; (iii) make other restricted payments; (iv) incur liens; (v) redeem debt that is junior in right of payment to the Credit Facility; (vi) sell or otherwise dispose of assets, including capital stock of subsidiaries; (vii) enter into mergers or consolidations; and (viii) enter into transactions with affiliates. These covenants are subject to a number of exceptions and qualifications.

Exhibit 10.79

August 2, 2021

[Executive Name]
[Home Address]
[Home Address]

Re: Severance Agreement

Dear ___:

STRATA Skin Sciences, Inc., a Delaware corporation (the "Company") considers it essential and in the best interests of its stockholders to foster the continuous employment of key management personnel. In this regard, the Board of Directors of the Company (the "Board") recognizes that the possibility of a termination of employment related to a change in control of the Company may exist and that such possibility, and the uncertainty and questions that it may raise among management, may result in the departure or distraction of management personnel to the detriment of the Company and its stockholders.

The Board has determined that appropriate steps should be taken to reinforce and encourage the continued attention and dedication of members of the Company's senior management, including you, to their assigned duties without distraction in the face of potentially disturbing circumstances arising from the possibility of a termination of employment.

In order to induce you to remain in the employ of the Company, the Company agrees that you will receive the severance benefits set forth in this letter agreement (the "Agreement") in the event your employment with the Company is terminated under the circumstances described below.

1. ***Term of Agreement.***

The term of this Agreement will commence on the date above (the "Effective Date") and will continue until termination of your employment in accordance with the terms of this Agreement. Notwithstanding the foregoing, if a Change in Control occurs after the Effective Date and during the term of this Agreement, this Agreement will continue in effect for a limited period of two (2) years after the date of such Change in Control, unless terminated sooner in accordance with this Agreement.

1.1 You acknowledge that your employment with the Company constitutes "at-will" employment and that, because you are an at-will employee, either you or the Company may terminate your employment at any time, upon written notice of termination within a reasonable period of time before the effective date of the termination, subject to the procedures and consequences set forth in this Agreement.

2. ***Severance Benefits***.

2.1 Termination by the Company without Cause or by You with Good Reason in connection with a Change in Control: If your employment hereunder is terminated by the Company other than for death, disability, or Cause or by you for Good Reason, in each case (i) during the six (6) month period prior to a Change in Control and it is reasonably demonstrated by you that your termination of employment was at the request of a third party who has taken steps reasonably calculated to effect a Change in Control or otherwise arose in connection with or anticipation of a Change in Control or (ii) on or within twenty-four (24) months after a Change in Control (such time periods, the "Protection Period"), you will be entitled to receive:

a. Severance in an amount equal to your then annual base compensation then in effect (or immediately prior to any reduction resulting in a termination for Good Reason) for nine (9) months payable in equal installments, less applicable taxes and withholdings, pursuant to the Company's normal payroll procedures over nine (9) months.

a. A pro-rata payment from the Company's annual bonus plan for the fiscal year in which your termination occurred, equal to the payment you would have received had you remained in the employment of the Company through the end of such fiscal year, multiplied by a fraction, the numerator of which is the number of full months elapsed from the start of such fiscal year to the date of your termination of employment, and the denominator of which is 12. Such amount, if any, will be paid at the time such award would otherwise have been paid to other participants had your employment not terminated, but in no event later than two and one-half months following the end of such fiscal year.

b. For a period of nine (9) months following your termination, you and your beneficiaries will remain eligible to participate, on the same terms and conditions as apply from time to time to the Company's senior management generally, in the health, vision and dental programs of the Company; provided, however, that such eligibility will cease at such time as you become eligible to participate in comparable programs of a subsequent employer; and further provided that if you are precluded from participating in any such plan or program by its terms or applicable law, you will receive a dollar amount equal to the cost (estimated in good faith by the Company) of obtaining such benefits, or substantially similar benefits, within thirty (30) days following the date of your termination.

2.2 Good Reason: You will be considered to have terminated employment hereunder for Good Reason if such termination of employment is on account of any of the following actions by the Company, which occur during the Protection Period, without your express written consent:

a. A reduction of in your annual base compensation;

b. Any material diminution of your positions, duties, or responsibilities;

c. Any permanent reassignment of you to a location greater than sixty (60) miles from your primary residence; or

d. A material breach by the Company of its obligations under this Agreement.

Notwithstanding the foregoing, a termination by you will not be for "Good Reason," unless you have given the Company at least ten (10) business days written notice specifying the grounds upon which you intend to terminate your employment hereunder for "Good Reason". In addition, any action or inaction by the Company which is remedied within thirty (30) days following such written notice will not constitute "Good Reason" for termination hereunder and will render such notice null and void.

2.3 Change in Control. The term "Change of Control" is defined as: (i) any "person," as such term is used in sections 13(d) and 14(d) of Securities Exchange Act of 1934, as amended (the "Exchange Act"), becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 75% or more of the total voting power represented by the Company's then outstanding voting securities; provided, however, that no Change of Control shall be deemed to occur by reason of the acquisition of securities of the Company by one or more investors in the Company in capital-raising transactions; (ii) the direct or indirect sale or exchange by the stockholders of the Company of all or substantially all of the outstanding capital stock of the Company; (iii) a merger or consolidation in which the Company is a party and in which the stockholders of the Company before such Change of Control do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the Company after such transaction; or (iv) an agreement for the sale or disposition by the Company of all or substantially all the Company's assets.

2.4 Cause. "Cause" is defined as: (i) the conviction for (or your plea of *nolo contendere* to) a felony or a crime involving moral turpitude; (ii) your material violation of any written Company policy or the material terms of this Agreement after written notice of such failure and failure to cure within ten (10) days; (iii) your failure to follow a lawful direction of the Board after written notice of such failure and failure to cure within ten (10) days; (iv) a breach of a fiduciary responsibility owing to the Company or any of its affiliates; (v) your failure to perform such duties as are reasonably delegated or assigned to you after written notice of such failure and failure to cure within ten (10) days; (vi) drug or alcohol abuse, but in the first instance of such drug or alcohol abuse, only if you fail to seek appropriate counseling or fails to complete a prescribed counseling program to the satisfaction of the Board; and (vii) a breach of any obligation relating to non-competition, non-solicitation of employees, customers, licensees or licensors, confidentiality, or ownership and/or rights as to creations and/or proprietary information or property, under any written agreement in effect from time to time, in favor of the Company.

2.5 Accrued Benefits. Upon your termination of employment for any reason, you, or your estate, as applicable, will receive your accrued but unpaid annual base compensation and any accrued but unpaid or otherwise vested benefits under any Company benefit or incentive plan.

3. Parachute Provisions. Payments under this Agreement shall be made without regard to whether the deductibility of such payments (or any other payments) would be limited or precluded by Section 280G of the Code, and without regard to whether such payments would subject Employee to the federal excise tax levied on certain "excess parachute payments" under Section 4999 of the Code; provided, however, that if the Total After-Tax Payments (as defined below) would be increased by the limitation or elimination of any amount payable under this Agreement, then the amount payable under this Agreement will be reduced to the extent necessary to maximize the Total After-Tax Payments. The determination of whether and to what extent payments under this Agreement are required to be reduced in accordance with the preceding sentence will be made by the Company's independent auditors. In the event of any underpayment or overpayment under this Agreement (as determined after the application of this Section 5(f)), the amount of such underpayment or overpayment will be immediately paid by the Company to Employee or refunded by Employee to the Company, as the case may be, with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code. For purposes of this Agreement, "Total After-Tax Payments" means the total of all "parachute payments" (as that term is defined in Section 280G(b)(2) of the Code) made to or for the benefit of Employee (whether made hereunder or otherwise), after reduction for all applicable federal taxes (including, without limitation, the tax described in Section 4999 of the Code)..

4. ***Covenant Not to Compete; Nonsolicitation; Confidential Information; Nondisparagement.***

4.1 You agree with the Company that you will not at any time, except in performance of your obligations to the Company or with the prior written consent of the Company, directly or indirectly, reveal to any "Person" (as defined in Section 3(9) of the Employee Retirement Income Security Act of 1974, as amended) (other than the Company, or its employees, officers, directors, shareholders, or agents) or use for your own benefit any information deemed to be confidential by the Company or any of its subsidiaries or affiliates (such subsidiaries and affiliates, collectively "Affiliates") ("Confidential Information") relating to the assets, liabilities, employees, goodwill, business affairs of the Company or any of its Affiliates, including, without limitation, any information concerning past, present, or prospective customers, manufacturing processes, marketing, operating, or financial data, or other confidential information used by, or useful to, the Company or any of its Affiliates and known (whether or not known with the knowledge and permission of the Company or any of its Affiliates and whether or not at any time prior to the Effective Date developed, devised, or otherwise created in whole or in part by your efforts) to you by reason of your employment by, shareholdings in or other association with the Company or any of its Affiliates. You further agree that you will retain all copies and extracts of any written or electronic Confidential Information acquired or developed by you during any such employment, shareholding, or association in trust for the sole benefit of the Company, its Affiliates, and their successors and assigns. You further agree that you will not, without the prior written consent of the Company, remove or take from the Company's or any of its Affiliate's premises (or if previously removed or taken, you will promptly return) any written or electronic Confidential Information or any copies or extracts thereof. Upon the request and at the expense of the Company, you will promptly make all disclosures, execute all instruments and papers, and perform all acts reasonably necessary to vest and confirm in the Company and its Affiliates, fully and completely, all rights created or contemplated by this Section 4.1. The term "Confidential Information" will not include information that is or becomes generally available to the public other than as a result of a disclosure by, or at the direction of, you. Your agreements set forth in this Section 4.1 regarding Confidential Information are independent of, and in addition to, your agreements set forth in the rest of Section 4 and will not be construed either to enlarge or to contract the scope of such other agreements.

4.2 You agree with the Company that, for so long as you are employed by the Company or any of its Affiliates and continuing for the Restricted Period (as defined below), you will not, without the prior written consent of the Company, directly or indirectly, and whether as principal or investor or as an employee, officer, director, manager, partner, consultant, agent, or otherwise, alone or in association with any other Person, become involved in a Competing Business (as defined below) in any geographic area in which the Company or any of its Affiliates has engaged during such period in any of the activities which comprise a Competing Business, or in which you have knowledge of the Company's plans to engage in any of the activities which comprise a Competing Business (including, without limitation, any area in which any customer of the Company or any of its Affiliates may be located). This Section 4.2 will not be violated, however, by owning in the aggregate less than one percent of any class of securities listed on a national securities exchange or traded publicly in the over-the-counter market.

4.3 As a separate and independent covenant, you agree with the Company that, for so long as you are employed by the Company or any of its Affiliates and continuing for the Restricted Period (as defined below), you will not in any way,(a) solicit, encourage or entice any client, customer, vendor, licensee, licensor, consultant or supplier of or to the Company to cease to do business with, or to reduce or modify the business such person or entity has done with or intends to do with, or to end, reduce or modify any relationship or proposed relationship of such person or entity with, the Company, or (b) interfere with, disrupt or attempt to disrupt or otherwise jeopardize any relationship of the Company with any client, customer, vendor, licensee, licensor, consultant or supplier or any other person or entity with whom the Company has a business relationship.

4.4 For purposes of this Section 4, a "Competing Business" means a business or enterprise (other than Company or its subsidiaries) that competes directly or indirectly with the business conducted by the Company or proposed to be conducted by the Company during the time you were employed by the Company or during the Restricted Period, within the geographical areas in which the Company is doing business or proposes to do business at the time of your termination of employment.

4.5 You confirm that all Confidential Information is and will remain the exclusive property of the Company and its Affiliates. All business records, papers, and documents kept or made by you relating to the business of the Company will be and remain the property of the Company and its Affiliates.

4.6 You agree to refrain during the Restricted Period and at all times thereafter from, disparaging, criticizing or making statements which may be perceived as negative, detrimental or injurious to the Company, or any of the management, owners, business, policies or practices of the Company.

4.7 Without intending to limit the remedies available to the Company and its Affiliates, you agree that a breach of any of the covenants contained in this Section 4 may result in material and irreparable injury to the Company or its Affiliates for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach or threat thereof, the Company and its Affiliates will be entitled to seek a temporary restraining order or a preliminary or permanent injunction, or both, without bond or other security, restraining you from engaging in activities prohibited by this Section 4 or such other relief as may be required specifically to enforce any of the covenants in this Section 4. Such injunctive relief in any court will be available to the Company and its Affiliates in lieu of, or prior to or pending determination in, any arbitration proceeding.

4.8 Although you and the Company consider the restrictions contained in this Section 4 to be the minimum restriction reasonable for the purposes of preserving the Company's goodwill and other proprietary rights, if a final determination is made by a court that the time or territory, or any other restriction contained in this Section 4 is an unreasonable or otherwise unenforceable restriction against you, the provisions of this Section 4 will not be rendered void, but will be deemed amended to apply as to such maximum time and territory and to such other extent as the court may determine to be reasonable.

4.9 Notwithstanding anything to the contrary in Section 2.1, in the event that you breach any of the covenants contained in this Section 4:

a. Any remaining payments or benefits to be provided under Section 2.1 will not be paid or will cease immediately upon such breach; and

b. The Company will be entitled to the immediate repayment of all payments and benefits provided under Section 2.1.

4.10 You agree that the covenants contained in this Section 4 may be assigned by the Company, as needed, to affect its purpose and intent and that the Company's assignee will be entitled to the full benefit of the restrictions enjoyed by the Company under the terms of these covenants.

4.11 The term "Restricted Period" means one (1) year following the termination of your employment for any reason; provided, however, that the Restricted Period will be extended by a period of time equal to any period during which you are in breach of any of the covenants set forth in this Section 4.

5. ***Binding Effect and Benefit***.

5.1 The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to all or substantially all of the business 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. Failure by the Company to obtain such assumption and agreement prior to the effectiveness of any such succession will constitute a material breach of this Agreement. As used in this Agreement, "the Company" means the Company as defined above and any successor to the respective business or assets of the Company as abovementioned which assumes and agrees to perform this Agreement by operation of law, or otherwise.

5.2 This Agreement will inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, heirs, distributees, devisees, and legatees. If you should die while any amount is payable to you under this Agreement if you had continued to live, all such amounts, unless otherwise provided herein, will be paid in accordance with the terms of this Agreement to your devisee, legatee, or other designee, or, if there is no such designee, to your estate.

6. ***Assignment***. This Agreement will not be assignable by either party hereto, except as provided in Section 4.10 and by the Company to any successor in interest to the business of the Company, provided that the Company (if it remains a separate entity) will remain fully liable under this Agreement for all obligations, payments, and otherwise.

7. **Governing Law; Venue.** This Agreement and the legal relations among the parties shall be governed by the internal laws of the Commonwealth of Pennsylvania, without regard to principles of conflict of laws. Any litigation arising in connection with or related to this Agreement or any of the subject hereof shall be tried solely by and in the United States District Court for the Eastern District of Pennsylvania, provided that, if such litigation shall not be permitted to be tried by such court, then such litigation shall be held solely in the state courts of Pennsylvania sitting in Montgomery County. Each party hereto irrevocably consents to and confers personal jurisdiction on the United States District Court for the Eastern District of Pennsylvania, or, if (but only if) the litigation in question shall not be permitted to be tried by such court, or the state courts of Pennsylvania sitting in Montgomery County, and expressly waives any objection to the venue of such court, as the case may be and any argument that any case filed should be transferred to a more convenient forum. **.** EACH PARTY HERETO HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT, OR THE EMPLOYMENT OF EMPLOYEE, WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. EACH PARTY HERETO AGREES THAT EITHER OF THEM MAY FILE A COPY OF THIS AGREEMENT UNDER SEAL WITH THE COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

8. ***No Mitigation or Offset***. In the event of termination of your employment, you will be under no obligation to seek other employment and there will be no offset against any payment or benefit provided for in this Agreement on account of any remuneration or benefits from any subsequent employment that you may obtain.

9. ***Application of Code Section 409A***. This Agreement shall be interpreted and administered to the extent practicable in a manner consistent with the following statement of intent: All benefits and compensation payable to Employee pursuant to this Agreement are intended to be exempt from the definition of "nonqualified deferred compensation plan" or "deferral of compensation" under Code Section 409A in accordance with one or more exemptions available under the Treasury Regulations promulgated under Code Section 409A. To the extent that any benefit or payment is or becomes subject to Code Section 409A, this Agreement is intended to comply with the requirements of Code Section 409A as applicable to such benefit or payment.

10. ***Miscellaneous***.

10.1 The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement, which will remain in full force and effect.

10.2 No waiver by you or the Company at any time of any breach of, or compliance with, any provision of this Agreement to be performed by the Company or you, respectively, will be deemed a waiver of that or any other provision at any subsequent time.

10.3 Upon any termination of employment that entitles you to payments and benefits under Section 2, you must, within 60 days of your termination of employment, execute a legally enforceable release agreement substantially in the form of Exhibit A attached hereto prior to the receipt of such payments and benefits. If such 60 day period begins in one taxable year and ends in a second taxable year, the payments and benefits will be provided or commence being provided, if at all, in the second taxable year. Any payments made to you will be paid net of any applicable withholding required under federal, state, local, or foreign law.

10.4 This Agreement is the exclusive agreement with respect to the severance benefits payable to you in the event of a termination of your employment. All prior negotiations and agreements are hereby merged into this Agreement. You acknowledge and agree that any employment agreement, offer letter, and/or any agreement regarding change in control or termination benefits, previously entered into between you and the Company is immediately null and void.

10.5 Notwithstanding the termination of this Agreement, the provisions which specify continuing obligations, compensation and benefits, and rights will remain in effect until such time as all such obligations are discharged, all such compensation and benefits are received, and no party or beneficiary has any remaining actual or contingent rights under this Agreement.

11. ***Legal Fees***. In the event of a dispute following a Change in Control, the Company, or its successor, will reimburse you for all reasonable legal fees and expenses incurred by you in attempting to obtain or enforce rights or benefits provided by this Agreement, if, with respect to any such right or benefit, you are successful in obtaining or enforcing such right or benefit (including by negotiated settlement).

If you agree to the terms of this Agreement, please sign on the line provided below and return two signed copies to the Company. A fully executed copy will be returned to you for your files after it is signed by the Company.

Sincerely,

STRATA Skin Sciences, Inc.

By: _____

Title: _____

Dated: _____

Agreed to and accepted:

_____

[EXECUTIVE]

Dated: _____

APPENDIX A

FORM OF GENERAL RELEASE

Reference is made to the Severance Agreement dated as of _____ (the "Severance Agreement"), between STRATA Skin Sciences, Inc., a Delaware corporation (the "Company"), and _____ (the "Executive"). Capitalized terms used herein without definition shall have the meanings assigned to them in the Severance Agreement, a copy of which is attached hereto.

SECTION 1. Mutual Release.

(a) General Waiver and Release. In consideration of their respective obligations under the Severance Agreement in connection with and following the Executive's termination of employment with the Company and its affiliates, and subject to the limitations set forth in Section 2 hereof, the Company, on the one hand, does hereby release and forever discharge the Executive, and the Executive, on the other hand, does hereby release and forever discharge the Company, its present, former, and future shareholders, affiliates, direct and indirect parents, subsidiaries, successors, directors, officers, employees, agents, attorneys, heirs, and assigns (the "Company Parties" and, together with the Executive, the "Released Parties"), from any and all claims, actions, causes of action, suits, costs, controversies, judgments, decrees, verdicts, damages, liabilities, attorneys' fees, covenants, contracts, and agreements that the Executive may have against the Company Parties or the Company Parties may have against the Executive, or in the future may possess based on events occurring during the term of the Executive's employment with the Company arising out of (i) the Executive's employment relationship with or service as an employee or officer of the Company and its affiliates or the termination of such relationship or service or (ii) any event, condition, circumstance or obligation that occurred, existed or arose on or prior to the date the Executive signs this Release, with respect to each other, including, but not limited to, any claims arising under Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1866, the Civil Rights Act of 1991, the Employee Retirement Income Security Act of 1974, the Family Medical Leave Act of 1993, or any other federal or state or local law or any foreign jurisdiction, whether such claim arises under statute, common law, or in equity, and whether or not any of the Released Parties are presently aware of the existence of such claim, damage, action or cause of action, suit, or demand (collectively, including claims, actions, and causes of action set forth in Section 1(b) below, the "Claims"). The Executive and the Company Parties also do forever release, discharge, and waive any right the Executive or the Company Parties may have to recover in any proceeding brought by any federal, state, or local agency against the Company Parties and the Executive, respectively, to enforce any laws. Each of the parties hereto agrees that the value received or to be received in the future as described in the Severance Agreement shall be in full satisfaction of any and all claims, actions, or causes of action for payment or other benefits of any kind that the Executive may have against the Company Parties and that the Company Parties may have against the Executive; provided, however, that nothing in this Agreement shall preclude the Company from recouping, or refusing to pay, (i) severance benefits under the Severance Agreement in accordance with Section 2.5 thereof or (ii) cash or equity incentive-based compensation paid or payable to the Executive in the event of a restatement of the Company's financial statements pursuant to applicable law or regulation or Company policy adopted consistent with applicable law or regulation.

(b) ADEA Release. In further recognition of the above, the Executive hereby releases and forever discharges each of the Company Parties from any and all claims, actions and causes of action that the Executive may have as of the date the Executive signs and delivers to the Company this Release arising under the federal Age Discrimination in Employment Act of 1967, as amended, and the applicable rules and regulations promulgated thereunder ("ADEA").

SECTION 2. Limitations.

(a) No Impact on Obligations under the Severance Agreement or the Shareholder Agreement. The releases contained herein do not, are not intended to, and shall not be interpreted to serve as a release or waiver by the Executive or the Company Parties with respect to their respective rights and obligations set forth in the Severance Agreement. In particular, and without limiting the generality of the preceding sentence, the Executive does not waive or release any claim the Executive might now or in the future have to be paid or receive the payments and benefits provided for in Section 2 of the Severance Agreement, and the Company Parties do not waive or release any claim they might now or in the future have under Section 4 of the Severance Agreement.

(b) No Impact on Indemnification Rights. The releases contained herein do not, are not intended to, and shall not be interpreted to serve as a release or waiver by the Executive with respect to any indemnification rights the Executive may have and such indemnification rights shall not be effected, modified, or extinguished by the Executive's execution of this Release.

SECTION 3. No Pending Litigation.

The Executive represents and agrees that the Executive has not filed, and will not file, any action, complaint, charge, grievance, or arbitration against any Company Party, except that such agreement shall not apply to any claim based on any matter which, pursuant to Section 2, is excluded from the scope of this Release. The Company hereby represents and agrees that no Company Party has filed, and no Company Party will file, any action, complaint, charge, grievance, or arbitration against the Executive except that such agreement shall not apply to any claim based on any matter which, pursuant to Section 2, is excluded from the scope of this Release.

SECTION 4. Acknowledgment.

The Executive acknowledges and confirms that (i) the Executive has been advised in writing by the Company in connection with the Executive's termination to consult with an attorney of the Executive's choice prior to signing this Release and to have such attorney explain to the Executive the terms of the Release, including, without limitation, the terms relating to the Executive's release of Claims arising under ADEA; (ii) the Executive has read this Release carefully and completely and understands each of the terms hereof; and (iii) the Executive was given not less than twenty-one (21) days to consider the terms of the Release and to consult with an attorney of the Executive's choosing with respect thereto, and that for a period of seven (7) days following the Executive's signing of this Agreement, the Executive shall have the option to revoke this Agreement in accordance with the terms set forth in Section 6 below.

SECTION 5. Successors.

The rights and obligations under this Agreement shall inure to any and all successors of the Company.

SECTION 6. Revocation.

The Executive shall have the right to revoke this Release during the seven-day period commencing immediately following the date the Executive signs and delivers this Agreement to the Company (the "Revocation Period"). The period shall expire at 5:00 p.m., Eastern Standard Time, on the last day of the seven-day period; provided, however, that if such seventh day is not a business day, the period shall extend to 5:00 p.m. on the next succeeding business day. In the event of any such revocation by the Executive, the obligations of the Company under this Release shall terminate and be of no further force and effect as of the date of such revocation. No such revocation by the Executive shall be effective unless it is in writing and signed by the Executive and received by a representative of the Company prior to the expiration of the Revocation Period.

SECTION 7. Counterparts.

This Release may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

STRATA Skin Sciences, Inc.

By: _____

Name:

Title:

ACCEPTED AND AGREED:

_____

[Name]

Dated:

Exhibit 10.84

LIMITED CONSENT AND AMENDMENT NO. 1 TO CREDIT AND SECURITY AGREEMENT

This LIMITED CONSENT AND AMENDMENT NO. 1 TO CREDIT AND SECURITY AGREEMENT (this "**Agreement**") is made as of this **10th** day of January, 2022 ("**Effective Date**"), by and among **STRATA SKIN SCIENCES, INC.**, a Delaware corporation (together with each of its subsidiaries that hereafter becomes a party to this Agreement, the "**Borrower**"), **MIDCAP FINANCIAL TRUST**, as Agent for Lenders (in such capacity and together with its permitted successors and assigns, the "**Agent**") and the other financial institutions or other entities from time to time parties to the Credit Agreement referenced below, each as a Lender.

RECITALS

- Agent, Lenders and Borrower have entered into that certain Credit and Security Agreement, dated as of September 30, 2021 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**Existing Credit Agreement**" and the Existing Credit Agreement, as amended hereby, the "**Credit Agreement**"), pursuant to which the Lenders have agreed to make certain advances of money and to extend certain financial accommodations to Borrower in the amounts and manner set forth in the Credit Agreement.

- Borrower desires to purchase from Theravant Corporation, a Delaware corporation ("Seller"), certain Products and related assets constituting the Purchased Assets (as defined in the Theravant Asset Purchase Agreement) (the "**Theravant Asset Acquisition**") pursuant to the terms of that certain Asset Purchase Agreement dated as of January 10, 2022, between and among Seller, Ashish Bhatia, as seller representative, Ashish Bhatia, Francesco Lucarelli and Robert Anderson, and STRATA Skin Sciences, Inc., as buyer, attached hereto as Exhibit A (the "**Theravant Asset Purchase Agreement**").

- The Theravant Asset Acquisition would not constitute a Permitted Investment pursuant to the terms of the Credit Agreement and, therefore, the Credit Parties have requested that Agent and Lenders, constituting at least the Required Lenders, provide their written consent to the Theravant Asset Acquisition and the incurrence of certain Contingent Obligations related to such acquisition as set forth in the Theravant Purchase Agreement and that certain Development Agreement, dated as of January 10, 2022, by and between Theravant Corporation and STRATA Skin Sciences, Inc. attached hereto as Exhibit B (the "**Theravant Development Agreement**"), on and subject to the conditions and terms set forth herein.

- Agent and the Lenders constituting at least the Required Lenders have agreed to so consent, as more fully set forth and subject to the terms and conditions herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, Required Lenders, and the Credit Parties hereby agree as follows:

- **Recitals; Construction**. This Agreement shall constitute a Financing Document and the Recitals and each reference to the Credit Agreement, unless otherwise expressly noted, will be deemed to reference the Credit Agreement as modified hereby. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement (including those capitalized terms used in the Recitals hereto).

- **Limited Consent**.

  - Subject to the satisfaction of the conditions of this Agreement, including, without limitation, the conditions to effectiveness set forth in Section 5 below, and in accordance with the terms set forth in this Agreement, Agent and each Required Lender hereby consents to the Theravant Asset Acquisition as a Permitted Investment.

  - The limited consent in paragraph 2(a) is effective solely for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (i) except as expressly provided herein, be a consent to any amendment, waiver or modification of any term or condition of the Credit Agreement or of any other Financing Document; (ii) prejudice any right that Agent or the Lenders have or may have in the future under or in connection with the Credit Agreement or any other Financing Document; (iii) waive any Default and/or Event of Default that may exist and is continuing as of the date hereof; or (iv) establish a custom or course of dealing among Borrower, on the one hand, and Agent or any Lender, on the other hand.

- **Amendments**. Subject to the terms and conditions of this Agreement, including, without limitation, the conditions to effectiveness set forth in Section 5 below, the Existing Credit Agreement is hereby amended as follows:

  - The following definitions of "First Amendment", "First Amendment Effective Date", "Theravant Asset Purchase Agreement" and "Theravant Development Agreement" are hereby added to Section 15 of the Existing Credit Agreement in the appropriate alphabetical order therein:

    "**First Amendment**" means that certain Limited Consent and Amendment No. 1 to Credit and Security Agreement dated January 10, 2022, by and among Borrower, Agent and the Lenders party thereto."

    "**First Amendment Effective Date**" means January 10, 2022.

    "**Theravant Asset Purchase Agreement**" has the meaning set forth in the First Amendment."

    "**Theravant Development Agreement**" has the meaning set forth in the First Amendment."

  - The definition of "Material Agreement" set forth in Section 15 of the Existing Credit Agreement is hereby amended by:

    - renumbering the existing clause (d) as clause (e); and

    - adding the following new clause (d) in the appropriate alphabetical order therein:

    1. "(d) the Theravant Development Agreement"

  - The definition of "Net Revenue" set forth in Section 15 of the Existing Credit Agreement is hereby deleted in its entirety and replaced with the following:

    "**Net Revenue**" means, for any period, the consolidated revenues of Credit Parties, as determined in accordance with GAAP, generated solely through the commercial sale of Products (other than Products acquired by the Credit Parties after the Closing Date) by the Credit Parties during such period, in all cases, in the Ordinary Course of Business.

- The definition of "Permitted Contingent Obligations" set forth in Section 15 of the Existing Credit Agreement is hereby amended by:
  - deleting the "and" at the end of clause (i) thereof;
  - renumbering the existing clause (j) as clause (k); and
  - Adding the following new clause (j) in the appropriate alphabetical order therein:

2. "(j) unsecured Contingent Obligations incurred under the Theravant Asset Purchase Agreement or the Theravant Development Agreement, to the extent the payment of such Contingent Obligations is required under the terms and conditions of the Theravant Purchase Agreement or the Theravant Development Agreement, as applicable, and, in each case, as in effect on the First Amendment Effective Date; *provided* that Borrowers shall not prepay any such Contingent Obligations or make or permit any payment (or set aside any funds for payment) on or in respect such Contingent Obligations (x) if an Event of Default has occurred and is outstanding and (y) until such Contingent Obligations are due and owing pursuant to the terms of the Theravant Purchase Agreement or the Theravant Development Agreement, as applicable; and"

- **Representations and Warranties; Reaffirmation of Security Interest**. Each Credit Party hereby (a) confirms that all of the representations and warranties set forth in the Credit Agreement are true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) with respect to such Credit Party as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date, (b) represents and warrants that (i) Credit Parties have delivered to Agent final copies of the Theravant Asset Purchase Agreement and all other documents related thereto and, (ii) (A) the Purchased Assets (as defined in the Theravant Asset Purchase Agreement) and the Theravant Development Agreement shall constitute "Collateral" and Agent shall have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Agent's rights and remedies under the Financing Documents, (B) the Theravant Asset Acquisition and all related transaction in connection therewith shall be consummated in all material respects in accordance with applicable Laws, (C) the assets acquired in the Theravant Asset Acquisition are for use in the same, similar, related or complementary lines of business as the Credit Parties are currently engaged or a similar, related or complementary line of business reasonably related, ancillary or supplemental thereto or incidental thereto or reasonably expansive thereto, and (D) if required, the Theravant Asset Acquisition has been approved by the board of directors (or other similar body) and/or the stockholders or other equity holders of Seller, and (F) no Indebtedness or Liens are assumed or created (other than Permitted Liens and Permitted Indebtedness) in connection with the Theravant Asset Acquisition. Each Credit Party acknowledges and agrees that the Credit Agreement, the other Financing Documents and this Agreement constitute the legal, valid and binding obligation of such Credit Party, and are enforceable against such Credit Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

- **Conditions to Effectiveness.** This Agreement shall become effective as of the date on which each of the following conditions has been satisfied, as determined by Agent in its sole discretion:

1. Agent shall have received (including by way of facsimile or other electronic transmission) a duly authorized, executed and delivered counterpart of the signature page to this Agreement, from Borrower, Agent and the Required Lenders;

2. Agent shall have received fully executed copies of the Theravant Asset Purchase Agreement and each document to be executed in connection therewith;

3. all representations and warranties of the Credit Parties contained herein shall be true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) as of the date hereof, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (without duplication of any materiality qualifier in the text of such representation or warranty) (and such parties' delivery of their respective signatures hereto shall be deemed to be its certification thereof); and

4. both immediately before and after giving effect to this Agreement, no Default or Event of Default shall have occurred and be continuing or result therefrom.

- **Post-Closing Requirements.** Borrower hereby covenants and agrees that:

1. Within thirty (30) days of the date hereof (or such later date as Agent may agree in writing in its sole discretion), Borrower shall deliver to Agent executed intellectual property security agreements in form and substance reasonably satisfactory to Agent and in proper form for recording with the United States Patent and Trademark Office and United States Copyright Office, as applicable, to perfect and maintain a first priority perfected security interest in favor of Agent, for the ratable benefit of Lenders, in the Intellectual Property acquired in the Theravant Asset Acquisition.

2. By the date that is thirty (30) days after the date hereof (or such later date as Agent may agree in Writing) Borrower shall provide to Agent a fully executed Access Agreement with respect to Borrower's facilities located at 2375 Camino Via Roble, Carlsbad, CA 92011.

3. By the date that is ten (10) Business Days after the date hereof (or such later date as Agent may agree in writing), Borrower shall provide Agent evidence, in form and substance reasonably satisfactory to Agent, that Borrower has established one or more separate Deposit Accounts to hold any and all amounts to be used by Borrower for payroll, payroll taxes and other employee wage and benefit payments.

4. By the date that is thirty (30) days after the date hereof (or such later date as Agent may agree in writing), Borrower shall provide Agent evidence, in form and substance reasonably satisfactory to Agent, that the UCC-1 financing statement naming Borrower as debtor and the U.S. Small Business Administration as secured party and filed in the UCC records of the Secretary of State of the State of California (Filing No. number 20-7784205702) has been terminated.

5. Each Credit Party hereby agrees that failure to comply with the requirements set forth in this Section 6 shall constitute an immediate and automatic Event of Default.

- **Release.** In consideration of the agreements of Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Credit Party, voluntarily, knowingly, unconditionally and irrevocably, with specific and express intent, for and on behalf of itself and all of its respective parents, subsidiaries, affiliates, members, managers, predecessors, successors, and assigns, and each of their respective current and former directors, officers, shareholders, agents, and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Releasing Parties**") does hereby fully and completely release, acquit and forever discharge each of Agent, Lenders, and each their respective parents, subsidiaries, affiliates, members, managers, shareholders, directors, officers and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Released Parties**"), of and from any and all actions, causes of action, suits, debts, disputes, damages, claims, obligations, liabilities, costs, expenses and demands of any kind whatsoever, at law or in equity, whether matured or unmatured, liquidated or unliquidated, vested or contingent, choate or inchoate, known or that reasonably should have been known that the Releasing Parties (or any of them) has against the Released Parties or any of them (whether directly or indirectly), based in whole or in part on facts, known or that reasonably should have been known, existing on or before the date hereof. Each Credit Party acknowledges that the foregoing release is a material inducement to Agent's and each Lender's decision to enter into this Agreement and agree to the modifications contemplated hereunder, and has been relied upon by Agent and Lenders in connection therewith.

- **No Waiver or Novation.** The execution, delivery and effectiveness of this Agreement shall not operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Credit Agreement, the Financing Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Nothing herein is intended or shall be construed as a waiver of any existing Defaults or Events of Default under the Credit Agreement or other Financing Documents or any of Agent's rights and remedies in respect of such Defaults or Events of Default. This Agreement (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

- **Affirmation.** Each Credit Party hereby acknowledges and agrees that the Credit Agreement and all other Financing Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by such Credit Party, including without limitation the granting of Liens in the Collateral to secure the Obligations and other Financing Documents. Each Credit Party covenants and agrees to comply with all of the terms, covenants and conditions of the Credit Agreement and the Financing Documents, notwithstanding any prior course of conduct or other actions or inactions on Agent's or any Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions. Each Credit Party confirms and agrees that all security interests and Liens granted to Agent pursuant to the Financing Documents continue in full force and effect, and all Collateral remains free and clear of any Liens, other than those granted to Agent and Permitted Liens.

- **Miscellaneous.**

  - Reference to the Effect on the Credit Agreement. The Credit Agreement, and all other Financing Documents (and all covenants, terms, conditions and agreements therein), shall remain in full force and effect, and are hereby ratified and confirmed in all respects by each Credit Party.

  - THIS AGREEMENT AND THE RIGHTS, REMEDIES AND OBLIGATIONS OF THE PARTIES HERETO, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT, THE RELATIONSHIP OF THE PARTIES, AND/OR THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES AND ALL OTHER MATTERS RELATING HERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW). NOTWITHSTANDING THE FOREGOING, AGENT AND LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST EACH CREDIT PARTY OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH AGENT AND LENDERS (IN ACCORDANCE WITH THE PROVISIONS OF SECTION 12.1 OF THE CREDIT AGREEMENT) DEEM NECESSARY OR APPROPRIATE TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE AGENT'S AND LENDERS' RIGHTS AGAINST SUCH CREDIT PARTY OR ITS PROPERTY. EACH CREDIT PARTY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH CREDIT PARTY HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE, OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. EACH CREDIT PARTY HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINTS, AND OTHER PROCESS ISSUED IN SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS, AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO THE APPLICABLE CREDIT PARTY AT THE ADDRESS SET FORTH IN ARTICLE 11 OF THE CREDIT AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER TO OCCUR OF SUCH CREDIT PARTY'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAIL, PROPER POSTAGE PREPAID.

  - **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH CREDIT PARTY, AGENT AND LENDERS PARTY HERETO EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

- Incorporation of Credit Agreement Provisions. The provisions contained in Section 13.2 (Indemnification) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

- Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

- Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission shall be as effective as delivery of a manually executed counterpart hereof. In furtherance of the foregoing, the words "execution", "signed", "signature", "delivery" and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby or thereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. As used herein, "Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or other record.

- Entire Agreement. This Agreement constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

- Severability. In case any provision of or obligation under this Agreement shall be invalid, illegal or unenforceable in any applicable jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

- Successors/Assigns. This Agreement shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the parties hereto, subject to the provisions of the Credit Agreement and the other Financing Documents.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, the undersigned have executed this Agreement as of the day and year first hereinabove set forth.

AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: // Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Signature Page(s)

LENDERS:

ELM 2020-3 TRUST

By: MidCap Financial Services Capital Management, LLC, as Servicer

By: // John O'Dea
Name: John O'Dea
Title: Authorized Signatory

ELM 2020-4 TRUST

By: MidCap Financial Services Capital Management, LLC, as Servicer

By: // John O'Dea
Name: John O'Dea
Title: Authorized Signatory

BORROWER:

STRATA SKIN SCIENCES, INC.

By: **// Robert J. Moccia**
Name: Robert J. Moccia
Title: President and Chief Executive Officer

Exhibit A

Theravant Asset Purchase Agreement

[see attached]

ASSET PURCHASE AGREEMENT

between and among

THERAVANT CORPORATION, as Seller

and

STRATA SKIN SCIENCES, INC., as Buyer

and

ASHISH BHATIA, FRANCESCO LUCARELLI AND ROBERT ANDERSON,
solely for purposes of Section 5(h)

and

ASHISH BHATIA,
in his capacity as the Seller's Representative

* * * *

Dated as of January 10, 2022

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is entered into as of January 10, 2022 between and among Theravant Corporation, a Delaware corporation (the "Seller"), Ashish Bhatia, in his capacity as the Seller's Representative, each of Ashish Bhatia, Francesco Lucarelli and Robert Anderson, solely for purposes of Section 5(h) and STRATA Skin Sciences, Inc., a Delaware corporation (the "Buyer"). The Seller and the Buyer are each a "Party" and are, collectively, the "Parties".

RECITALS

WHEREAS, the Seller desires to sell and transfer to the Buyer, and the Buyer desires to purchase and assume from the Seller, the Purchased Assets free and clean of any Liens (each as hereinafter defined), in exchange for the payment by the Buyer of the amounts set forth herein, and the other consideration set forth herein, in each case in accordance with the terms and subject to the conditions set forth herein; and

WHEREAS, the Parties desire to make certain representations, warranties, covenants, and agreements as set forth more particularly herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, covenants, and agreements herein contained, the Parties agree as follows:

1. Definitions; Interpretations.

1. Definitions. The following terms shall have the meanings set forth below when capitalized (or not capitalized) in the manner set forth below, and when wholly-capitalized (and the same shall apply to other grammatical forms of the following terms):

"510(k) and Related Regulatory Rights" means, collectively, all FDA approvals and clearances including, but not limited to, 510(k) clearances, 510(k) pre-market notifications and all related filings, submissions and other reports submitted by any Seller under Section 510(k) of the United States Food, Drug and Cosmetic Act, and further including rights, in and copies of, all supporting materials including, without limitation, technical files, drawings and documents supporting the submissions for FDA clearances, device registrations, design files, marketing and manufacturing files, and filings and correspondence with the FDA, together with any foreign equivalents of the foregoing and foreign regulatory filings, reports, submissions, certifications and authorizations relating to products being marketed, manufactured, distributed and/or sold by or on behalf of Seller.

"Action" means any action, claim, counterclaim, demand, charge, complaint, suit, or other dispute resolution or proceeding, whether judicial, administrative or arbitrative, whether civil or criminal, whether brought at equity or at law, and whether brought by a Governmental Authority or any other Person, in each case, by or before a Governmental Authority.

"Acquired Intellectual Property" has the meaning set forth in Section 4(n)(i).

"Acquired Licensed Intellectual Property" has the meaning set forth in Section 4(n)(ii).

"Additional Earnout" shall have the meaning set forth in Section 2(f)(ii).

"Affiliate" means, with respect to a specified Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such specified Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controls" and "controlled") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by Contract, or otherwise.

"Ancillary Agreement" a Bill of Sale by and between the Buyer and the Seller, dated of even date herewith, an Assignment and Assumption Agreement by and between the Buyer and the Seller, dated of even date herewith, a Transition Services Agreement by and between the Buyer and the Seller, dated of even date herewith, a Development Agreement by and between the Buyer and the Seller, dated of even date herewith, each Ancillary Certificate and each other agreement, document, or certificate executed and delivered by a Party in connection herewith or therewith.

"Ancillary Certificate" means each certificate or affidavit delivered, or to be delivered, under this Agreement, including pursuant to Section 6.

"Arbitrator" has the meaning set forth in Section (2)(f)(iii).

"Assignment and Assumption Agreement" means that certain Assignment and Assumption Agreement, dated as of the Closing Date, by and between the Seller and the Buyer.

"Assumed Liabilities" means, and is limited to, only those liabilities of the Seller arising from obligations required to be performed following the Closing under any Assumed Contracts and not relating to or resulting from any (A) Action arising from events, facts, or circumstances existing at or prior to the Closing, or (B) breach of such Contract, tort, infringement, violation of Law, or breach of warranty, in each case occurring at or prior to the Closing; provided, that, in each case, that notwithstanding anything to the contrary set forth in this definition, all Excluded Liabilities shall be excluded from the definition of "Assumed Liabilities."

"Basket Amount" has the meaning set forth in Section 7(f)(i).

"Bill of Sale" means that certain Bill of Sale, dated as of the Closing Date, by the Sellers in favor of the Buyer.

"Business" means, collectively, the business of developing, distributing, marketing and selling the Products (as defined below).

"Business Day" means any day other than a Saturday, Sunday, or a day on which banks in Toledo, Ohio are authorized or obligated by Law to close.

"Buyer" has the meaning set forth in the Preamble.

"Buyer Indemnified Party" means the Buyer and its Affiliates, Representatives, and direct and indirect owners, and the successors and permitted assigns of all the foregoing.

"Cap Amount" has the meaning set forth in Section 7(f)(i).

"Capitalized Lease Obligations" means obligations pursuant to a lease that is, or is required in accordance with GAAP to be, classified as a capitalized lease obligation.

"Closing" has the meaning set forth in Section 2(c).

"Closing Date" has the meaning set forth in Section 2(c).

"Code" means the Internal Revenue Code of 1986, as amended.

"Common Stock" means the common stock, par value $0.001 per share, of the Buyer.

"Competitive Business" means, collectively, the business of developing, distributing, marketing and selling a photo-pneumatic broadband light device for the treatment, remediation or prevention of acne.

"Conduct of the Business" means the conduct of the Business of the Seller as currently conducted in the Ordinary Course of Business and as currently proposed to be conducted, in each case as of the date the applicable representation or warranty is made or tested.

"Consent" means:

1. with respect to any Governmental Authority, any consent or waiver required to be obtained, or notice, payment, or filing required to be made, in each case that if not obtained or made would (with or without notice, lapse of time, or both) (A) violate any Law promulgated or enforced by such Governmental Authority, or (B) conflict with, result in a breach of, give rise to any right to terminate, revoke, suspend, limit, or adversely modify, or result in the loss of any rights under, any Permit issued by such Governmental Authority; and

2. with respect to any Contract (including any insurance policy), any consent or waiver required to be obtained, or notice, payment, or filing required to be made, in each case that if not obtained or made would (with or without notice, lapse of time, or both) conflict with, or result in a breach of, such Contract, or give rise to any right to terminate, accelerate, or adversely modify, or result in the loss of any rights under such Contract.

"Contemplated Transactions" means, collectively, the purchase, sale and related transactions contemplated by this Agreement.

"Contract" means, with respect to any Person, any contract, purchase order, lease, license, instrument, settlement agreement, or other agreement, commitment, or arrangement, whether written or oral, in each case (i) that is binding on such Person, (ii) to which such Person's assets are subject, and/or (iii) in which such Person has any right or interest.

"Cost of Goods Sold" shall mean the actual direct costs and expenses incurred by the Buyer or its Affiliates to manufacture or have manufactured the Products, in each case, including: (i) the costs of acquiring or manufacturing raw materials, if any; and (ii) fees paid to contract manufacturers.

"Current Contract" means any Contract executed by Seller to manufacture or sell Products prior to the Closing which have not been completed by the Closing Date.

"Customer" means a customer of the Business being purchased hereunder, including end-customers and distributors.

"Determination Time" means 12:01 a.m., Eastern time, on the Closing Date.

"Disclosure Schedules" means the Schedules attached hereto corresponding to the numbered and lettered subsections and clauses of Section 3(a) and Section 4. The disclosures set forth in any Disclosure Schedule shall qualify and apply only to (i) each representation and warranty (or portion thereof) within this Agreement that specifically refers to such Disclosure Schedule, and (ii) any other representations and warranties (or portions thereof) within this Agreement that refer to any Disclosure Schedule to the extent that it is reasonably apparent from the face of such disclosure that such disclosure also qualifies or applies to such other representations and warranties (or portions thereof).

"Earnout Dispute Notice" shall have the meaning set forth in Section 2(f)(iii).

"Earnout Period" shall mean, collectively, the First Measurement Period, the Second Measurement Period, the Third Measurement Period, and the Third Anniversary Milestone.

"Earnout Payment" shall mean, as applicable, the First Earnout Payment, the Second Earnout Payment, and the Third Earnout Payment.

"Earnout Payment Calculation" shall have the meaning set forth in Section 2(f)(i)(C).

"Enterprise Value" means $500,000.00.

"entity" means a Person other than an individual.

"Excluded Assets" means all of the Seller's right, title, and interest in and to the following assets:

3. all Contracts relating to the Products (including, for the avoidance of doubt, leases, leasehold interests, and licenses and Current Contracts) set forth on Schedule 1.1, and all rights and revenue associated therewith and/or arising thereunder;

4. all assets of the Seller not explicitly included in the definition of Purchased Assets.

"Excluded Liabilities" means all Liabilities of any Seller or any of its Affiliates that are not expressly set forth in the definition of Assumed Liabilities, including, without limitation, any payables or warranty claims.

"Expiration Date" has the meaning set forth in Section 7(a).

"FDA" means the Food and Drug Administration and any successor Governmental Authority.

"Financial Statements" has the meaning set forth in Section 4(f)(i).

"First Earnout Payment" shall have the meaning set forth in Section 2(f)(i).

"First Measurement Period" shall mean a rolling twelve (12) month period.

"Fundamental Representations" means the representations and warranties set forth in Sections 3(b) (Power and Authority; Execution and Delivery; Due Authorization), 3(f) (Brokers); and 4(a) (Due Organization; Qualification; Corporate Power), 4(b) (Power and Authority; Execution and Delivery; Due Authorization), 4(d) (Brokers), 4(e) (Capitalization) and 4(i) (Compliance with Laws and Permits) and 4(l) (Intellectual Property).

"Funded Indebtedness" means, without duplication, the aggregate amount (including the current portions thereof) of (i) indebtedness for money borrowed or advanced and monetary obligations evidenced by bonds, debentures, notes, or similar debt securities, (ii) Capitalized Lease Obligations, (iii) obligations in respect of the deferred purchase price for property or services, but excluding payables that are taken into account in determining Working Capital, (iv) obligations in respect of letters of credit, acceptances, surety bonds, or similar instruments, and (v) any obligations of another Person that are guaranteed, or secured by any of the assets, of the Seller, including all interest, fees, expenses, prepayment premiums, and breakage costs with respect to any such indebtedness or obligations.

"GAAP" means generally accepted accounting principles as in effect in the United States applied (to the extent not in contravention of the foregoing) on a basis consistent with the principles used in preparing the Year-End Financial Statements (so long as such application is in conformance with generally accepted accounting principles as in effect in the United States).

"Governmental Authority" means any federal, state, group or groups of nations, local, or foreign government, governmental or quasi-governmental authority, political subdivision, regulatory or administrative agency, or governmental department, board, bureau, agency, or instrumentality, including independent agencies and commissions, courts, and tribunals, including arbitral bodies (whether private or governmental), in each case of competent jurisdiction.

"Gross Profit" for any period means Net Revenue for such period less Cost of Goods Sold for such period.

"Indemnified Party" means any applicable Buyer Indemnified Party with respect to any indemnification obligation pursuant to Section 7(b), and any applicable Seller Indemnified Party with respect to any indemnification obligation pursuant to Section 7(c).

"Indemnified Party Representative" means the Buyer with respect to any indemnification obligation pursuant to Section 7(b), and the Seller with respect to any indemnification obligation pursuant to Section 7(c).

"Indemnifying Party" means Seller with respect to any indemnification obligation pursuant to Section 7(b), and the Buyer with respect to any indemnification obligation pursuant to Section 7(c).

"Indemnifying Party Representative" means the Seller with respect to any indemnification obligation pursuant to Section 7(b), and the Buyer with respect to any indemnification obligation pursuant to Section 7(c).

"Intellectual Property" means, collectively, all of the following in any jurisdiction throughout the world: (i) all inventions (whether patentable or un patentable and whether or not reduced to practice), all improvements thereto, and all patents, industrial and utility models, industrial designs, patent applications, provisional applications, and patent disclosures, together with all reissuances, continuations, continuations in part, divisionals, revisions, extensions, reexaminations, other post grant certificates or equivalents or counterparts of any of the foregoing, and any other indicia of invention ownership issued or granted by any Governmental Authority; (ii) all trademarks, service marks, trade dress, brand names, logos, slogans, trade names, corporate names, Internet domain names, URL's and rights in telephone numbers, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (iii) all copyrightable works and uncopyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith; (iv) all mask works and all applications, registrations, and renewals in connection therewith; (v) all trade secrets and confidential business information (including ideas, research and development, know how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals); (vi) all computer software and code (including source code, object code, executable code, data, databases, and related documentation); (vii) all other proprietary rights and any moral or economic rights of others in any of the foregoing; (viii) all copies and tangible embodiments of any of the foregoing (in whatever form or medium); and (ix) all rights to income, royalties, damages and payments due or payable, including damages and payments for past, present or future infringements or misappropriations thereof, the right to sue and recover for past infringements or misappropriations thereof, and any and all corresponding rights or interests that, now or hereafter, may be secured throughout the world.

"Intellectual Property Assignments" means those certain agreements with respect to the assignment of Intellectual Property, dated as of the Closing Date, by the Seller, Darrel Chow and Robert Anderson, in each instance in favor of the Buyer.

"Knowledge" (i) with respect to the Seller, means the knowledge of any member of the Seller Knowledge Group, (ii) with respect to any other entity, means the knowledge of any director, manager, or officer of such entity, and (iii) with respect to any individual (including any member of the Seller Knowledge Group), means the actual knowledge of such individual, in each case within the foregoing clauses (i) through (iii), assuming due inquiry.

"Launch" means the Buyer's first placement of a Theraclear device in a physician office or other treatment facility; *provided*, *however*, the Buyer shall be permitted to place five (5) Products to test the market and the Seller acknowledges and agrees that such placements shall not constitute a Launch.

"Law" means any law, constitutional provision, treaty, statute, code, regulation, ordinance, rule, common law, Order, or other requirement of a Governmental Authority including, without limitation, interpretations of such laws such as regulations, guidances, titled and untitled letters.

"Liability" means any liability or obligation of any kind, character, or description, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, matured or unmatured, due or to become due, vested or unvested, executory, determined, determinable, or otherwise.

"license" means license or sublicense.

"Lien" means any lien (statutory or otherwise), encumbrance, security interest, mortgage, deed of trust, pledge, hypothecation, charge, equitable interest, easement, encroachment, right of way, or any similar title exception (whether arising under Contract, Law, or otherwise).

"Losses" means, collectively, all losses, damages, liabilities, diminution in value, Actions, judgments, awards, injunctions and other equitable remedies, Liens, settlements, Taxes, penalties, fines, interest, costs, court costs, and fees and expenses (including reasonable fees and expenses of legal counsel and other professional advisors and experts), which may include such fees and expenses incurred by the applicable Indemnified Party in connection with the enforcement of its rights hereunder, provided, that Losses shall exclude punitive damages unless and to the extent awarded in connection with a Third Party Claim.

"made available" means made available via the virtual data room hosted by the Seller via Dropbox that clearly identifies the applicable materials. When used in any representation or warranty, "made available" includes only those materials made available (in accordance with the preceding sentence) at least five (5) Business Days prior to the date hereof.

"Material Adverse Effect" means any effect, event, condition, change, state of facts, or group of related effects, events, conditions, changes, or states of facts (each, an "Effect") that is or would reasonably be expected to become, individually or in the aggregate, materially adverse to the Business, assets, prospects, Liabilities, condition (financial or otherwise), operations, or results of operations, of the Business taken as a whole, provided that none of the following shall be taken into account in determining whether there has been or may be a Material Adverse Effect: (i) Effects generally applicable to (A) the global economy, (B) financial, banking, or securities markets (including any disruption thereof, any decline in the price of any security or market index, and any change in prevailing interest rates), or (C) any economies, markets, and industries applicable to the Seller; (ii) changes in GAAP, other applicable accounting standards, or any Laws applicable to the Seller, or any Tax, regulatory, or political conditions applicable to the Seller; and (iii) Effects arising as a result of acts of God (including earthquakes, hurricanes, floods, or other natural disasters or weather-related conditions) or the commencement, occurrence, continuation, or intensification of any war (whether or not declared), sabotage, armed hostilities, military attacks or acts of terrorism; except, in each case within the foregoing clauses (i) through (iii), to the extent that the Seller is disproportionately adversely affected by such Effects relative to other businesses operating in the industries of such Seller.

"Material Contract" means, collectively, (i) all Contracts relating to the Business that are or should be listed on Schedule 4(j)(i), (ii) all Intellectual Property Licenses, and all amendments, supplements or other modifications with respect to the foregoing.

"Material Customers" means the ten (10) largest customers (including distributors) of the Business, as measured by gross revenues attributable to such customers (including distributors) for the eleven (11) month period ending November 30, 2021.

"Material Suppliers" means the ten (10) largest suppliers (including contract manufacturers) of Products, as measured by the expenses paid to such suppliers during for the eleven (11) month period ending November 30, 2021.

"Measurement Period" shall mean, as applicable, the First Measurement Period, the Second Measurement Period, or the Third Measurement Period.

"Misdirected Item" has the meaning set forth in Section 5(g)(i).

"Mitigating Payments" has the meaning set forth in Section 7(h)(ii).

"Most Recent Balance Sheet" has the meaning set forth in Section 4(f)(i).

"Most Recent Balance Sheet Date" has the meaning set forth in Section 4(f)(i).

"Most Recent Financial Statements" has the meaning set forth in Section 4(f)(i).

"Net Revenue" means, with respect to the Earnout Period, gross revenues recognized in the U.S. from the sale of the Theraclear Devices, and consumables *less* discounts, returns, shipping, shipping insurance and charges of a similar nature and sales Taxes, with all of the foregoing as calculated pursuant to and in accordance with GAAP and determined by reference to the audited financial statements of the Buyer for the Earnout Period.

"Non-Assignable Item" has the meaning set forth in Section 5(f)(i).

"Non U.S. Gross Profit" for any period means Non U.S. Net Revenue for such period less Cost of Goods Sold for Products sold outside the U.S. for such period.

"Non U.S. Net Revenue" means, with respect to the Earnout Period, gross revenues recognized outside the U.S. from the sale of the Theraclear Devices, and consumables *less* discounts, returns, shipping, shipping insurance and charges of a similar nature and sales Taxes, with all of the foregoing as calculated pursuant to and in accordance with GAAP and determined by reference to the audited financial statements of the Buyer for the Earnout Period.

"Objection Notice" has the meaning set forth in Section 2(f)(iii).

"Objection Period" has the meaning set forth in Section 2(f)(iii).

"Order" means any order, award, decision, injunction, judgment, ruling, subpoena, or verdict entered, issued, made, or rendered by any Governmental Authority.

"Ordinary Course of Business" means the ordinary course of business of the Seller relating to the Business, consistent with past practice (including with respect to quantity and frequency).

"Organizational Documents" means the certificate of incorporation, formation, or limited partnership, and the bylaws, limited liability company operating agreement, or limited partnership agreement, or any analogous documents entered into, adopted, or filed in connection with the creation, formation, or organization, in each case of the applicable entity.

"Parties" has the meaning set forth in the Preamble.

"Permit" means any permit, license, franchise, approval, authorization, registration, certificate, variance, clearance, or similar right that may be issued by any Governmental Authority or any accreditation or certification agency, body, or organization.

"Permitted Liens" means Liens set forth on Schedule 4(k) (but only to the extent such Liens are not required to be terminated and released in connection with the Contemplated Transactions) and Liens arising in the Ordinary Course of Business that do not materially impair the use or value of the assets to which they relate.

"Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity, or a Governmental Authority.

"Products" means, collectively, the TheraClear®™ Acne System and the Theraclear Device and related consumables manufactured, assembled, distributed, marketed or sold by the Seller prior to the Closing Date (including any and all improvements, developments and modifications thereto and accessories thereof, including those concepts in the research and/or development stage) related to the Theraclear Device, together with any and all products which are in the process of being invented related to the Theraclear Device, designed by or on behalf of the Seller.

"Principals" shall mean each of Ashish Bhatia, Francesco Lucarelli and Robert Anderson.

"Purchase Price" means an amount equal to (i) Enterprise Value, plus (ii) the Shares.

"Purchased Assets" means all of the Seller's right, title, and interest in and to the following assets only to the extent such assets relate to the Business and unless as expressly set forth herein shall not include any assets that relate to the Excluded Business:

1. the Products;

2. all Permits relating to the Products, and all rights associated therewith and/or arising thereunder, including with respect to any data and records held by the applicable Governmental Authority;

3. all inventories, raw materials, work-in-process, finished goods, supplies, and purchased parts, including, without limitation, those set forth on Exhibit C attached hereto and incorporated herein;

4. all Intellectual Property and goodwill associated with the going concern of the Business or any Purchased Asset and all rights associated therewith and/or arising thereunder and all other proprietary know-how, formulae, manufacturing processes, technology, data, research and development records, all other intangible assets, and all user, technical, maintenance or other documentation associated with any of the foregoing;

5. all 510(k) and Related Regulatory Rights related to the Products;

6. all books, records, lists, documents, correspondence, plans, policies, other data and information (including those pertaining to accounts, Customers, suppliers, personnel, Representatives, and other business relations and data that has or may be submitted to one or more Governmental Authority including, without limitation, Regulatory Materials that may be controlled by Seller and/or their employees, contractors and/or Affiliates), and, to the extent they are related to Products being purchased hereunder including, without limitation, all Regulatory Materials;

7. all advertising, marketing, promotional, trade show, and other materials, whether in writing, electronic format, or otherwise related to the Products;

8. all rights under express or implied warranties from suppliers, manufacturers, and vendors, and all other guarantees, warranties, indemnities and similar rights, in each case with respect to any Purchased Assets;

9. Those Contracts set forth on Exhibit B attached hereto and incorporated herein (the "Assumed Contracts"); and

10. without limiting the generality of clause (a), and for the avoidance of doubt, all rights under non-competition, non-solicitation, confidentiality, assignment of developments and inventions and similar agreements entered into between the Seller and any existing or former employee, contractor, consultant or other Person.

"Regulatory Materials" means, collectively, with respect to any Product: regulatory applications and submissions (and any supplements or amendments thereto) under applicable Healthcare Law; any notifications, communications, correspondence, registrations, master files and/or other filings made or received from or otherwise conducted with a Governmental Authority under applicable Healthcare Laws (*e.g.*, regarding current good manufacturing practices, state and local registrations, and quality system regulations); and records that are necessary or advisable in order to obtain consents, approvals, certifications or authorizations from any Governmental Authorities under applicable Healthcare Laws for research, development, testing, production, manufacturing, approval, labeling, marketing, transfer, distribution, pricing, third party reimbursement and sale of the Products.

"Representatives" means, with respect to any Person, the directors, managers, trustees, officers, employees, independent contractors, agents, attorneys, accountants, advisors, and other representatives of such Person and of such Person's Affiliates.

"Restricted Period" has the meaning set forth in Section 5(h)(i).

"Restricted Territory" has the meaning set forth in Section 5(h)(i)(A).

"Second Earnout Payment" shall have the meaning set forth in Section 2(f)(ii).

"Second Measurement Period" shall mean a rolling twelve (12) month period beginning with the first month following the month in which the First Earnout Payment is earned.

"Securities Act" shall mean the U.S. Securities Act of 1933, as amended.

"Seller" has the meaning set forth in the Preamble.

"Seller Indemnified Party" means Seller and its Affiliates, Representatives, and direct and indirect owners, and the successors and permitted assigns of all of the foregoing.

"Seller Knowledge Group" means each Principal.

"Seller Permit" has the meaning set forth in Section 4(i)(ii).

"Seller Product/Service" has the meaning set forth in Section 4(n)(i).

"Seller Real Property" means all real property currently owned, leased, or operated by the Seller.

"Seller's Representative" shall have the meaning set forth in Article VIII.

"Seller Subsidiary" means any Subsidiary of the Seller.

"Shares" has the meaning set forth in Section 2(b)(iv).

"Subsidiary" means, with respect to any Person, (i) any corporation of which a majority of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, or trustees thereof is at the time of determination owned, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof, and (ii) any limited liability company, partnership, association, or other entity (other than a corporation) of which a majority of partnership, limited liability company, or other similar ownership interests thereof is at the time of determination owned, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof.

"Systems" has the meaning set forth in Section 4(l)(viii).

"Tax" means any (i) federal, state, local, or foreign income, gross receipts, ad valorem, escheat, unclaimed property, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, levies, tariffs, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, service, utility, sales, use, transfer, gains, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether or not disputed, (ii) Liability for amounts of the type described in clause (i) as a result of Treasury Regulations §1.1502-6, as a result of being a transferee or successor, or as a result of a Contract or otherwise, or (iii) penalties or fees for failure to file or late filing of any Tax Returns.

"Tax Allocations" has the meaning set forth in Section 2(h).

"Tax Return" means any return, amended return, declaration, report, claim for refund, or information return or statement relating to Taxes filed or required to be filed with a Governmental Authority, including any schedule or attachment thereto, and including any amendment thereof.

"Theraclear 2.0" has the meaning set forth on Exhibit A attached hereto and incorporated herein.

"Theraclear Device" has the meaning set forth in Section 2(g)(i).

"Third Anniversary Milestone" shall mean the third anniversary of the Launch, provided that the Theraclear Device is still commercially marketed by the Buyer in the U.S. at such time.

"Third Earnout Payment" shall have the meaning set forth in Section 2(f)(iii).

"Third Measurement Period" shall mean a rolling twelve (12) month period beginning with the first month following the end of the Second Measurement Period.

"Third Party Claim" has the meaning set forth in Section 7(d)(ii)(A).

"Third Party Claim Notice" has the meaning set forth in Section 7(d)(ii)(A).

"Transfer" means transfer, sell, issue, lease, license, grant any Lien upon, or otherwise dispose of.

"Treasury Regulations" means the regulations promulgated under the Code.

"writing" and "written" means any writing, facsimile, or electronic mail.

"Year-End Financial Statements" has the meaning set forth in Section 4(f)(i).

2. Accounting Provisions. All accounting terms used but not defined in this Agreement and/or any Ancillary Agreement shall have the respective meanings given to them in conformance with GAAP.

3. Interpretation. With respect to this Agreement and each Ancillary Agreement:

1. Unless the context otherwise requires: (A) whenever the word "include", "includes", or "including" is used, it shall be deemed to be followed by the words "without limitation"; (B) the word "or" shall not be exclusive; (C) the words "hereof", "herein", "hereunder", "herewith", and words of similar import shall refer to this Agreement (or, if used in an Ancillary Agreement, to such Ancillary Agreement) as a whole and not to any particular provision of this Agreement (or such Ancillary Agreement, as applicable); (D) any references contained herein (or in any Ancillary Agreement) to a preamble, section, clause, exhibit, schedule, or other attachment shall refer to the preamble or such section, clause, exhibit, schedule, or other attachment to this Agreement (or, if such reference is contained in an Ancillary Agreement, to such Ancillary Agreement, as applicable); (E) the meaning assigned to each term defined herein or in any Ancillary Agreement shall be equally applicable to both the singular and the plural forms of such term; (F) references to any gender shall include the other gender or shall be neutral; (G) a reference to any Person in a particular capacity shall refer to that Person solely in such capacity, and shall include such Person's permitted successors and assigns in such capacity; (H) a reference to any Law shall include all amendments thereto, all modifications and reenactment thereof, all Laws substituted therefor, and all rules, regulations, and statutory instruments promulgated thereunder or pursuant thereto; (I) a reference to any Contract (including this Agreement and any Ancillary Agreement) shall include all exhibits, schedules, and other attachments to such Contract, and shall refer to such Contract as amended, restated, supplemented, or otherwise modified as of the time of determination; (J) a reference to $ or dollars shall mean U.S. dollars; and (K) when calculating the period of time before which, within which, or following which any act is to be done or step taken pursuant to this Agreement or any Ancillary Agreement, the date that is the reference date in calculating such period shall be excluded and, if the last day of such period is not a Business Day, then the period shall end on the next succeeding Business Day.

2. Section headings are not to be considered part of this Agreement or any Ancillary Agreement, are included solely for convenience, are not intended to be full or accurate descriptions of the content of the sections of this Agreement or any Ancillary Agreement, and shall not affect the construction hereof or thereof.

3. The Parties have participated jointly in the negotiation and drafting of this Agreement and each Ancillary Agreement (with the benefit of their respective legal counsels) and, in the event an ambiguity or question of intent or interpretation arises, this Agreement and each Ancillary Agreement shall be construed as jointly drafted by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement or such Ancillary Agreement.

2. Purchase and Sale; Payments; Closing.

1. Purchase and Sale.

1. At the Closing, on and subject to the terms and conditions of this Agreement, the Buyer does hereby purchase and assume from the Seller, and the Seller does hereby sell and deliver to the Buyer, the Purchased Assets free and clear of any Liens and the Assumed Liabilities, in exchange for the consideration set forth in this Section 2.

2. For the avoidance of doubt, the Buyer is neither purchasing nor assuming, and the Seller is not contributing, selling, or delivering, any Excluded Assets or Excluded Liabilities.

2. Payments at Closing. At the Closing, the Buyer shall: (x) make (or cause to be made) the payments in clauses (i), (ii) and (iii) by wire transfer of immediately available funds to the bank accounts designated in writing by the Seller to the Buyer; and (y) issue the Shares to the Seller as set forth in clause (iv):

1. to the Seller, an amount equal to $500,000.00 minus (A) the sum of the amounts, if any, necessary to remove any and all Liens on the Purchased Assets and (B) the Funded Indebtedness;

2. to the Persons holding any and all Liens on any of the Purchased Assets as of the Closing, an amount payable to each such Person necessary to remove such Lien;

3. to the holders of Funded Indebtedness as of the Closing, all such Funded Indebtedness; and

4. the number of shares of the Common Stock with an aggregate value of $500,000.00 (the "Shares"), such number of the Common Stock shares to be determined by the Buyer at the Closing and which shall be based upon the ten (10) trading day volume weighted average of the closing price of the Common Stock on the ten (10) trading days ending on the third trading day immediately prior to Closing.

3. Closing. The closing of the Contemplated Transactions (the "Closing") shall take place remotely by electronic transmission simultaneously with the execution and delivery of this Agreement (the day on which the Closing takes place being referred to herein as the "Closing Date"). Upon consummation of the Closing, all Contemplated Transactions to occur on or as of the Closing or the Closing Date (including the purchase and sale of the Purchased Assets and the delivery of the documents to be delivered at the Closing pursuant to Section 6) shall be deemed to have occurred simultaneously and to be effective as of the Determination Time (other than for Tax purposes).

4. [Intentionally Omitted]

5. [Intentionally Omitted.]

6. Earnout; Additional Earnout.

1. Earnout.

1. Upon the earlier of (A) the achievement of $10,000,000.00 in Net Revenues during the First Measurement Period, or (B) the Third Anniversary Milestone, the Seller shall be entitled to receive from the Buyer, in immediately available funds using wire transfer instructions as designated in writing by the Seller, an amount equal to $1,000,000.00 (the "First Earnout Payment"). If the First Earnout Payment is earned in accordance with clause (A) above, the First Earnout Payment shall be payable within ten (10) Business Days following such occurrence. If the First Earnout Payment is earned in accordance with clause (B) above, the First Earnout Payment shall be payable within ten (10) Business Days following such occurrence.

2. After the First Earnout Payment is made, the Seller shall be entitled to receive from the Buyer, in immediately available funds using wire transfer instructions as designated in writing by the Seller, an amount equal to $1,000,000.00 (the "Second Earnout Payment") upon the achievement of $12,500,000.00 in Net Revenues during the Second Measurement Period.

3. After the Second Earnout Payment is made, the Seller shall be entitled to receive from the Buyer, in immediately available funds using wire transfer instructions as designated in writing by the Seller, an amount equal to $1,000,000.00 (the "Third Earnout Payment") upon the achievement of $15,000,000.00 in Net Revenues during the Third Measurement Period.

4. On or before forty-five (45) days following the end of each Measurement Period, the Buyer shall deliver to the Seller a statement of the Earnout Payment due for such Measurement Period ("Earnout Payment Calculation"), which statement shall be accompanied by supporting documentation including information related to revenue recognition for that Measurement Period based on sales of the Theraclear Devices.

5. The Buyer shall make all shipments of Theraclear Devices in good faith in the ordinary course of its business during the Earnout Period, and such shipments shall be made pursuant to the Buyer's standard terms and conditions, including its standard payment terms subject to reasonable discounts.

6. The Parties agree to treat any payment of any Earnout Amount as an adjustment to the Purchase Price for all purposes hereunder and all Tax purposes, except as otherwise required by applicable Law.

7. Notwithstanding anything to the contrary contained herein or in any Ancillary Agreement, the right of any Party to receive payment in respect of the Earnout Amount, together with each other right set forth in this Section 2(f)(i), (A) is solely a contractual right and is not a security for purposes of any federal or state securities Laws, and (B) shall not be assigned (by operation of law, merger (whether as surviving or disappearing entity), consolidation, dissolution, or otherwise) or otherwise Transferred without the prior written consent of the Buyer and the Seller, and any such assignment or other Transfer in violation of the foregoing shall be null and void; provided, that, upon advance written notice to the Buyer, the Seller shall have the right to assign and transfer to the Principals its rights in respect of the Earnout Amount. In connection with entering into the agreements set forth within this Section 2(f), the Seller acknowledges and agrees that, from and after the Closing, the Buyer shall be permitted to operate the Business in its sole and absolute discretion, without regard to the effects that such operation of the Business may have on the calculation of the payment made or that otherwise may have been made under this Section 2(f)(i).

2. Additional Earnout. As set forth in this Section 2(f)(ii), the below contemplated payments are the "Additional Earnout."

1. Commencing with the first full calendar quarter in which the Buyer collects revenues from commercial sales of the Theraclear Device, the Buyer shall pay to the Seller, on a quarterly basis, an amount equal to 20% of Gross Profit from U.S. sales until such time as the aggregate payments pursuant to this Section(f)(ii) equal $5,000,000.00;

2. Thereafter the Buyer shall pay to the Seller, on a quarterly basis, an amount equal to 15% of Gross Profits from U.S. sales until such time as the aggregate payments to the Seller pursuant to clause (A) above and this clause (B) equal $10,000,000.00;

3. Thereafter the Buyer shall pay to the Seller, on a quarterly basis, an amount equal to 10% of Gross Profits from U.S. sales until such time as the aggregate payments to the Seller pursuant to clauses (A) and (B) above and this clause (C) equal $20,000,000.00. At such time no additional payments will be made; and

4. Notwithstanding anything herein to the contrary, the Buyer shall have no obligation to make any Additional Earnout payments to the Seller pursuant to this Sections 2(f)(ii)(A)-(C) following the seventh (7th) anniversary of the Closing.

5. In addition, the Buyer shall pay to the Seller, on a quarterly basis, an amount equal to 25% of Non U.S. Gross Profits for four (4) years from the Closing Date.

6. The Parties agree to treat any payment of any Additional Earnout as an adjustment to the Purchase Price for all purposes hereunder and all Tax purposes, except as otherwise required by applicable Law.

7. Notwithstanding anything to the contrary contained herein or in any Ancillary Agreement, the right of any Party to receive payment in respect of the Additional Earnout, together with each other right set forth in this Section 2(f)(ii), (A) is solely a contractual right and is not a security for purposes of any federal or state securities Laws, and (B) shall not be assigned (by operation of law, merger (whether as surviving or disappearing entity), consolidation, dissolution, or otherwise) or otherwise Transferred without the prior written consent of the Buyer and the Seller, and any such assignment or other Transfer in violation of the foregoing shall be null and void; provided, that, upon advance written notice to the Buyer, the Seller shall have the right to assign and transfer to the Principals its rights in respect of the Additional Earnout. In connection with entering into the agreements set forth within this Section 2(f)(ii), the Seller acknowledges and agrees that, from and after the Closing, the Buyer shall be permitted to operate the Business in its sole and absolute discretion, without regard to the effects that such operation of the Business may have on the calculation of the payment made or that otherwise may have been made under this Section 2(f)(ii).

3. Disputes.

1. In the event the Seller in good faith disputes any Earnout Payment Calculation or the amount of Additional Earnout, then the Seller shall deliver a written notice of dispute to the Buyer setting forth in detail the nature of the dispute within ten (10) days after receipt of the Earnout Payment Calculation and the calculation of Additional Earnout ("Earnout Dispute Notice"). The Seller and the Buyer shall negotiate in good faith to resolve such dispute within thirty (30) days after delivery of the Earnout Dispute Notice. During such thirty (30) day period, the Seller shall (on a confidential basis) have access to a copy of the records of the Buyer necessary to verify the Earnout Payment Calculation and the calculation of Additional Earnout. The Buyer shall provide such copy within five (5) business days after receiving a request from the Seller. If the parties cannot resolve such dispute within such thirty (30) day period (the "Disputed Items"), and the Seller or the Buyer so requests by notice in writing to the other, then, within five (5) Business Days following delivery of such request, the Seller and the Buyer shall engage Citrin Cooperman & Company, LLP or if *Citrin Cooperman* & Company, LLP is unable or unwilling to accept such engagement (whether as a result of conflicts or otherwise), a nationally-recognized accounting firm as is reasonably agreed to by the Seller and the Buyer (in any case, the "Arbitrator") to resolve the Disputed Items. The Seller and the Buyer shall execute any engagement or similar agreement reasonably requested by the Arbitrator. A single partner of the Arbitrator selected by the Arbitrator in accordance with its normal procedures shall act for the Arbitrator in connection with such engagement. The Seller and the Buyer shall instruct the Arbitrator to render, within thirty (30) days following its engagement, a written determination and report (based solely on presentations by the Seller and the Buyer to the Arbitrator, and not by independent review) as to the Disputed Items (excluding, for the avoidance of doubt, any item that is not set forth in a timely Objection Notice) and the resulting calculation of the Earnout Payment Calculation and the calculation of Additional Earnout. The Arbitrator shall have no authority to resolve any other issues that may arise in connection with this Agreement, including whether the Objection Notice was delivered within the Objection Period. In determining each Disputed Item, the Arbitrator may not assign a value to such item greater than the greatest value, or lower than the lowest value, claimed for such item by either the Buyer in such Adjustment Report or the Seller in such Objection Notice. The Seller and the Buyer shall cooperate with the Arbitrator in making its determination and such determination shall be conclusive and binding upon the Parties absent fraud or manifest error. The fees and disbursements of the Arbitrator shall be paid by the Seller, on the one hand, and by the Buyer, on the other hand, on an inversely proportional basis, based upon the relative difference between the amounts in dispute submitted to the Arbitrator and the Arbitrator's determination of such amounts. Each of the Buyer and the Seller shall pay its own fees and expenses related to such determination. For the avoidance of doubt, whether or not an Arbitrator is engaged, (A) each item that was raised in a timely Objection Notice but that is a not a Disputed Item shall have the value as was agreed to between the Seller and the Buyer, (B) each item that was not raised in a timely Objection Notice shall have the value set forth in the Adjustment Report, and (C) each item that was raised in neither a timely Objection Notice nor an Adjustment Report shall have the value set forth in the Estimated Statement. In the event that the Seller fails to deliver the Earnout Dispute Notice within the ten (10) day time period set forth in this subsection, the Earnout Payment Calculation and the calculation of Additional Earnout shall be deemed final and conclusive. In the event that the Seller does deliver an Earnout Dispute Notice, the Buyer shall pay to the Seller on or before ten (10) days following the resolution of the dispute raised in the Earnout Dispute Notice, the Earnout Payment agreed to by the Parties or specified by the Arbitrator, as applicable.

2. In the event that the Seller does not deliver an Earnout Dispute Notice, the Buyer shall pay to the Seller on or before sixty (60) days following the end of the Measurement Period covered by the Earnout Payment Calculation, the Earnout Payment reflected thereon, if any and any Additional Earnout due.

7. Payments Subsequent to Closing. In addition to the payments by the Buyer to the Seller set forth above in Section 2(b), the Buyer shall, assuming the satisfaction of the conditions set forth in clauses (i) and (ii) below, deliver to the Seller's Representative (or cause to be made) the payments in clauses (i) and (ii):

1. by wire transfer of immediately available funds to the bank accounts designated in writing by the Seller's Representative to the Buyer, an amount equal to $500,000.00 upon the Buyer's Launch of the TheraClear®™ Acne System, a medical device for the treatment of acne as described in U.S. FDA 510(k) clearances K101415 and K123889, and as marketed by the Seller through the Seller's website https://www.theraclear.com/ (the "Theraclear Device"); and

2. by wire transfer of immediately available funds to the bank accounts designated in writing by the Seller's Representative to the Buyer, an amount equal to $500,000.00 on the delivery and passing of acceptance test of the commercial model of TheraClear 2.0, as such acceptance test is set forth on Exhibit A attached hereto and incorporated herein.

8. Tax Allocations. Not later than sixty (60) days after the Closing Date, the Buyer shall prepare and deliver to the Seller a schedule (the "Tax Allocations") allocating the Purchase Price, (as the same may be adjusted as expressly provided for herein), including the Earnout Amount (if any), the Additional Earnout Amount (if any) and the Assumed Liabilities, among the Purchased Assets in accordance with the applicable provisions of Section 1060 of the Code and the regulations promulgated thereunder), and such allocation will be conclusive and binding upon the parties hereto for all purposes. The Buyer and the Seller shall each file all Tax Returns (including amended returns and claims for refund) in a manner consistent with such allocation (including the filing of IRS Form 8594), unless otherwise required by applicable Law. Neither the Buyer nor the Seller shall take any position with respect to Taxes that is inconsistent with the agreed upon allocation, including in any audit or examination by any Tax authority, unless otherwise required by applicable Law. The Buyer and the Seller shall prepare and timely file such reports and information returns as may be required under applicable Laws to report the allocation of the Purchase Price among the Purchases Assets in accordance with the Tax Allocations. Each Party agrees to notify the other party in the event that any Tax authority takes or proposes to take a position for Tax purposes that is inconsistent with the allocation set forth in the Tax Allocations.

9. Audit Rights. The Buyer agrees to maintain accurate and complete records of all contracts, papers, correspondence, accounts, invoices, data and/or other information in the Buyer's possession relating to the sale of the Products and any related revenues and consumables until the second (2nd) anniversary after the completion of Buyer's obligation to pay the Earnout Payment and the Additional Earnout under this Agreement. Upon no less than fifteen (15) Business Days' notice and not more than once calendar year, Buyer shall permit a certified public accounting firm selected by the Seller at the Seller's sole expense to have access during normal business hours to such records of the Buyer as may be reasonably necessary to verify the accuracy and completeness of the Earnout Payment and the Additional Earnout. The accounting firm selected by the Seller shall prepare a report stating whether the calculation of Earnout Payment and the Additional Earnout were correct or whether and to what extent an overcharge or underpayment was made. The Seller shall provide the Buyer with the accounting firm's written report within thirty (30) days of completion of such report. If the accounting firm concludes that the Buyer underpaid the Additional Earnout to the Seller, then the Buyer shall pay the amount due within thirty (30) days after the day the Seller delivers the accounting firm's written report to the Buyer. If the accounting firm concludes that the Buyer overpaid the Additional Earnout to the Seller, then the Seller shall pay the amount due within thirty (30) days after the day the Seller delivers the accounting firm's written report to the Buyer. The Seller shall bear the full cost of such audit unless such audit discloses that the underpayment of the Earnout Payment and the Additional Earnout by the Buyer for the period audited is greater than 5% from the amount actually paid, in which case: (i) the Buyer shall pay the fees and expenses charged by the accounting firm; (ii) the Buyer shall pay interest on the amount of the underpayment at the rate of 10% per annum from the time when such underpayment was originally due to the Seller; and (iii) thereafter the Seller shall be permitted to conduct the audit as set forth in this Section 2(i) no more than once each fiscal quarter.

3. Representations and Warranties of the Buyer. The Buyer hereby represents and warrants to Seller as follows:

1. Due Formation. The Buyer is duly formed, validly existing and in good standing under the laws of the State of Delaware.

2. Power and Authority; Execution and Delivery; Due Authorization. The Buyer has full corporate power and authority to execute and deliver this Agreement and each Ancillary Agreement to which it is or is proposed to be a party and to perform its obligations hereunder and thereunder. This Agreement has been and each Ancillary Agreement to which the Buyer is or is proposed to be a party has been (or, when executed and delivered, will have been) duly executed and delivered by the Buyer and, assuming the due and valid authorization, execution, and delivery by each other party hereto or thereto, this Agreement constitutes and each Ancillary Agreement to which the Buyer is or is proposed to be a party constitutes (or, when executed and delivered, will constitute) a legal, valid, and binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms and conditions, except in each case as may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally or by general principles of equity. The execution, delivery, and performance of this Agreement and each Ancillary Agreement to which the Buyer is or is proposed to be a party have been (or, when executed and delivered, will have been) duly authorized by all requisite corporate action on the part of the Buyer.

3. Non-contravention. Neither the execution and delivery of this Agreement or any Ancillary Agreement by the Buyer, nor the performance by the Buyer of its obligations hereunder or thereunder, will (A) violate the Organizational Documents of the Buyer, or (B) violate any Law to which the Buyer is subject or require the Consent of any Governmental Authority (other than any Consent that has already been obtained or otherwise satisfied).

4. Shares. The Shares are duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Buyer in accordance with the terms of this Agreement, will be validly issued and fully paid, and free and clear of any Liens or restrictions on transfer other than those arising under applicable securities Laws or that are created or imposed by the Seller. Assuming the accuracy of Section 4(p), the offer, issuance, sale and delivery of the Shares are or will be exempt from the registration requirements of the Securities Act and the qualification or registration provisions of applicable state securities Laws. The issuance of the Shares is not subject to any preemptive rights, rights of first refusal or other similar rights or provisions.

5. Legal Proceedings. There are no Actions pending or, to the Knowledge of the Buyer, threatened by or against the Buyer or any Affiliate of the Buyer that challenge or seek to restrain or enjoin the consummation of the Contemplated Transactions.

6. Brokers. The Buyer has not engaged, and does not and will not have any Liability for the payment of any fees or commissions to, any broker, finder, agent, investment banker, or financial advisor in connection with the Contemplated Transactions.

4. Representations and Warranties of the Seller. Seller hereby represents and warrants to the Buyer as follows:

1. Due Organization; Qualification; Power. The Seller is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or formation and is qualified to do business as a foreign entity under the laws of each jurisdiction in which qualification is necessary, which jurisdictions are set forth on Schedule 4(a). The Seller has all requisite corporate or limited liability company power and authority to carry on the business in which it is engaged and to own and use the properties owned and used by it. The Seller is not in breach of or default under (with or without notice, lapse of time, or both) its Organizational Documents. The Seller has made available to the Buyer complete and correct copies of its Organizational Documents.

2. Power and Authority; Execution and Delivery; Due Authorization. The Seller has full power and authority (including full corporate or limited liability company power and authority) to execute and deliver this Agreement and each Ancillary Agreement to which the Seller is or is proposed to be a party and to perform its obligations hereunder and thereunder. This Agreement has been and each Ancillary Agreement to which the Seller is or is proposed to be a party has been (or, when executed and delivered, will have been) duly executed and delivered by the Seller and, assuming the due and valid authorization, execution, and delivery by each other party hereto or thereto, this Agreement constitutes and each Ancillary Agreement to which the Seller is or is proposed to be a party constitutes (or, when executed and delivered, will constitute) a legal, valid, and binding obligation of the Seller, enforceable against the Seller in accordance with its terms and conditions, except in each case as may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally or by general principles of equity. The execution, delivery, and performance of this Agreement and each Ancillary Agreement to which the Seller is or is proposed to be a party have been (or, when executed and delivered, will have been) duly authorized by all requisite corporate or limited liability company action on the part of the Seller.

3. Non-contravention; Legal Proceedings.

    1. Neither the execution and delivery of this Agreement or any Ancillary Agreement by the Seller, nor the performance by the Seller of its obligations hereunder or thereunder, will (A) violate the Organizational Documents of the Seller, (B) violate any Law to which the Seller is subject, (C) except as set forth on Schedule 4(c)(i)(C), require Consent under any Material Contract or (D) result in the loss or impairment of any rights with respect to, or result in the imposition or creation of a Lien upon, any material Purchased Assets.

    2. There are no Actions pending or, to the Knowledge of the Seller, threatened by or against the Seller or any Affiliate thereof that challenge or seek to restrain or enjoin consummation of the Contemplated Transactions.

4. Brokers. The Seller has not engaged, and does not and will not have any Liability for the payment of any fees or commissions to, any broker, finder, agent, investment banker, or financial advisor in connection with the Contemplated Transactions.

5. Capitalization. Schedule 4(e) sets forth the number and class of authorized, and issued and outstanding capital stock (or equivalents thereto, including any stock appreciation, phantom stock, profit participation, rights to be allocated or receive any profits, loss, income, dividends, or distributions, options, warrants, call rights, preemptive, conversion or similar rights) of the Seller and the name of the record holder thereof. All of such issued and outstanding capital stock has been duly authorized, validly issued, fully paid, and non-assessable, and has been issued without violation of any applicable Laws (including securities Laws) or any Contracts or Organizational Documents as then in effect (including any preemptive and anti-dilution rights). There are no Seller Subsidiaries and the Seller does not hold of record or own beneficially, directly or indirectly, any equity (or equivalents thereto) of any Person.

6. Financial Statements; Undisclosed Liabilities.

1. Attached hereto as Schedule 4(f)(i) are the following financial statements of the Seller: (A) the compiled, unaudited consolidated balance sheet and statements of income and changes in stockholders' equity as of and for the fiscal years ended December 31, 2019 and December 31, 2020 (collectively, the "Year-End Financial Statements"); and (B) the unaudited consolidated balance sheet and statements of income and changes in stockholders' equity as of and for the eleven (11)-month period ended November 30, 2021 (such date, the "Most Recent Balance Sheet Date", such balance sheet, the "Most Recent Balance Sheet", and such balance sheet and statements of income and changes in stockholders' equity, collectively, the "Most Recent Financial Statements" and, together with the Year-End Financial Statements, collectively, the "Financial Statements"). The Financial Statements (including the notes thereto, as applicable) are complete and correct in all material respects, have been prepared in accordance, and are consistent, with the books and records of the Seller (which books and records are complete and correct in all material respects), and fairly and accurately present in all material respects the financial condition, results of operations, and changes in financial position of the Seller as of such dates and for such periods, in each case in accordance with generally accepted accounting principles as in effect in the United States (as in effect as of the dates such Financial Statements were prepared, applied on a consistent basis throughout the Financial Statements), provided that the Most Recent Financial Statements are subject to normal year-end adjustments and lack footnotes (none of which adjustments or footnotes are or would be material in the aggregate) and other presentation items.

2. The Seller does not have any Liabilities or commitments, except those that are adequately reflected or reserved against on the Most Recent Balance Sheet.

3. During the three (3) years prior to the date hereof, the Seller has not changed the accounting methods, principles, policies, practices, procedures, classifications, judgments, or estimation methodology used by the Seller in the preparation of the Financial Statements. Since December 31, 2020, the Seller has not (1) accelerated its acquisition of materials or inventory or incurrence of other costs, or (2) otherwise modified its operations in a manner that would accelerate the recognition of revenue, in each case within the foregoing clauses (1) and (2), relative to the Ordinary Course of Business.

7. Recent Events. Since December 31, 2020, no Material Adverse Effect has occurred, and, except as set forth on Schedule 4(g), the Seller has not:

   1. made any change in the financial accounting, Tax accounting, Tax reporting, or cash or working capital management principles, methods, or practices used by it, except to the extent required by a change in applicable Law or United States generally accepted accounting principles that came into effect following December 31, 2020;

   2. initiated any Action, or settled, had dismissed, or otherwise resolved any Action brought by or against it;

   3. suffered or entered into any termination, revocation, suspension, nonrenewal, abandonment, material amendment, or material breach of any of its Permits, Material Contracts, Intellectual Property, or insurance policies; or

   4. entered into any term sheet, letter-of-intent, or legally binding commitment or Contract to take, or adopted any corporate or other resolution authorizing or approving, any of the foregoing actions.

8. Litigation; Orders. Except as set forth on Schedule 4(h)(1), there are not currently, and there have not been since the date that is five (5) years prior to the date hereof, any Actions (or, to the Knowledge of the Seller, investigations by any Governmental Authority) pending (or, to the Knowledge of the Seller, threatened) by or against the Seller, or otherwise materially affecting the Seller's Business or any Purchased Assets or Assumed Liabilities. To the Knowledge of the Seller, no event has occurred or circumstance exists that would serve as a reasonable basis for the commencement of, or that would reasonably be expected to give rise to, any such Action or investigation. Except as set forth on Schedule 4(h)(2), none of the Seller, the Seller's Business, or any of the Purchased Assets is subject to any unsatisfied payment obligations or ongoing equitable restrictions pursuant to any Order or settlement agreement or is subject to any Order or settlement agreement that does or would reasonably be expected to prevent or materially delay the consummation of the Contemplated Transactions. None of the Actions, investigations, and Orders set forth on Schedule 4(h)(1) or (2) would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

9. Compliance with Laws and Permits.

1. The Seller is and to Seller's Knowledge any and all Product licensees and/or Distributors are, and have been at all times since the date that is five (5) years prior to the date hereof, in compliance in all material respects with all Laws applicable to the Seller, the Seller's Business, or any Purchased Assets or Assumed Liabilities. The Seller has not, since the date that is five (5) years prior to the date hereof, received any written notice from any Governmental Authority regarding any actual or alleged violation by the Seller or any director, manager, officer, employee, or independent contractor thereof acting in its capacity as such of any Law, or regarding any actual or potential investigation of the same.

2. Schedule 4(i)(ii) sets forth a complete and correct list of each Permit necessary or appropriate for the Conduct of the Business (including any Permit required under applicable Laws and/or Material Contracts), and the issuance and expiration date with respect thereto (each Permit that is or should be set forth on such Schedule, a "Seller Permit"). The Seller (A) maintains and is in compliance in all material respects with each Seller Permit, and (B) has timely and duly filed all applicable renewals and other filings required to have been filed with respect to each Seller Permit. Each Seller Permit is valid, in good standing and in full force and effect.

3. Without limiting the generality of the above, the Seller and the Business have been conducted at all times in compliance in all material respects with all anti-money laundering Laws and applicable financial record keeping and reporting requirements, rules, and regulations applicable to the Seller or the Business and no claim before any Governmental Authority involving any Seller with respect to such Laws is pending and, to the knowledge of the Seller, no such claims are threatened or contemplated.

10. Contracts.

1. Schedule 4(j)(i) sets forth a complete and correct list, and copies of, of all of the following Contracts of the Seller relating to the Business with respect to which the performance of either party has not been completed as of December 31, 2021, or with respect to which the Seller or other party thereto has, contingent or otherwise, continuing rights or obligations thereunder;

    1. (i) Any Contract with a Material Customer, and (ii) any Contract with a Material Supplier;

    2. Any Contract with any other existing distributor, supplier, manufacturer or vendor, regardless of whether any of the foregoing are Material Customers or Material Suppliers;

3. Any Contract (or group of related Contracts) with a Person other than a Customer, and in either case the performance of which (i) involved aggregate consideration in excess of $25,000.00 in the twelve (12)-month period ending at the end of the last full month immediately preceding the date hereof, or (ii) would reasonably be expected to involve aggregate consideration in excess of $25,000.00 in the twelve (12)-month period immediately following the date hereof;

4. Any Contract under which the Seller has made or has the right or obligation to make any (i) loans or advances to any of its current or former directors, managers, officers, employees, or other service providers, other than advances for expenses or in the Ordinary Course of Business, (ii) loans or advances to any other Persons, or (iii) guaranteeing the indebtedness of any other Persons;

5. Any lease or other Contract pursuant to which the Seller is granted, or grants to another Person, any rights with respect to any hardware, technology, or services related thereto, which hardware, technology, or services is or are material to the Conduct of the Business;

6. Any Contract primarily concerning non-competition, confidentiality, non-disclosure, non-use obligations and/or development or inventions assignments (including those with existing or former employees, contractors, consultants and other Persons);

7. List of Contracts with, or any and all details related to in the absence of such a Contract, any countries, or groups of countries, where research studies have been, or will be, performed and any and all information associated with such research studies including, but not limited to, the requisite registration and disclosure related to such research studies;

8. List of, and any and all details related to, any applications that have been, or are in the process of being, submitted to any, and all, Healthcare Regulatory Authorities;

9. List of, and any and all details related to, operating procedures and policies, audit and monitoring reports, corrective and preventative actions;

10. Any Contract under which the Seller (i) is bound (or is intended to be bound) by any non-competition, non-solicitation, or non-hire provisions, or any other provisions restricting its right to engage in any line of business or provide any goods or services, (ii) has granted any exclusive rights, (iii) has granted any options, (iv) has granted any rights of first offer or refusal, or (v) has granted any "most-favored-nation" right, special discount right, or similar right; and

11. Any other Contract (or group of related Contracts) that is material to the Conduct of the Business.

2. Each Material Contract constitutes a legal, valid, and binding obligation of the Seller, in full force and effect and enforceable in accordance with its terms and conditions against the Seller (and, to the Knowledge of the Seller, each other party thereto). The Seller is not (and, to the Knowledge of the Seller, no other party to any such Material Contract is) in material breach of or default under any Material Contract, with or without the lapse of time or the giving of notice or both. Since the date that is twelve (12) months prior to the date hereof, no other party to any Material Contract has materially reduced or otherwise materially adversely modified the business conducted under such Material Contract, has communicated written notice threatening or stating its intention to do so or to terminate such Material Contract, or has provided written notice claiming a breach of or default under, or repudiating any material provision of, such Material Contract.

11. Title to and Sufficiency of Assets. The Seller has good and marketable title to, or a legal, valid, and binding leasehold interest in or license to use, all of the Purchased Assets (whether real or personal, and whether tangible or intangible), free and clear of all Liens (other than Permitted Liens). Such title, leasehold interest, or license is not shared by the Seller with any other Person (including either Principal or other Affiliate). The Purchased Assets constitute all assets necessary or appropriate for the Conduct of the Business. Without limiting the foregoing, the Seller has good and marketable title to all Seller Intellectual Property, and a legal, valid, and binding leasehold interest in or license to use all Leased Real Property and Licensed Intellectual Property, in each case free and clear of all Liens (other than Permitted Liens).

12. Intellectual Property.

1. Schedule 4(l)(i) sets forth a complete and correct list of all Intellectual Property owned by the Seller and related to, used in or necessary for the operation of the Business (collectively, the "Acquired Intellectual Property"). For each item of Acquired Intellectual Property, Schedule 4(l)(i) sets forth the registration, patent, serial and/or application number, if any, the applicable jurisdiction, the Seller that owns or holds or grants, as applicable to such Acquired Intellectual Property, the date issued (if issued), date granted, and date filed (if filed), and the Governmental Authority or other entity with which any such application has been filed and/or which has issued, reissued and/or renewed any such patent, registration or license, as applicable. The completion of the Contemplated Transactions will not (A) impair any rights of the Seller under, or cause any Seller to be in violation of or default under, any Contract under which it has the right to use or otherwise commercialize or exploit in any way any Acquired Intellectual Property, (B) give rise to any termination or modification of, or entitle any other party to terminate or modify, any such Contract, or (C) require the payment of (or increase the amount of) any royalties, fees, or other consideration with respect to the Seller's use or exploitation of any Acquired Intellectual Property other than (y) fees and expenses required to record the transfer of its ownership; and (z) maintenance, renewal and other fees payable in the ordinary course. The Seller represents the Acquired Intellectual Property is valid, subsisting, and enforceable, and the Seller has taken all action necessary or reasonably advisable, performed all customary or prudent acts, recorded or filed all documents and paid all fees and Taxes (to the extent applicable) required or reasonably advisable to protect and maintain in full force and effect the Acquired Intellectual Property. Without limiting the generality of the foregoing, (i) the Seller has to the extent possible filed all affidavits or other documents regarding its registered trademarks that are required or useful to render such trademarks incontestable or otherwise enhance the scope or strength thereof and (ii) all assignments and licenses of any Acquired Intellectual Property to the Seller or any predecessor in interest thereof have been timely and properly recorded with the U.S. Patent and Trademark Office, the U.S. Copyright Office, or other appropriate agency to the extent required or reasonably advisable. Neither Principal owns or holds any Intellectual Property that is used, commercialized or exploited in any way, or anticipated to be used, commercialized or exploited in any way, by the Seller.

2. Seller has the right under a valid and enforceable license set forth on Schedule 4(l)(ii) (or under a valid and enforceable license to Off the Shelf Software), to use and otherwise commercialize or exploit subject to the terms of the license therefor, all licensed Intellectual Property ("Acquired Licensed IP"). The Acquired Intellectual Property and the Acquired Licensed IP collectively constitutes all of the Intellectual Property related to, used in, or necessary for the operation of the Business. To the Knowledge of the Seller, none of the licenses to the Acquired Licensed IP exclusively licensed to the Seller is invalid or unenforceable in whole or in part. Except as set forth on Schedule 4(l)(ii), no loss or expiration of any of the Acquired Licensed IP is pending, reasonably foreseeable or, to the Knowledge of the Seller, threatened.

3. Except as set forth on Schedule 4(l)(iii): (A) the use of the Acquired Intellectual Property, and the conduct of the Business, has not and to Seller's Knowledge does not infringe upon or misappropriate any intellectual property rights of any Person, whether directly, vicariously, indirectly, contributorily or otherwise; (B) no claims or allegations of infringement or unauthorized use involving any Acquired Intellectual Property or challenging the Seller's ownership of Intellectual Property owned or purported to be owned by the Seller or right to use, commercialize or exploit any other Intellectual Property is pending by or against any third party, or have been made in writing against the Seller, and, to the Seller's Knowledge, there is no basis for any such claim; (C) there are no pending claims or allegations or, to the Seller's Knowledge, threatened claims of infringement, misappropriation or unauthorized use of any third party Intellectual Property or technology against the Seller and no such claims or allegations have been made against any Seller and there is no basis for any such claim; (D) the Seller has not received any notices of, and, to the Seller's Knowledge, there are no facts which indicate a likelihood of, any direct, vicarious, indirect, contributory or other infringement, violation or misappropriation by any Seller of any Intellectual Property (including any cease and desist letters or demands or offers to license any Intellectual Property from any other Person); (E) to the Seller's Knowledge, none of the Acquired Intellectual Property is being infringed, misappropriated or otherwise used or available for use by any Person other than the Seller; and (F) none of the Acquired Intellectual Property is or has ever been subject to any Governmental Order.

4. Except as set forth on Schedule 4(l)(iv), all Acquired Intellectual Property set forth on Schedule 4(l)(i) is in full force and effect, all renewal and other maintenance filings and fees with respect thereto have been made and paid (to the extent due and payable prior to the date hereof), all other required maintenance actions have been taken, and all such intellectual property rights are valid and enforceable.

5. Seller has not taken any action which has in any way adversely affected its ownership of any portion of the Acquired Intellectual Property or its use of any Acquired Licensed Intellectual Property, or permitted any such Intellectual Property to enter the public domain. Except as set forth on Schedule 4(l)(v), (A) no licensing fees, royalties, or payments are due and payable in connection with the Seller's use of any Intellectual Property, and (B) the Seller has not licensed or otherwise granted any right to any Person under any Acquired Intellectual Property or has otherwise agreed not to assert any such Acquired Intellectual Property against any Person.

6. All employees of the Seller who participated in the creation or contributed to the conception or development of Intellectual Property owned or purported to be owned by the Seller relating to the Business were employees of the Seller at the time of rendering such services and such services were within the scope of their employment or such employees have otherwise validly assigned such Intellectual Property to the Seller or were contractors who assigned such Intellectual Property to the Seller. Except as set forth on Schedule 4(l)(vi), no director, manager, officer, equityholder, employee, consultant, contractor, agent or other representative of the Seller, including each Principal, owns or, to the Seller's Knowledge, claims any rights in (nor has any of them made application for) any Intellectual Property owned or used by the Seller.

7. Except as set forth on Schedule 4(l)(vii), the Seller has entered into confidentiality and/or nondisclosure agreements with all Persons with access to the proprietary information or trade secrets of the Seller relating to protect the confidentiality and value of such proprietary information and trade secrets, and, to the Seller's Knowledge, there has not been any breach by any of the foregoing of any such agreement. The Seller uses best efforts to maintain the secrecy of all proprietary information and trade secrets of the Seller that are material to the operation of the Business and are valuable thereto by virtue of their secrecy.

8. Except as set forth on Schedule 4(l)(viii), the information technology systems owned, licensed, leased, operated on behalf of, or otherwise held for use by the Seller, including all computer hardware, software, firmware and telecommunications systems (the "Systems") used by the Seller, (A) perform reliably in all material respects subject to normal wear and tear and in material conformance with the appropriate specifications or documentation for such systems, (B) are sufficient for the conduct of the Business as currently conducted, including as to capacity and ability to process current peak volumes in a timely manner and (C) are not currently in need of any material upgrades, revisions or additions. There have been no bugs in, or failures, breakdowns, or continued substandard performance of, any Systems that has caused the substantial disruption or interruption in or to the use of such Systems by any Seller or the conduct of the Business.

9. Schedule 4(l)(ix) set forth a true, correct and complete list of all 510(k) clearances, 510(k) pre-market notifications and other 510(k) and Related Regulatory Rights required for the operation of the Business as currently conducted by the Seller, and the Seller is in compliance in all respects with all Laws relating thereto.

10. Except as set forth on Schedule 4(l)(x), the Seller has satisfied all of its obligations to any Person, including, without limitation, payment of money or property, who has developed or licensed the Acquired Intellectual Property and the Acquired Licensed IP.

13. Labor Matters.

1. No employee or independent contractor of the Seller is bound by any restrictive covenants relating either to the Business or the Products.

2. No employee or independent contractor of the Seller is owed any compensation or payment from the Seller except in the ordinary course in accordance with the Seller's payroll practices.

3. To the Knowledge of the Seller, no employee of the Seller is obligated under any Contract (including any license, covenant, or commitment of any nature), or is subject to any Order, that would materially interfere with such employee's ability to promote the interest of the Seller or that would conflict with the Conduct of the Business.

14. Product and Service Liability, Warranties, and Returns.

1. Since the date that is three (3) years prior to the date hereof, the Seller has not incurred any Liabilities or received written notice of any claims, in all cases for amounts in excess of $15,000.00 in the aggregate (whether or not currently outstanding), arising from any actual or alleged (A) defect or other deficiency (whether of design, manufacture, materials, workmanship, labeling, instructions, inadequate warning, or otherwise) with respect to the Products or related goods, services, or other products that have been designed, manufactured, packaged, shipped, sold, leased out, licensed out, marketed, distributed, or otherwise introduced into the stream of commerce by or on behalf of the Seller, whether as distributor, agent, pursuant to any Contractual relationship with the manufacturer, or otherwise (each, a "Seller Product/Service"), (B) injury to Persons or property arising from the receipt, ownership, use, or possession of any Seller Product/Service, or (C) breach of, or failure to meet, any express or implied warranty (including any warranty of merchantability or fitness), other Contractual commitment, any applicable standard, any applicable Law, or any specification of any Governmental Authority, in each case relating to the Seller Product/Service. No such Liabilities or claims are currently outstanding, and no event has occurred or circumstance exists that would reasonably be expected to give rise to any such Liabilities, or that would serve as a reasonable basis for the commencement of any such claims. Since the date that is three (3) years prior to the date hereof, all Seller Products/Services have been sold in conformity with all express (and to the Knowledge of the Seller, implied) warranties (including any warranty of merchantability or fitness) and other Contractual commitments.

2. Since the date that is three (3) years prior to the date hereof, the Seller Product/Service has not been subject to a recall, and the Seller is not currently planning or contemplating the recall of any Seller Product/Service, in each case whether required by any Governmental Authority or otherwise. The Seller (and to the Knowledge of the Seller, each supplier or manufacturer from whom the Seller has purchased or otherwise obtained raw materials or finished products used in connection with Seller Products/Services) is, and has been at all times since the date that is three (3) years prior to the date hereof, in compliance in all material respects with all Laws and requirements of industry standards organizations, in each case relating to the manufacturing of, or otherwise applicable to, Seller Products/Services. The Seller has not, since the date that is three (3) years prior to the date hereof, received any written notice from any Governmental Authority regarding any actual or alleged violation with respect to any Seller Product/Service of any applicable Laws or requirements of industry standards organizations, or regarding any actual or potential investigation of the same or any actual or potential recall of any Seller Product/Service.

3. Attached hereto as Schedule 4(n)(iii) are complete and correct copies of the warranty terms, if any, applicable to all Seller Products/Services for the three (3) year period prior to the date hereof.

4. Since the date that is five (5) years prior to the date hereof, the Seller has not experienced (or received written notice of any claims, whether or not outstanding, for) any returns, requests for refunds or price renegotiations, or claims of over-shipment with respect to any Seller Products/Services, except in the Ordinary Course of Business, and, to the Knowledge of the Seller, no event has occurred or circumstance exists that would reasonably be expected to give rise to the occurrence of any such returns, requests for refunds or price renegotiations, or claims of over-shipment.

15. Inventory. The inventory set forth on the set forth on Exhibit C attached hereto and incorporated here: (i) depicts the current inventory relating to the Products or the; (ii) is owned by the Seller free and clear of all Liens (other than Permitted Liens), and is not held on a consignment basis, and (iii) consists of a quality and quantity that is fully usable and saleable in the Ordinary Course of Business, subject to any inventory write-down or reserve identified on the Most Recent Balance Sheet.

16. Federal Securities Law Matters.

1. The Seller, and each Person to whom the Shares may be transferred by the Seller, is an "accredited investor" as defined in Regulation D under the Securities Act and will be acquiring the Shares for his, her or its own account, for investment and not with a view to distribution or sale, or for the account of any other Person.

2. The Seller acknowledges that the Seller is experienced, sophisticated and knowledgeable in trading of securities of public companies and that the Seller has been given the opportunity to seek any information and ask any questions of the Buyer which the Seller deems necessary in order to make an informed decision with respect to the purchase of the Shares. The Seller represents that the Seller has, based on such information as the Seller deemed adequate and appropriate, made the Seller's own independent investigation and evaluation of the financial condition of the Buyer and the value of the Common Stock without any reliance on the Buyer. The Seller acknowledges and understands that the Buyer and its Affiliates possess material nonpublic information regarding the Buyer not known to the Seller that may impact the value of the Shares (the "Information"), and that the Buyer is not disclosing the Information to the Seller. The Seller understands, based on the Seller's experience, the disadvantage to which the Seller is subject due to the disparity of information between the Seller and the Buyer. Notwithstanding such disparity, the Seller has deemed it appropriate to enter into this Agreement and to consummate the transaction contemplated hereby. The Seller acknowledges that its financial condition is such that it has no need for liquidity with respect to its investment in the Shares and no need to dispose of the Shares to satisfy any existing or contemplated undertaking or indebtedness.

17. Full Disclosure. The Seller has made available to the Buyer a complete and correct copy of each of the Contracts, plans, insurance policies, and other documents set forth or referenced (or required to be set forth or referenced) on the Disclosure Schedules and all amendments, supplements, or other modifications thereto. Each description of any such Contract, plan, insurance policy, or other document on the Disclosure Schedules includes all such amendments, supplements, or other modifications thereto. To the Knowledge of the Seller, there are no material facts relating to the business, condition (financial or otherwise), results of operations, assets, prospects, or Liabilities of the Seller relating to the Business that have not been disclosed in this Agreement (including the Disclosure Schedules) or in any Ancillary Agreement. Neither this Agreement (including the Disclosure Schedules) nor any Ancillary Agreement contains any untrue statement of a material fact or omits a material fact necessary in order to make the statements contained herein or therein not misleading.

5. Covenants.

1. Further Assurances. From and after the Closing, each Party shall, and shall cause its Affiliates and Representatives to, take such further actions and execute and deliver such further documents (in form and substance reasonably satisfactory to such Party) as may be reasonably requested by any other Party to carry out the purposes of this Agreement or any Ancillary Agreement, at the sole cost and expense of the requesting Party (unless the contesting or defending Party is entitled to indemnification therefor pursuant to the terms hereof). Without limiting the generality of the foregoing, the covenants of further assurances provided under this Section 5(a) shall require the Seller, at Buyer's cost and expense, to take any and all action reasonably requested by the Buyer after the Closing to (i) evidence and confirm the transfer and assignment of the 510(k) and Related Regulatory Rights and provide written notice thereof to the FDA and other applicable Governmental Authorities, (ii) evidence and confirm the transfer and assignment of Intellectual Property included within the Purchased Assets and (iii) provide notice to any authorized representatives of the Seller appointed as such to facilitate the sale and distribution of products outside of the United States, and to designate and appoint such authorized representatives as authorized representatives of the Buyer for such purpose and to ensure the smooth and orderly transition of Business ownership from the Seller to the Buyer.

2. Litigation Support. From and after the Closing, in the event and for so long as any Party or Affiliate thereof is contesting or defending any Action relating to either (i) a fact, event, or condition in existence or occurring at or prior to the Closing involving any Purchased Assets or Assumed Liabilities, or (ii) the Contemplated Transactions (in each case within the foregoing clauses (i) and (ii), other than any Action between the Buyer and/or any of its Affiliates, on the one hand, and Seller and/or any of its Affiliates, on the other hand), each other Party shall, and shall cause its Affiliates and Representatives to, cooperate with such contesting or defending Party or Affiliate thereof and its counsel in such defense or contest, including by making available its personnel and providing such testimony and access to its books and records as shall be reasonably necessary or advisable in connection with such contest or defense, in each case at the sole cost and expense of the contesting or defending Party (unless the contesting or defending Party is entitled to indemnification therefor pursuant to the terms hereof).

3. Assumed Liabilities. From and after the Closing, the Buyer shall be responsible for, and shall have complete control over the payment, settlement, or other disposition of, or any dispute involving, and shall conduct and control all negotiations and proceedings with respect to, all Assumed Liabilities.

4. [Intentionally Omitted].

5. Transfer Taxes. The Seller shall be responsible for the preparation and filing of Tax Returns (including any documentation) with respect to all transfer, documentation, sales, use, stamp, registration, and similar Taxes, including bulk sales taxes, incurred in connection with the Contemplated Transactions. The Seller shall pay and discharge the amount of such Taxes and indemnify and hold harmless the Buyer Indemnified Parties from same.

6. Consents.

    1. Notwithstanding anything to the contrary in this Agreement or the Ancillary Agreements (but without limiting the representations and warranties set forth herein and therein), to the extent that the purchase, assumption, or other conveyance by the Seller to the Buyer of any Purchased Asset or Assumed Liability hereunder would require Consent of any Governmental Authority or under any Contract, in each case which Consent is not obtained prior to the Closing, then for so long as such Consent is not obtained or otherwise satisfied, such Purchased Asset or Assumed Liability (each, a "Non-Assignable Item") shall be deemed to not have been purchased, assumed, or otherwise conveyed hereunder and shall not constitute a Purchased Asset or Assumed Liability, and instead shall constitute an Excluded Asset or an Excluded Liability, as applicable.

    2. From and after the Closing, Seller shall, at Buyer's cost and expense, use its reasonable best efforts to assist the Buyer in obtaining or otherwise satisfying all Consents required in connection with the Contemplated Transactions, including by paying any reasonable costs of, or consideration to, any third party in order to obtain or otherwise satisfy such Consents. For so long as any such Consent is not obtained or otherwise satisfied, the Seller shall, at its sole cost and expense, use its reasonable best efforts to provide the Buyer with substantially the same economic and operational benefits of any Non-Assignable Item (that would, if the applicable Consent were obtained or otherwise satisfied, constitute a Purchased Asset) as the Seller received prior to the Closing as a result of such Non-Assignable Item (for example, by way of subleasing, sublicensing, or subcontracting the applicable Non-Assignable Item).

3. If and when any Consent with respect to a Non-Assignable Item is obtained or otherwise satisfied, such Non-Assignable Item shall, without the requirement of any further action, automatically be deemed to have been purchased, assumed, or otherwise conveyed hereunder, as applicable, and shall thereupon cease to constitute a Non-Assignable Item, Excluded Asset, or Excluded Liability, and instead shall constitute a Purchased Asset or Assumed Liability, as applicable, and the representations and warranties set forth in this Agreement and the Ancillary Agreements with respect to Purchased Assets or Assumed Liabilities, as applicable, shall be deemed to apply to such item. The Seller shall take such further actions and execute, deliver, and file such further documents as may be reasonably requested by the Buyer to evidence the foregoing, without the payment of additional consideration.

7. Misdirected Items and Communications.

1. To the extent that, at any time following the Closing, either the Buyer, on the one hand, or Seller, on the other hand, receives payment of an account receivable or other payment or benefit, or is in possession of any asset (including, in the case of the Buyer, any Excluded Asset, and in the case of the Seller, any Purchased Asset), in each case that in accordance with this Agreement and the Ancillary Agreements is owned by or owed to the other (each, a "Misdirected Item"), then the Person receiving such Misdirected Item shall promptly upon becoming aware of such fact provide written notice to the Person entitled to such Misdirected Item and cooperate to deliver such Misdirected Item to such entitled Person, without the payment of additional consideration. The Person initially receiving such Misdirected Item shall take such further actions and execute, deliver, and file such further documents as may be reasonably requested by the entitled Person in connection with the foregoing, including the endorsement of any applicable checks.

2. To the extent that, at any time following the Closing, any Party receives any mail, email, or other written communication that, in the case of the Buyer on the one hand, relates primarily to Excluded Assets and/or Excluded Liabilities, and in the case of the Seller on the other hand, relates primarily to Purchased Assets and/or Assumed Liabilities, then promptly upon becoming aware of such fact, such Party shall promptly forward such communication to the other.

8. Restrictive Covenants.

1. The Seller and each Principal in exchange for the good and valuable consideration they are receiving from the Contemplated Transactions, the receipt and sufficiency of which is hereby acknowledged, intending to be legal bound and acknowledging the Buyer would not enter into this Agreement or the Contemplated Transactions without this Section 5(h), hereby covenant and agree that, during the period commencing at the Closing and continuing until the fifth (5th) anniversary of the Closing Date (the "Restricted Period"), the Seller and each Principal shall not (and shall cause its Affiliates not to) do any of the following, or serve as a partner, joint venturer, director, manager, trustee, officer, employee, independent contractor, agent, lender, investor or equityholder (excluding *de minimis* holdings in publicly traded companies) of any Person that does any of the following, in each case whether directly or indirectly:

    1. participate or engage in, or provide any financial or other assistance to any Person participating or engaging in a Competitive Business anywhere in the world (it being understood, recognized and acknowledged by the Seller that the Business being purchased hereunder is conducted on a global worldwide basis) (the "Restricted Territory"), provided that this clause (A) shall not apply to any Principal serving in any capacity of the Buyer or any of its Affiliates;

    2. solicit, contact, or conduct a Competitive Business with (or attempt to conduct a Competitive Business with) any Person who is then, or was within the twelve (12) months prior thereto, a Customer of the Buyer or the Business being purchased hereunder;

    3. induce or entice (or attempt to induce or entice) any distributor, supplier, vendor, or any other Person having a business relationship with the Buyer or the Business being purchased hereunder to terminate or adversely modify its relationship with the Buyer or such Business;

    4. solicit, contact, hire, engage, or enter into any other business relationship with (or attempt to do any of the foregoing) any Person who is then, or was within the twelve (12) months prior thereto, a director, manager, officer, employee, independent contractor, or agent of the Buyer or the Business being purchased hereunder, or induce or entice (or attempt to induce or entice) any such Person to terminate or adversely modify its relationship with the Buyer or such Business, provided that nothing in this clause (D) shall prohibit the publishing of general advertisements not specifically targeted to any directors, managers, officers, employees, independent contractors, or agents of the Buyer or such Business; or

5. make or endorse any disparaging, derogatory, or otherwise negative written or oral communication regarding the Business, any of the Purchased Assets or Assumed Liabilities, or the Buyer or its Affiliates or Representatives.

2. The Restricted Period with respect to Seller and each Principal shall be tolled during (and shall be deemed to be automatically extended by) any period during which Seller is in violation of any provision set forth in clause (i) above.

3. Seller and each Principal hereby agree that the Business would suffer irreparable damage, and money damages would be inadequate, if any provision of clause (i) above were not performed in accordance with its terms and that the Buyer shall be entitled to injunctive relief and specific performance of the terms of clause (i) above, in addition to any other remedy to which it is entitled at law or in equity. Seller and each Principal irrevocably waives any requirement for the securing or posting of any bond in connection with such remedy. Seller and each Principal further agree that the only permitted objection that it may raise in response to any Action for equitable relief is that it contests the existence of a breach or threatened breach of clause (i) above.

4. Seller and each Principal hereby agree that all restrictions set forth in clause (i) above, including those relating to the duration of the Restricted Period and the scope of the Restricted Territory, are necessary and fundamental to the protection of the Buyer and its operation of the Business purchased hereunder, are reasonable and valid, and constitute a material inducement for the Buyer to enter into this Agreement and each Ancillary Agreement and to consummate the Contemplated Transactions. To the extent that any court of competent jurisdiction holds that the duration, scope, or area restrictions set forth in clause (i) above are unreasonable under circumstances then existing, the Parties agree that the maximum duration, scope, or area reasonable under such circumstances shall be substituted for the stated duration, scope, or area and that such court shall be permitted, and this Agreement shall automatically be revised, to modify the restrictions set forth in clause (i) above to cover the maximum period, scope and area permitted by law or equity.

9. Restrictions on Transfer. The Seller understands and agrees that the Shares will bear a legend substantially similar to the legend set forth below in addition to any other legend that may be required by applicable law or by any agreement between the Buyer and the Seller. Upon receipt of certifications from the Seller reasonably satisfactory to the Buyer's counsel, the Buyer shall cause the legend to be removed in accordance with, and pursuant to, Rule 144 promulgated under the Securities Act and any other applicable federal and state securities Laws.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR REGISTERED AND/OR QUALIFIED UNDER ANY STATE SECURITIES LAWS. THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED EXCEPT (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND REGISTRATION AND/OR QUALIFICATION UNDER APPLICABLE STATE SECURITIES LAWS, (B) IN A TRANSACTION WHICH IS EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND REGISTRATION AND/OR QUALIFICATION UNDER APPLICABLE STATE SECURITIES LAWS PROVIDED THAT AT THE ISSUER'S REQUEST, THE TRANSFEROR THEREOF SHALL HAVE DELIVERED TO THE ISSUER AN OPINION OF COUNSEL (WHICH OPINION SHALL BE IN FORM, SUBSTANCE AND SCOPE REASONABLY SATISFACTORY TO THE ISSUER) TO THE EFFECT THAT SUCH SECURITIES MAY BE SOLD OR TRANSFERRED PURSUANT TO AN EXEMPTION FROM SUCH REGISTRATION, OR (C) SUCH SECURITIES MAY BE SOLD PURSUANT TO RULE 144 PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

10. Registration Statement. No later than three (3) Business Days after the Closing Date, the Buyer covenants to file a registration statement with the Securities and Exchange Commission seeking to register the Shares under the Securities Act of 1933. The Buyer shall use commercially reasonable efforts to keep the Shares registered under the Securities Act of 1933 until the one (1) year anniversary of such registration statement becoming effective.

11. Theraclear 2.0. The Seller shall use commercially reasonable efforts to develop TheraClear 2.0.

6. Closing Deliverables.

1. Deliverables of the Seller. At the Closing, the Seller shall deliver to the Buyer (or cause to be delivered to the Buyer) the following documents, as applicable, in form and substance reasonably satisfactory to the Buyer:

    1. to the extent requested by the Buyer, a complete and correct payoff letter with respect to all Funded Indebtedness as of the Closing, setting forth the amounts required to be paid to (A) satisfy all such Funded Indebtedness as of the Closing, and (B) terminate and release any related Liens and all other obligations of the Seller in favor of such Person, together with any termination statements on Form UCC-3 or other releases reasonably necessary or desirable to evidence the termination and release of any such Liens and obligations, in each case in form ready for filing (if applicable);

2. evidence reasonably satisfactory to the Buyer that each Person who has, directly or indirectly, contributed to the development of the Intellectual Property has assigned his, her or its ownership of the Intellectual Property to the Seller;

3. (A) counterparts of each Ancillary Agreement, and (B) such documents, notices and other agreements or instruments of transfer reasonably requested by the Buyer or any applicable Governmental Authority to transfer, assign and convey to the Buyer on an exclusive basis all 510(k) and Related Regulatory Rights, ownership thereof and responsibility therefor pursuant to and as required by all applicable Laws (provided, that it is understood, recognized and agreed that certain of such documents, notices and other agreements or instruments of transfer may be executed after the Closing as contemplated by Section 5(a) to the extent such execution does not adversely affect the rights and interests of the Buyer hereunder);

4. evidence the Consents set forth on Schedule 6(a) shall have been obtained or otherwise satisfied;

5. termination statements on Form UCC-3 or other releases reasonably necessary or desirable to evidence the termination and release of any such Liens and obligations, in each case in form ready for filing (if applicable);

6. a Form W-9 or other applicable tax form, duly executed by the Seller;

7. a payment direction letter, duly executed by the Seller, setting forth the amount and wire transfer instructions with respect to each payment to be made pursuant to Section 2(b) at the Closing and authorizing the Buyer to pay (or cause to be paid) such amounts using such wire transfer instructions in lieu of making such payments to the Seller;

8. a certificate of good standing or analogous status of the Seller in its jurisdiction of organization, certified by the Secretary of State (or analogous office) of its jurisdiction of organization;

9. a copy of the articles or certificate of incorporation or analogous charter or similar document of the Seller;

10. an electronic, operational copy of the most recent version of the object code and/or source code, and/or any progeny or legacy object code and/or source code, all of which is necessary in connection with the operation of the Products, together with all comments and programmers notes;

11. a certificate of a secretary or other authorized officer of the Seller certifying as to (A) its Organizational Documents, (B) the resolutions duly adopted by all requisite Persons on its behalf authorizing and approving this Agreement, each Ancillary Agreement to which it is or is proposed to be a party, and the consummation of the Contemplated Transactions, and (C) an incumbency setting forth the names, titles, and signatures of Persons authorized to execute and deliver on its behalf this Agreement and each Ancillary Agreement to which it is or is proposed to be a party; and

12. such other documents reasonably requested by the Buyer.

2. Deliverables of the Buyer. At the Closing, the Buyer shall deliver to Seller the following documents, as applicable, in form and substance reasonably satisfactory to the Seller:

1. counterparts of each Ancillary Agreement, duly executed by the Buyer;

2. a certificate of good standing or analogous status of the Buyer in its jurisdiction of organization;

3. a certificate of a secretary or other authorized officer of the Seller certifying as to (A) its Organizational Documents, (B) the resolutions duly adopted by all requisite Persons on its behalf authorizing and approving this Agreement, each Ancillary Agreement to which it is or is proposed to be a party, and the consummation of the Contemplated Transactions, and (C) an incumbency setting forth the names, titles, and signatures of Persons authorized to execute and deliver on its behalf this Agreement and each Ancillary Agreement to which it is or is proposed to be a party; and

4. such other documents reasonably requested by the Seller.

7. Indemnification.

1. Survival Periods. All representations and warranties made by the Parties in this Agreement and in any Ancillary Certificate shall survive the Closing (and any claims for the breach thereof may be brought) until the eighteen (18)-month anniversary of the Closing Date, provided that:

1. the Fundamental Representations shall survive the Closing (and any claims for the breach thereof may be brought) for a period of five (5) years after the Closing Date;

2. [Intentionally Omitted]; and

3. any claims based upon fraud, intentional misrepresentation, willful misconduct or bad faith may be brought anytime indefinitely.

The last date on which a claim for the breach of a representation or warranty contained in this Agreement or in any Ancillary Certificate may be brought in accordance with the foregoing is referred to herein as the "Expiration Date" of such representation or warranty. Any such claim must be asserted by a written notice that provides in reasonable detail the facts, occurrences or omissions giving rise to such breach on or before the applicable Expiration Date, provided that, notwithstanding anything to the contrary contained in this Section 7(a), if such a written notice is given with respect to any claim, such claim shall survive until fully resolved as provided herein.

2. Seller Indemnities. Subject to the provisions of this Section 7, from and after the Closing:

1. The Seller shall indemnify, defend and hold harmless each Buyer Indemnified Party from and against any Losses such Buyer Indemnified Party shall suffer resulting from (A) the breach of any representation or warranty made by the Seller in this Agreement or in any Ancillary Certificate, (B) the breach of any covenant or agreement with respect to obligations to be performed by the Seller set forth in this Agreement, (C) any Excluded Liabilities, (D) any Taxes in respect of the Business being purchased hereunder or the Purchased Assets with respect to any period on or prior to the Closing, (E) the applicability of any bulk sales Laws to the Contemplated Transactions, (F) any Action by any Person alleging that the Contemplated Transactions were not duly authorized or approved in accordance with the Organizational Documents of the Seller or applicable Law or (G) the failure by the Seller to obtain any Consent required in connection with the completion of the Contemplated Transactions as such Consents are identified and disclosed on Schedule 4(c)(i)(C).

3. Buyer Indemnities. Subject to the provisions of this Section 7, from and after the Closing, the Buyer shall indemnify, defend and hold harmless each Seller Indemnified Party from and against any Losses such Seller Indemnified Party shall suffer resulting from (A) the breach of any representation or warranty made by the Buyer in this Agreement or in any Ancillary Certificate, (B) the breach of any covenant or agreement with respect to obligations to be performed by the Buyer set forth in this Agreement, and (C) the operation of the Business after the Closing Date, (D) any Taxes in respect of the Business being purchased hereunder or the Purchased Assets with respect to any period after the Closing and (E) any Assumed Liabilities.

4. Direct Claims; Third Party Claims.

1. Direct Claims. If an Indemnified Party incurs Losses for which it is entitled to indemnification under this Section 7, other than as a result of a Third Party Claim, then the Indemnified Party Representative may deliver written notice of its claim for such indemnification to the Indemnifying Party Representative describing its claim for indemnification with reasonable specificity and setting forth, to the extent known, an estimated amount of Losses. If, within thirty (30) days following its receipt of the notice described above, the Indemnifying Party Representative delivers written notice to the Indemnified Party Representative disputing the amount (or any portion thereof) of Losses claimed by such Indemnified Party or that such Indemnified Party is entitled to such indemnification and the Indemnifying Party Representative and the Indemnified Party Representative are not able to resolve such matter within such thirty (30)-day period, then the Indemnified Party Representative shall be entitled to submit such indemnification claim to any court or authority of competent jurisdiction described in Section 9(h), which claim shall be adjudicated in accordance with the limitations set forth in this Section 7. With respect to any amount (or portion thereof) of Losses claimed by such Indemnified Party that has not been disputed by the Indemnifying Party Representative within such thirty (30)-day period in accordance with the foregoing, such amount (or portion thereof) shall for all purposes under this Agreement conclusively be deemed to be indemnifiable Losses and the applicable Indemnifying Party(ies) shall be liable therefor (it being understood and agreed that, in accordance with the above, such amount (or portion thereof) may not constitute all indemnifiable Losses that may arise from the applicable matter in question).

2. Third Party Claims.

1. If any Person which is not an Indemnified Party shall assert a claim against an Indemnified Party which claim gives rise to a claim for indemnification against an Indemnifying Party under this Section 7 (a "Third Party Claim"), then such Indemnified Party shall, within thirty (30) days after such non-Indemnified Party asserts such claim, deliver written notice of such Third Party Claim to the Indemnifying Party Representative (a "Third Party Claim Notice") (provided that the failure or delay to so notify such Indemnifying Party Representative shall not relieve any Indemnifying Party of its obligations hereunder except to the extent that such Indemnifying Party is actually and materially prejudiced by such failure or delay). Thereafter, each Indemnified Party shall deliver or cause to be delivered to such Indemnifying Party Representative, within five (5) Business Days after such Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by such Indemnified Party relating to the Third Party Claim.

2. The Indemnifying Party Representative shall have the right (but not the obligation), to be exercised within ten (10) Business Days following its receipt of the Third Party Claim Notice by delivering written notice to the Indemnified Party Representative, to assume and thereafter conduct and control the defense of such Third Party Claim (with counsel of such Indemnifying Party Representative's choice that is reasonably satisfactory to the Indemnified Party Representative), but only if and for so long as (1) such Indemnifying Party Representative acknowledges in a signed writing (which, for the avoidance of doubt, shall be deemed to be binding on behalf of all Indemnifying Parties and irrevocable) that the Indemnifying Party(ies) shall be deemed to be liable for all Losses with respect to such Third Party Claim, (2) such Third Party Claim does not seek monetary damages in an amount in excess of the remaining amount for which the Indemnifying Party(ies) could be liable by virtue of the limitations set forth in Section 7(f)(i)(B), Section 7(g)(B), or any other caps on indemnifiable amounts expressly set forth herein, (3) such Indemnifying Party Representative is conducting and controlling such defense diligently and in good faith, (4) if both an Indemnified Party and an Indemnifying Party are named (by impleader or otherwise) in such Third Party Claim, then there are no material legal defenses available to an Indemnified Party the assertion of which would be adverse to the interests of an Indemnifying Party, (5) such Third Party Claim has not been brought by a Material Customer or Material Supplier, (6) such Third Party Claim does not allege fraud or criminal activity, (7) such Third Party Claim does not seek equitable remedies, and (8) such Third Party Claim, if adversely determined, would not reasonably be expected to result in a material adverse effect as to an Indemnified Party and its Subsidiaries taken as a whole. If such Indemnifying Party Representative assumes the defense of such Third Party Claim, then, regardless of the outcome of such Third Party Claim, the Indemnifying Party(ies) shall bear all costs and expenses incurred by the Indemnifying Party Representative in connection with such defense. For so long as such Indemnifying Party Representative is conducting and controlling such defense, (I) each Indemnified Party shall have the right, but not the obligation, to participate in such defense with separate counsel of its choosing at its sole cost and expense (or at the Indemnifying Parties' sole cost and expense if there are any conflicts of interests with respect to such defense as between any Indemnified Party and any Indemnifying Party), and (II) each Indemnified Party shall cooperate with such Indemnifying Party Representative in such defense and make available to such Indemnifying Party Representative and its Representatives, at the Indemnifying Party's(ies') sole cost and expense, all witnesses, pertinent records, materials and information in or under such Indemnified Party's possession or control relating thereto as may be reasonably requested by such Indemnifying Party Representative. The Indemnifying Party Representative shall not be permitted to consent to the entry of any judgment or enter into any settlement with respect to such Third Party Claim without the prior written consent of the Indemnified Party Representative, provided that such consent shall not be unreasonably withheld unless such judgment or settlement (w) involves the admission of fraudulent or criminal wrongdoing on the part of any Indemnified Party, (x) imposes equitable relief upon any Indemnified Party, (y) imposes any monetary damages on any Indemnified Party except to the extent that the Indemnifying Parties are required under this Section 7 (after giving effect to all applicable limitations set forth herein), and have the funds available, to pay such damages in their entirety, or (z) does not contain a complete and unconditional release of each applicable Indemnified Party from all liability with respect to such Third Party Claim.

3. Unless and until the Indemnifying Party Representative assumes the defense of any Third Party Claim as provided in Section 7(d)(ii)(B), each applicable Indemnified Party may defend against such Third Party Claim in any manner it may reasonably deem appropriate (with counsel of such Indemnified Party's choice), in which case each Indemnifying Party shall cooperate with such Indemnified Party in such defense and make available to such Indemnified Party and its Representatives all witnesses, pertinent records, materials, and information in or under such Indemnifying Party's possession or control relating thereto as may be reasonably requested by such Indemnified Party. The conduct of such defense by such Indemnified Party shall not be construed to be a waiver of such Indemnified Party's right to indemnification with respect to such Third Party Claim. No Indemnified Party shall be permitted to consent to the entry of any judgment or enter into any settlement with respect to such Third Party Claim without the prior written consent of such Indemnifying Party Representative (not to be unreasonably withheld, conditioned, or delayed).

5. Additional Indemnification Provisions.

    1. For purposes of this Section 7, in determining the amount of Losses arising in connection with or resulting from any inaccuracy in or breach of any representation or warranty set forth in this Agreement or in any Ancillary Certificate, each reference to any materiality, Material Adverse Effect, or similar qualification contained in or otherwise applicable to any such representation or warranty shall be disregarded.

    2. [Intentionally Omitted.]

    3. Seller, on behalf of itself and its Affiliates, hereby waives any right of contribution or similar right that might otherwise have been available to it against any Buyer Indemnified Party or its insurers with respect to any indemnification obligation pursuant to Section 7(b).

6. Limitations on Seller Indemnities. Notwithstanding anything to the contrary contained herein, Seller shall not be obligated to indemnify any Buyer Indemnified Party from or against:

    1. any Losses arising under Section 7(b)(i)(A) (other than Losses arising from fraud or a breach of a Fundamental Representation): (A) until the Buyer Indemnified Parties shall have suffered such Losses in an aggregate amount equal to $20,000.00 (the "Basket Amount"), after which point the Seller shall be obligated to indemnify each Buyer Indemnified Party from and against the aggregate amount of all such Losses, including the Basket Amount; and/or (B) to the extent that the Buyer Indemnified Parties shall have suffered (and received indemnity payments for) such Losses in an aggregate amount in excess of $200,000.00 plus any amounts paid to Seller in respect of either (i) the Earnout Amount actually received by the Seller; or (ii) the Additional Earnout actually received by the Seller (collectively, the "Cap Amount"); or

    2. any Losses arising under Section 7(b)(i)(A) arising from a breach of a Fundamental Representation to the extent that the Buyer Indemnified Parties shall have suffered (and received indemnity payments for) such Losses in an aggregate amount equal to any amounts paid by the Buyer to the Seller pursuant to this Agreement or any Ancillary Agreement, including, without limitation, the Purchase Price, the Earnout Amount or the Additional Earnout Amount.

7. Limitations on Buyer Indemnities. Notwithstanding anything to the contrary contained herein, the Buyer shall not be obligated to indemnify any Seller Indemnified Party from or against any Losses arising under Section 7(c)(A) (other than Losses arising from or a breach of a Fundamental Representation): (A) until the Seller Indemnified Parties shall have suffered such Losses in an aggregate amount equal to the Basket Amount, after which point the Buyer shall be obligated to indemnify the Seller Indemnified Parties solely from and against the aggregate amount of such Losses in excess of the Basket Amount; and/or (B) to the extent that the Seller Indemnified Parties shall have suffered (and received indemnity payments for) such Losses in an aggregate amount in excess of the Cap Amount.

8. Mitigation; Reductions of Losses.

   1. The Parties shall cooperate and use commercially reasonable efforts to mitigate any Losses for which an Indemnified Party is entitled to indemnification hereunder to the extent required under applicable Law, provided that, notwithstanding the requirements under applicable Law, no Party shall be required to take any action that would be detrimental to it in any material respect, violate any Contract or applicable Law, seek recovery from its Customers, suppliers, vendors, or other material business relations, or file any lawsuit to obtain recovery from any Person or under any insurance policy. All expenses incurred by or on behalf of an Indemnified Party in connection with its efforts to mitigate Losses shall be deemed Losses.

   2. In calculating the amount of Losses of any Indemnified Party, there shall be a deduction for the amount of any insurance proceeds actually received by such Indemnified Party or any of its Affiliates amounting to a mitigation of such Losses (net of any related deductibles and actual and/or reasonably projected increases in premiums) ("Mitigating Payments"). Without duplication of the foregoing, in the event that any Indemnified Party or any of its Affiliates actually receives any Mitigating Payments in respect of any Losses subsequent to the receipt by such Indemnified Party of any indemnification payment hereunder in respect of such Losses, such Indemnified Party shall promptly make appropriate refunds to the appropriate Indemnifying Party in an aggregate amount equal to the lesser of (A) the amount of such subsequent Mitigating Payments, and (B) the amount of such indemnification payments received hereunder in respect of such Losses.

9. Effect of Knowledge. The rights of each Person to be indemnified and held harmless, and to exercise any other rights or remedies available to it, under the applicable provisions of this Agreement and any Ancillary Certificate shall not be affected or deemed waived by (A) any investigation made by such Person or its Representatives, or (B) the fact that such Person or its Representatives knew of or reasonably should have known of or reasonably could have foreseen, prior to the Closing, the matter or the breach of the representation, warranty, covenant, or agreement that gave rise to such right to indemnification, to be held harmless, or to exercise such other rights or remedies.

10. Exclusive Remedy. Except (i) for any equitable remedies of the Parties expressly provided herein (including pursuant to Section 5(f) and Section 9(m)), (ii) as expressly provided in Section 2(f)(ii), Section 2(i), and Section 5(e)(vii), and (iii) with respect to claims based on fraud, intentional misrepresentation, willful misconduct or bad faith, the provisions in Section 5(e) and this Section 7 shall be the sole and exclusive remedy of all Persons following the Closing with respect to claims and other matters arising under this Agreement and any Ancillary Certificate.

11. Manner of Payment.

    1. All obligations owed to any Party pursuant to Section 5(e) or Section 7(b)(i)(A) shall be satisfied within five (5) Business Days following the final determination of the claim giving rise to such obligation, by wire transfer of immediately available funds to one or more accounts designated in writing by the Buyer.

    2. All obligations owed to any Seller Indemnified Party pursuant to Section 7(c) shall be satisfied, within five (5) Business Days following the final determination of the claim giving rise to such obligation, by wire transfer of immediately available funds to one or more accounts designated in writing by the Seller.

12. Tax Treatment. The Parties agree to treat any payment made pursuant to this Section 7 as an adjustment to the Purchase Price for all purposes hereunder and all Tax purposes.

8. Authority of the Seller. Ashish Bhatia ("Seller's Representative") shall have the authority to act as the agent for, and to bind and/or execute any documents as attorney-in-fact for, Seller in connection with this Agreement and each Ancillary Agreement. Such authority shall include the sole and exclusive authority to (A) assert, pursue, defend against, contest, and settle claims for indemnification hereunder, (B) exercise any other rights and remedies that may be available to Seller hereunder, (C) defend against, contest, and settle the assertion of any other rights or remedies by the Buyer hereunder, and (D) execute and deliver amendments, consent, and waivers to and under this Agreement and each Ancillary Agreement. Seller shall retain the authority to act on its own behalf with respect to any matter not covered by the preceding sentence and not otherwise expressly required or permitted to be taken solely by Ashish Bhatia. The Buyer shall be entitled to rely on the authority granted pursuant to this Article VIII and shall have no liability to Seller as a result of such reliance. All of the powers, authorities, rights, and immunities granted to Ashish Bhatia under this Article VIII above shall survive the Closing. The grant of authority provided to Ashish Bhatia under this Article VIII is coupled with an interest, shall be irrevocable, and shall survive the death, incompetency, bankruptcy or liquidation of Seller.

9. Miscellaneous.

1. Press Releases and Public Announcements. The Parties shall issue a joint press release promptly following the Closing, in form and substance reasonably satisfactory to the Buyer and the Seller. Other than the foregoing, no Party shall, or shall permit its Affiliates or Representatives to, issue any press release or make any public filing, announcement, or disclosure (whether written, oral, or electronic) relating to the Contemplated Transactions without the prior written approval of the Buyer and the Seller, except (i) as required by applicable Law or the rules or regulations of any United States or foreign securities exchange, in which case the Party required to make such release, filing, announcement, or disclosure shall provide the Buyer and the Seller with reasonably advance written notice of, and an opportunity to review, discuss, and comment on, such proposed release, filing, announcement, or disclosure and (ii) for communications disseminated by the Buyer to investors, prospective investors, and to the public generally announcing the closing of the Contemplated Transactions, with a brief description thereof but not indicating the consideration paid for the Business, all in accordance with the ordinary course of business of the Buyer in connection with the announcing of its completed investments of the type described herein.

2. Third-Party Beneficiaries. Neither this Agreement nor any Ancillary Agreement shall confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns, provided that the Indemnified Parties shall constitute third-party beneficiaries solely for the purposes of Section 5(e) and Section 7 and any Person lending money to or extending credit to the Buyer shall constitute a third-party beneficiary of this Agreement and each Ancillary Agreement.

3. Entire Agreement. This Agreement and the Ancillary Agreements constitute the entire agreement among the Parties and supersede any prior understandings, agreements, representations, warranties, letters of intent, or term sheets by or among the Parties (as well as any Affiliate or Representative acting on behalf of any Party), written or oral, to the extent they relate in any way to the subject matter hereof or thereof.

4. Successors and Assigns. This Agreement and each Ancillary Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign (by operation of law, merger (whether as surviving or disappearing entity), consolidation, dissolution, or otherwise) this Agreement, any Ancillary Agreement, or any of such Party's rights, interests, or obligations hereunder or thereunder without the prior written consent of the Buyer and the Seller, and any such assignment in violation of the foregoing shall be null and void. Notwithstanding the foregoing, following the Closing, without obtaining any such consent, the Buyer or any of its successors or assigns shall be permitted to assign this Agreement, any Ancillary Agreements, and any of their rights and interests hereunder and thereunder to (i) any Affiliate of such Person, (ii) any acquirer of such Person (whether by sale of equity interests, by sale of all or substantially all assets, by operation of law, by merger, consolidation, or otherwise), and/or (iii) any debt financing sources of the Buyer or any of its successors or assigns (which, in the case of this clause (iii), shall be a collateral assignment until the exercise of remedies by such debt financing sources), provided that in each case within the foregoing clauses (i) through (iii), no such assignment shall relieve such Person of any of its obligations hereunder or thereunder.

5. Counterparts. This Agreement and each Ancillary Agreement may be executed in two or more counterparts (including by means of facsimile, .pdf, or other electronic transmission), each of which shall be deemed an original and all of which together will constitute one and the same instrument.

6. Notices. All notices, requests, demands, claims, and other communications made under this Agreement or any Ancillary Agreement shall not be effective unless in writing, and shall be deemed to be delivered and received (i) when delivered personally to the recipient, (ii) one Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid), (iii) four (4) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, or (iv) when successfully delivered to the recipient by facsimile, electronic mail, or other electronic transmission, provided that such delivery is subsequently confirmed and that any such facsimile, electronic mail, or other electronic transmission successfully delivered later than 5:00 p.m. in the recipient's local time shall be deemed to be delivered on the following Business Day, in each case, using the applicable contact information for such recipient set forth below:

If to Seller:

Theravant Corporation
455 North Canyons Parkway, Suite B
Livermore, CA 94551
Attention: Bob Anderson
Email: banderson@theravantcorp.com

With a copy (which shall not constitute notice) sent contemporaneously to:

Law Office of Deven S. Kane, P.C.
820B Crescent Street No. 5
Wheaton, IL 60187
Attention: Deven S. Kane
Email: devenkane@dskanelaw.com

If to the Buyer:

STRATA Skin Sciences, Inc.
5 Walnut Grove Drive, Suite 140
Horsham, PA 19044
Attention: Bob Moccia, Chief Executive Officer
Email: bmoccia@strataskin.com

With a copy (which shall not constitute notice) sent contemporaneously to:

Stevens & Lee, P.C.
1500 Market Street, East Tower, 18th Floor
Philadelphia, PA 19102
Attention: Jon C. Hughes
Email: jon.hughes@stevenslee.com

Any Party may change its contact information for such notices, requests, demands, claims, and other communications by giving the other Parties notice in the manner set forth above.

7. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC LAW OF THE STATE OF DELAWARE WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF DELAWARE OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF DELAWARE.

8. SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL. EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT OF THE STATE OF DELAWARE, COUNTY OF NEW CASTLE, FOR THE PURPOSES OF ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY ANCILLARY AGREEMENT, OR THE CONTEMPLATED TRANSACTIONS, AND AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION MAY BE HEARD AND DETERMINED IN ANY SUCH COURT. EACH PARTY AGREES TO COMMENCE ANY SUCH ACTION IN ANY STATE OR FEDERAL COURT OF THE STATE OF DELAWARE, COUNTY OF NEW CASTLE. EACH PARTY WAIVES ANY DEFENSE OF IMPROPER VENUE OR INCONVENIENT FORUM TO THE MAINTENANCE OF ANY ACTION SO BROUGHT. ANY PARTY MAY MAKE SERVICE ON ANY OTHER PARTY BY SENDING OR DELIVERING A COPY OF THE PROCESS TO THE PARTY TO BE SERVED AT THE ADDRESS AND IN THE MANNER PROVIDED FOR THE DELIVERY OF NOTICES IN SECTION 9(f), PROVIDED THAT NOTHING IN THIS SECTION 9(h) SHALL AFFECT THE RIGHT OF ANY PARTY TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AT EQUITY. EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY ANCILLARY AGREEMENT, OR THE CONTEMPLATED TRANSACTIONS. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, (B) UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) MAKES THIS WAIVER VOLUNTARILY, AND (D) ACKNOWLEDGES THAT EACH OTHER PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND EACH ANCILLARY AGREEMENT BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS CONTAINED HEREIN.

9. Amendments. No amendment of any provision of this Agreement shall be valid or effective unless in a writing executed by the Buyer and the Seller, and any such written executed amendment shall be binding and effective on all Parties. No consent under any provision of this Agreement or waiver of any provision of this Agreement or of any default under or breach of any representation, warranty, covenant, or agreement set forth herein, whether or not intentional, shall be valid or effective unless in a writing executed by the Buyer (if the Party seeking to enforce such consent or waiver is Seller) or the Seller (if the Party seeking to enforce such consent or waiver is the Buyer), nor shall any such waiver be deemed to extend to any prior, subsequent, or similar default or breach or affect in any way any rights arising by virtue of any such prior, subsequent, or similar default or breach. No failure by any Party to take any action with respect to any such default or breach shall constitute a waiver of such Party's rights to take any such action or to enforce any provision of this Agreement or any Ancillary Agreement.

10. Severability. Any term or provision of this Agreement or any Ancillary Agreement that is invalid, illegal, or unenforceable shall be deemed to be limited or modified in its application to the minimum extent necessary to avoid such invalidity, illegality, or unenforceability. The invalidity, illegality, or unenforceability of any such term or provision in any situation in any jurisdiction shall not affect the validity, legality, or enforceability of the remaining terms and provisions of this Agreement and each Ancillary Agreement or the validity, legality, or enforceability of such term or provision in any other situation or in any other jurisdiction.

11. Expenses. Except as otherwise provided in this Agreement or any Ancillary Agreement, each Party shall bear its own costs and expenses (including attorneys' fees) incurred in connection with this Agreement, the Ancillary Agreements, and the Contemplated Transactions.

12. Incorporation of Exhibits, Schedules, and Annexes. The Exhibits, Schedules, and Annexes identified in this Agreement are incorporated herein by reference and made a part hereof.

13. Specific Performance; Remedies Cumulative. Each Party agrees that the Seller's Business is unique and irreparable damages would occur, and money damages would be inadequate, if any provision of this Agreement or any Ancillary Agreement were not performed in accordance with the terms hereof or thereof and that, in the event of a breach or threatened breach of this Agreement or any Ancillary Agreement, the Parties shall be entitled to injunctive relief and specific performance of the terms hereof and thereof, in addition to any other remedy to which they are entitled at law or in equity. Each Party irrevocably waives any requirement for the securing or posting of any bond, or for the proving of any actual or special damages, in connection with any injunctive relief or specific performance described within this Section 9(m). Each Party further agrees that the only permitted objection that it may raise in response to any Action for any injunctive relief or specific performance described within this Section 9(m) is that it contests the existence of a breach or threatened breach of this Agreement or such Ancillary Agreement. Except as otherwise provided herein or in any Ancillary Agreement, the remedies provided herein and therein shall be cumulative and shall not preclude the assertion by any Party of any other rights or the seeking of any other remedies against any other Party.

[*The remainder of this page intentionally left blank. Signature page follows.*]

IN WITNESS WHEREOF, the Parties have executed this Asset Purchase Agreement as of the date first above written.

BUYER:

STRATA SKIN SCIENCES, INC.

By: _____

Name: Robert J. Moccia
Title: President and Chief Executive Officer

Signature page to Asset Purchase Agreement

SELLER:

THERAVANT CORPORATION

By: _____

Name: Robert Anderson
Title: President

Signature page to Asset Purchase Agreement

Solely for purposes of Section 5(h):

ASHISH BHATIA

FRANCESCO LUCARELLI

ROBERT ANDERSON

The undersigned hereby agrees to serve as the Seller's Representative in connection with this Asset Purchase Agreement and hereby agrees to act and perform the Seller's Representative's obligations hereunder.

SELLER'S REPRESENTATIVE:

ASHISH BHATIA

Signature page to Asset Purchase Agreement

Exhibit A

CERTAIN DEFINITIONS

"Acceptance Test" shall mean the demonstration of some or all of the following features that are determined by the development committee consisting of representatives of Buyer and Seller: (i) Wireless connectivity for in-office network link as well as remote monitoring and data capture capability along with over-the-air software upgrades; (ii) Adherence push notification to patients; (iii) Enhanced touchscreen interface; (iv) QR scanner for potential alignment with product utilization and/or co-promotional efforts; (v) Field replaceable handpiece & cord; and (vi) RFID optimization with UI simplification.

"Theraclear 2.0" shall mean the Theraclear Device with the additional features required for meeting the Acceptance Test.

Exhibit B

ASSUMED CONTRACTS

1. Potential Purchase Order from G Innings Medical, Ltd. for 10 Flash Lamp replacement kits and 5 handpiece shell replacements.

Exhibit C

INVENTORY

See attached.

Exhibit B

Theravant Development Agreement

[see attached]

Development Agreement

by and between

THERAVANT CORPORATION
with offices at 455 North Canyons Parkway, Suite B
Livermore, CA 94551

(hereinafter referred to “Party A”)

and

STRATA SKIN SCIENCES, INC.
with offices at 5 Walnut Grove, Suite 140
Horsham, Pennsylvania 19044

(hereinafter referred to “Party B”)

For Development Efforts of:

Healthcare products and methods for the medical aesthetic marketplace, including Theraclear 2.0 and which may include but not limited to 1) a systems and methods for the treatment of acne scarring, 2) a skin tightening product and method for the treatment of neck lines, 3) a product and method for non-laser removal of tattoos, and related healthcare products and methods based on the TheraClear® product and method, business services and activities ancillary thereto.

Table of Contents

ARTICLE 1 PREAMBLE	- 1 -
ARTICLE 2 DEFINITIONS	- 2 -
ARTICLE 3 DEVELOPMENTAL WORK	- 4 -
ARTICLE 4 COMPLETION OF THE DEVELOPMENT WORK	- 5 -
ARTICLE 5 COSTS OF THE DEVELOPMENT WORK	- 6 -
ARTICLE 6 DEVELOPMENT RESULTS, IPR AND RIGHTS THEREUNDER	- 6 -
ARTICLE 7 STRUCTURE OF COOPERATION AND ACTIVITIES	- 7 -
ARTICLE 8 CONFIDENTIALITY	- 8 -
ARTICLE 9 LIMITED WARRANTIES	- 9 -
ARTICLE 10 LIMITATION OF LIABILITY	- 9 -
ARTICLE 11 INDEMNITY	-10 -
ARTICLE 12 Intentionally Left Blank	- 10 -
ARTICLE 13 TERM AND TERMINATION	- 10 -
ARTICLE 14 MISCELLANEOUS	- 11 -

ARTICLE 1
PREAMBLE

Under this Development Agreement ("Agreement"), the Parties intend to cooperate in development efforts of healthcare products and methods for the medical aesthetic marketplace, including, but not limited to, the 1) a systems and methods for the treatment of acne scarring, 2) a skin tightening product and method for the treatment of neck lines, 3) a product and method for non-laser removal of tattoos, and related healthcare products and methods based on the TheraClear® product and method, business services and activities ancillary thereto.

Party B will solely market to customers with the Product (as defined below). As compensation for the R&D efforts and spending, Party A will be paid in accordance with the terms and conditions set forth in the PAYMENT PLAN attached hereto as ANNEX 1.

Party A will have the non-exclusive right to manufacture, distribute and sell the Product in NON-COMPETITIVE industries as defined below.

The Parties intend to continue development efforts of products beyond the Product.

ARTICLE 2
DEFINITIONS

2.1 **[INTENTIONALLY REDACTED]**.

2.2 **Background IP** means all IPR of Party A that has been or will be transferred to Party B under the Asset Purchase Agreement between Party A and Party B, such Background IP being used as necessary for the Product and/or the development thereof, including, without limitation, all data, written and/or oral technical information but not resulting from the activities contemplated by the Statement of Work or other provision of this Agreement.

2.3 **[REDACTED INTENTIONALLY]**.

2.4 **Customers** mean both distributors and end users of the Product.

2.5 **Development Work** means all work performed by the Parties in development of the Product in accordance with Statement of Work.

2.6 **Development Results** means all results, whether patentable or not, in written or oral form, achieved during performance of the Development Work, including without limitation any of the Foreground IP.

2.7 **Effective Date** means the date this Agreement is signed by both Parties.

2.8 **Field** means the area of technical expertise of a Party.

2.9 **Foreground IP** means all the IPR solely and independently developed by one of the Parties while providing services under this Agreement; such Foreground IP shall, is, or will become the sole property of Party B.

2.10 **Intellectual Property Rights** or **IPR** mean rights under patents, copyrights, mask works, or to any know-how, inventions, or trade secrets, or any other form of intellectual property rights anywhere in the world, provided such rights are owned by Party B, and/or Licensable by Party B to Party A.

2.11 **Joint IP** means all the IPR developed jointly by both Parties in the course of work performed under this Agreement; the rights of such Joint IP shall become the sole property of Party B , without regard to whether the Joint IP is patentable or not, in written or oral form.

2.12 **Licensable** means having the right to grant a license or sublicense of, or within, the scope provided for herein without violating any term, condition or other provision of an agreement or other arrangement with a third party.

2.13 **Non-Competing Products** means one or more product as licensed by Party B to Party A.

2.14 **Product** means any one or more of the: 1) a product for the treatment of acne scarring, 2) a skin tightening product for treating neck lines, and 3) a product for non-laser removal of tattoos, which the Parties plan to develop under this Agreement, and which is defined in more detail in the SPECIFICATIONS.

2.15 **Statement of Work** means the statement of work attached hereto as ANNEX 1.

2.16 **Specifications** mean the specifications that are determined by the development committee consisting of one or more representatives of Party A and Party B in compliance with Strata Skin Sciences SOP -0017, currently on Revision G. The specifications and SOP-0017 may each be updated from time to time.

2.17 **Term** means the duration of this Agreement as set forth in ARTICLE 13, Section 13.1.

ARTICLE 3
DEVELOPMENTAL WORK

3.1 The Parties agree Party A will perform the Development Work as set forth in the Statement of Work.

3.2 The Development Work shall comprise the efforts, activities, resource budget, material budget and Acceptance Plan.

3.3 The Development Work shall be carried out in accordance with the schedule set forth in the Statement of Work.

3.4 Disclosure of Background IP and Development Results will be affected without charges to Party B. Depending on the demands of the Development Work, the Background IP and Development Results can be submitted in writing and/or orally.

3.5 The Development Work shall be performed in close cooperation between the Parties and in a joint effort to minimize costs and expenditures.

3.6 Each of the Parties shall appoint a person who will act as the primary point of contact with respect to the communication made during the performance of the Development Work, and who shall be in the position to take or provide for related decisions to comply with the respective Party's obligations under this Agreement.

For Party A:
Francesco Lucarelli
455 North Canyons Parkway, Suite B
Livermore, CA 94551
Phone: 973-769-2506
email: Francesco.lucarelli@hcbhealth.com

For Party B:
Robert Moccia
Strata Skin Sciences, Inc.
5 Walnut Grove Drive, Suite 140
Horsham, PA 19044
Phone: 215-619-3200
E-mail: bmoccia@strataskin.com

3.7 Each of the Parties may change its respective contact person by giving adequate prior written notice to the other Party.

3.8 All Background IP and Development Results to be forwarded to Party B hereunder will be addressed to the Strata CEO or their duly appointed representative. The Strata CEO or their duly appointed representative shall have the final vote on decisions.

3.9 During the Development Work, Party A and Party B shall schedule regular meetings in accordance with Article 7 below. At these meetings, the Parties will review the status of the Development Work and exchange relevant DEVELOPMENT RESULTS.

3.10 In addition, Party A shall keep Party B informed on any major progress achieved during the Development Work.

3.11 If Party A realizes the Development Work cannot efficiently be performed according to the time schedules, development plans, milestones or budgets set forth for the project, Party A shall immediately inform Party B. Party B will solely determine further conduct and performance of the Development Work.

3.12 Party A undertakes to carry out the Development Work as stipulated in this Agreement.

3.13 Party A shall make best efforts to arrive at a successful completion of the relevant Development Work.

3.14 Party A may subcontract with or otherwise have third parties perform Development Work, *provided however*, Party A utilizing the third parties shall:

(a) obtain pre-approval from Party B before discussing details, or contracting, with any subcontractor;

(b) forward to the third parties the Background IP and the Development Results only on an "as needed" basis;

(c) require from each of the third parties a written undertaking to treat the relevant BACKGROUND IP/Development Results as confidential, wherein such undertaking shall be at least as restrictive as the obligations of Party A accepted under this Agreement; and

(d) ensure by written agreement with each of the third parties Party B will have identical rights and benefits as if such Development Work was not performed by the third parties, but rather, was performed by Party A. Specifically, each of the third parties shall agree by written agreement to assign to Party B all right, title and interest in and to any Development Work on behalf of Party A.

(e) the third parties will adhere to all relevant laws, regulations, and interpretations thereof as they relate to the services they provide.

ARTICLE 4
COMPLETION OF THE DEVELOPMENT WORK

4.1 The Development Work shall be regarded as being completed successfully once the efforts and activities as per the Statement of Work have been performed and the requirements set forth in the Acceptance Plan demonstrate the Product fulfills the requirements set forth in the SPECIFICATIONS.

4.2 The Parties undertake to record the results of the Development Work in a final protocol and workshop including the date of the successful completion of the Development Work.

ARTICLE 5
COSTS OF THE DEVELOPMENT WORK

5.1 Party B will bear all costs incurred by either Party to the extent it involves a Product or Products in connection with the Development Work. Such costs will not exceed a budget agreed to, in writing, by Party B prior to such costs being incurred.

ARTICLE 6
DEVELOPMENT RESULTS, IPR AND RIGHTS THEREUNDER

6.1 Notwithstanding the following provisions of this ARTICLE 6, Party A acknowledges that any violation of the IPR is likely to cause Party B irreparable harm, and Party A agrees that Party B shall be entitled to a preliminary injunction with respect thereto, without the need to post a bond.

6.2 Any Foreground IP developed during the Term and under the cooperation of this Agreement by either Party shall become the property of Party B. In avoidance of doubt, Party B shall be free from any restrictions and encumbrances to enjoy such Foreground IP, including filing applications for statutory protection and to use, maintain and permit to lapse such applications for statutory protection and any statutory rights issued thereon.

6.3 Any Joint IP created jointly by both Parties shall, at the time it is created, become the property of Party B.

6.4 Party B shall own and may enjoy the Joint IP, including any and all statutory protection issuing thereon, if any, free from any restrictions and encumbrances. Party B, therefore, for example and without limitation, has the right to grant non-exclusive, licenses and sublicenses to the Joint IP and the right to transfer to third parties all of portions of its rights in the Joint IP.

6.5 For Joint IP eligible for statutory protection, Party A will fully cooperate with Party B regarding the details for filing for such protection. The Parties shall consult, and Party B shall solely decide the appropriateness of whether to file applications for patents, and if so, which countries or regions protection shall be applied for. Party B shall bear all costs associated with such applications in all countries and regions including costs incurred by Party A.

6.6 All decisions about the handling of Joint IP shall be memorialized in writing, and such writing shall be signed by both Parties.

6.7 If Party B is interested in applying for statutory protection for the Joint IP, then Party A shall execute and forward to Party B all documents requested by Party B, or its representatives, and reasonably believed to be necessary and/or desirable for obtaining the statutory protection. Any statutory rights resulting from application by Party B for statutory protection for the Joint IP shall, from the date of filing, become the sole property of Party B. In avoidance of doubt, Party B shall be free from any restrictions and encumbrances to enjoy such Joint IP, and therefore, for example and without limitation, Party B can use, maintain and permit to lapse any of the Joint IP falling within the scope of this Subsection 6.7.

6.8 Party A ensures it will be in a position to immediately acquire for and on behalf of Party B all right, title and interest in and to the share of inventions of its employees and/or contractors/consultants as well as third party subcontractors for all Foreground IP and Joint IP, and to the extent any Background IP which would have been intended to be assigned at the closing, but was not previously identified for whatever reason whatsoever and is later is identified in the course of the Development Work, Party A said acquire all right, title and interest in and to such Background IP and then assign such Background IP to Party B, as if, *nunc pro tunc*, assigned at the closing.

6.9 Party B is not obligated (i) to take action against third parties infringing upon statutory rights filed or issued for Joint IP or (ii) to defend such rights against third parties.

6.10 Under its Background IP and to the DEVELOPMENT RESULTS, Party B hereby grants to Party A, subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable, royalty-free right to use same during the Term of this Agreement solely for the purpose of performing the Development Work. This right includes the right to have such Background IP and Development Results used by a subcontractor.

6.11 Subject to the terms and conditions of this Agreement, each of the Parties hereby grants to the other the right to reproduce, install, copy, distribute, sublicense, and execute any software for purposes of providing or carrying out the Development Work. The Parties agree that, except as may be expressly permitted by applicable law, it will not cause or permit (and will take all reasonable measures to prohibit customers from) reverse engineering, translation, disassembly or de-compilation of the software.

ARTICLE 7
STRUCTURE OF COOPERATION AND ACTIVITIES

7.1 Within thirty (30) days of the Effective Date, Party A will identify a representative to meet a representative of Party B on a regular basis once per month for the first quarter and then quarterly thereafter. The representatives of the two Parties will be:

For Party A:
Francesco Lucarelli
455 North Canyons Parkway, Suite B
Livermore, CA 94551
Phone: 973-769-2506
email: Francesco.lucarelli@hcbhealth.com

For Party B:
Robert Moccia
Strata Skin Sciences, Inc.
5 Walnut Grove Drive, Suite 140
Horsham, PA 19044
Phone: 215-619-3200
E-mail: bmoccia@strataskin.com

(a) The Parties will discuss in good faith the actual development status, future roadmaps and products, revenue and prospective. In addition, Party A will help Party B develop and release development timetables, products specifications, and marketing & sales strategy (customer approach, design wins).

(b) [delete] .

(c) Party A will be responsible for tasks that may include but not be limited to:

(1) generation of product specifications, data sheets, and the like;
(2) support for verification documents;
(3) joint technical presentations to customers;
(4) joint on-site support at customers;
(5) bilateral mutual training for increasing the technical knowledge base;
(6) generation of application notes;
(7) Bill of Material estimations;
(8) joint participation on field trials at customers/operators;
(9) definition of test criteria;
(10) fixing of environmental conditions for test cases;
(11) joint verification of first silicon / engineering samples; and
(12) performance issues / performance optimization.

7.2 Party A agrees to make available experts of Party A, at no cost to Party B, training courses regarding its BACKGROUND IP, Foreground IP and Joint IP, all of which shall be owned by Party B. The content of such training will be mutually agreed to by both Parties after execution of this Agreement. The training courses will take place upon request of Party B with a notice period of at least fifteen (15) days.

7.3 Both Parties intend to have Party A develop future generation products for Party B to own and commercialize. To this end, both Parties may discuss deploying a project team to help party A develop such future generation products. The relevant terms and conditions of the future generation products shall be in accordance with the terms and conditions of this Agreement, using additional statements of work, which may be annexed hereto pursuant to Section 14.7

ARTICLE 8
CONFIDENTIALITY

8.1 Party A agrees such BACKGROUND IP, Foreground IP, Joint IP, and Development Results will be deemed confidential and will be maintained by Party A in confidence, provided, however, Party A may disclose such Background IP to its officers, and those of its employees and others under its control for the purposes of this Agreement, all of whom will be advised of this Agreement and Party A's obligations hereunder.

8.2 Party A further agrees to use such confidential information only for purposes of performing its rights and obligations under this Agreement and for no other purposes.

8.3 Party A additionally agrees to take all reasonable precautions to safeguard the confidential nature of the BACKGROUND IP, Foreground IP, Joint IPIP, and DEVELOPMENT RESULTS.

8.4 Party A shall not be liable for disclosure and/or any use of such confidential information insofar as such confidential information

(a) is required by any judicial order or decree or by any governmental law or regulation, and
(b) is in, or becomes part of, the public domain other than through a breach of this Agreement by Party A;

8.5 The obligations of this ARTICLE 8 shall survive the termination of this Agreement.

ARTICLE 9
LIMITED WARRANTIES

9.1 Party B reserves the right, in its sole discretion, to develop any and all Product(s) for any or no reason including, but not limited to, if Party A cannot meet specifications in line with Party B expectations.

ARTICLE 10
LIMITATION OF LIABILITY

10.1 EXCEPT AS PROVIDED FOR BY MANDATORY PROVISIONS OF APPLICABLE LAW AND FOR BREACH OF LICENSE GRANT CAUSED BY WILLFUL INTENT AND CONFIDENTIALITY, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES ARISING OUT OF THIS AGREEMENT, OR THE USE OF THE PRODUCT OR SAMPLES THEREOF, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIABILITY OF A PARTY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY PARTY B TO PARTY A IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10.2 Nothing in this Agreement shall obligate either of the Parties to apply for, take out, maintain, or acquire any statutory protection, in any country.

10.3 To the extent any Joint IP or Foreground IP is created, all rights granted in BACKGROUND IP, Foreground IP, Joint IP, and Development Results are granted insofar only as the Party so granting has the right to grant without payment to third Parties.

ARTICLE 11
INDEMNITY

11.1 Each Party (the "Indemnifying Party") shall hold harmless, defend and indemnify the other Party and their respective officers, managers, directors, employees, agents, representatives, Property managers, partners, lenders, successors, assigns and affiliate entities (collectively, the "Indemnified Parties") from and against any and all claims, demands, actions, proceedings, lawsuits, costs, expenses, fees (including, without limitation, reasonable attorneys' fees), losses, liabilities, judgments, damages or injuries (collectively "Claims") asserted against or incurred by any of the Indemnified Parties in connection with the following: (i) the acts, omissions or negligence of the Indemnifying Party or its representatives; or (ii) breach of the intellectual property rights of another party by the Indemnifying Party or its representatives; provided, however, the Indemnifying Party shall not be liable to the extent Claims arise due to the acts, omissions or negligence of an indemnified Party.

Party A shall have no liability for any claim of infringement based on or arising from:

(a) modification of any deliverables and BACKGROUND IP, Foreground IP, Joint IP, and Development Results of Party A not in scope of this Agreement by Party B or any third party; or

(b) the combination or use of Party A's deliverables and BACKGROUND IP, Foreground IP, Joint IP, and DEVELOPMENT RESULTS, furnished hereunder with materials not furnished or expressly specified by Party A to the extent such infringement would have been avoided by use of Party B's furnished or specified materials alone.

11.2 This ARTICLE 11 states the Parties entire liability, and respectively, the exclusive remedy for any claim of infringement.

ARTICLE 12
Intentionally Left Blank

ARTICLE 13
TERM AND TERMINATION

13.1 This Agreement shall become effective on the date it is signed by both Parties (the "Effective Date"), and unless terminated earlier under a relevant provision of this Agreement, the Term of this Agreement shall begin on the Effective Date and terminate three (3) years thereafter.

13.2 This Agreement may be terminated at any time by a Party:

(a) by giving not less than 30 calendar days prior written notice to the other Party;

(b) if the other Party is declared bankrupt or otherwise cannot fulfill its financial obligations; or

(c) if a Party materially breaches this Agreement and does not remedy such default within 30 calendar days after receipt of notice to cure from the non-breaching Party not in breach.

13.3 Upon termination of this Agreement that results from any of the foregoing provisions, then, except as otherwise provided in this Agreement:

(a) the Parties shall cease all of the Development Work; and

(b) any successor company shall cease all support under ARTICLE 7.

ARTICLE 14
MISCELLANEOUS

14.1 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of Delaware applicable to contracts made in that state, without giving effect to the conflict of laws principles thereof.

14.2 Severability. If any provision or provisions of this Agreement shall, for any reason, be deemed unenforceable or in violation of law, such unenforceability or violation shall not affect the remaining provisions of this Agreement, which shall continue in full force and effect and be binding upon the Parties hereto.

14.3 Force Majeure. Each of the Parties will be excused from the obligations of this Agreement (other than payment obligations) to the extent performance is delayed or prevented by any circumstances, direct or indirect, reasonably beyond its control including, without limitation, fire, flood, accident, explosion, mechanical breakdown, strike or other labor trouble, plant shutdown, unavailability of or interference with the usual means of transporting the Product or compliance with any law, regulation, order, recommendation or request of any governmental authority.

14.4 Survival. ARTICLE 6; ARTICLE 8; ARTICLE 9; ARTICLE 10; ARTICLE 11;; ARTICLE 14; and each other term and provision of this Agreement that would by its very nature or terms survive any termination or expiration of this Agreement, shall survive any termination or expiration of this Agreement, regardless of the cause thereof, even if resulting from material breach of either party hereto. The Parties acknowledge and agree money damages alone will not be a sufficient remedy for a breach of any of ARTICLE 6 and ARTICLE 8; and the Parties shall be entitled to specific performance, injunctive relief and/or other equitable remedy for any such breach.

14.5 Section Headings. The headings of the articles, sections, paragraphs, tables, annexes, and schedules herein are for the Parties' convenient reference only and shall not define or limit any of the terms or provisions hereof. Annexes, schedules, and other documents referred to in this Agreement are an integral part hereof, unless the context of such reference indicates otherwise.

14.6 Waiver. This Agreement and the observance of any term of this Agreement may be waived only with the written consent of both Parties. The failure of any of the Parties to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part thereof or the right of any of the Parties thereafter to enforce each such provision. Nor shall the failure of any of the Parties to enforce at any time any of the provisions of this Agreement be construed as a waiver of such provision with respect to any other event or circumstance, whether past, present or future.

14.7 Modification. This Agreement may be amended, changed, or otherwise modified in any manner only upon the written consent of both of the Parties by their duly authorized representative. For avoidance of doubt, the SPECIFICATION may be amended from time to time, but only to the extent each of Parties have mutually agreed upon such amendment and memorialized such amendment in a written document signed on behalf of each of the Parties hereto by their duly authorized representatives.

14.8 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered; on the date of transmission if sent by facsimile or email; or on the fifth business day after mailing if mailed to the Party to whom notice is to be given, by first class mail, postage prepaid, and properly addressed as follows, or at such addresses as the parties hereto may designate by written notice in the manner aforesaid:

If to Party A:

Theravant Corporation
455 North Canyons Parkway, Suite B
Livermore, CA 94551
Attention: Bob Anderson
Email: banderson@theravantcorp.com

with a copy of any notice of breach to:

Law Office of Deven S. Kane
820B Crescent Street No. 5
Wheaton, IL 60187
Attention: Deven S. Kane
Email: devenkane@dskanelaw.com

If to Party B:

STRATA Skin Sciences, Inc.
5 Walnut Grove, Suite 140
Horsham, Pennsylvania 19044
E-mail: bmoccia@strataskin.com
Attention: Chief Executive Officer

with a copy of any notice of breach to:
Party A
Stevens & Lee, P.C.
1500 Market Street
East Tower, Suite 1800
Philadelphia, PA 19102
Email: jon.hughes@stevenslee.com
Attention: Jon C. Hughes

14.9 Currency. All monetary references in this Agreement shall be in U.S. Dollars.

14.10 Assignment. Party A may not transfer or assign its rights or obligations hereunder, directly, or indirectly, by operation of law or otherwise, without the prior written consent of Party B, such consent not to be unreasonably withheld or delayed. Any such attempt by Party A to assign its rights or obligations hereunder without consent of Party B shall be void. Notwithstanding the foregoing, either of the Parties may assign all or part of this Agreement to (i) a parent of such assigning Party at any time or (ii) a third party in the event of merger or the acquisition by such third party of all or substantially all the assets of the so-acquired Party or business unit thereof. This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and permitted assigns.

14.11 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated hereby, and supersedes all written and verbal negotiations, representations, warranties, commitments, and other understandings prior to the date hereof between Party A and Party B. Each of the Parties agrees there are no agreements between the parties, oral or written, with respect to the Product (including any made or implied from past dealings) except as expressed herein. No terms and conditions stated in or attached to communications between the Parties, including but not limited to any purchase orders, the terms of which (except quantity of the Product) are hereby rejected, are applicable to this Agreement in any way and are expressly not to be considered exceptions to the provisions of this Agreement. Trade custom, trade usage and past performance are superseded by this Agreement and shall not be used to interpret this Agreement.

14.12 Third-Party Beneficiaries. Nothing herein, express, or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

14.13 Publication; Press Release. Neither Party will issue a press release or otherwise publicize the terms of this Agreement or that the Parties are in negotiations and/or executed the Agreement without the prior written consent of the other Party, except to the extent any terms of this Agreement are required to be disclosed by law or regulation, or the rules of any stock exchange (including the Securities and Exchange Commission of the United States or any similar authority in any other country).

14.14 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective, duly authorized representatives.

Theravant Corporation 455 North Canyons Parkway, Suite B Livermore, CA 94551 Attention: Bob Anderson Email: banderson@theravantcorp.com	STRATA Skin Sciences, Inc. 5 Walnut Grove, Suite 140 Horsham, Pennsylvania 19044 E-mail: bmoccia@strataskin.com Attention: Chief Executive Officer
Accepted and Approved for Theravant Corporation	Accepted and Approved for STRATA Skin Sciences, Inc.
By: _____ Authorized Signature	By: _____ Authorized Signature
Name: Robert Anderson, President	Name: Robert J. Moccia, President and Chief Executive Officer
Date:	Date:

2.

ANNEX 1

PAYMENT PLAN

1. Party B shall commit to at least a P2 position in the sales force for four years post-Launch of Theraclear.

2. **Milestone Payments**. In addition to the payments as described in the Asset Purchase Agreement, Party B shall also pay to Party A contingent payments based upon the timely development, regulatory clearance, Launch and sales of the following pipeline devices provided that (1) they are primarily based on the Background IP, as defined in the Asset Purchase Agreement, and (2) provided by Party A to Party B, and (3) currently in development:

(i) A Five Hundred Thousand Dollar ("$500,000") payment upon clearance by the FDA of an acne scarring device or another device as mutually agreed upon based upon market need with a FDA label as agreed upon by the parties;

(ii) A $500,000 payment in addition to the payment identified in Section 2(i) in this Annex 1 above upon achievement of two million dollars ($2,000,000) in Net Revenue in a twelve month period for that device but by no later than December 31, 2026.

(iii) A $500,000 payment upon clearance by the FDA of a "neck line device" or other device as mutually agreed upon based upon market need and with a FDA label as mutually agreed upon by Party A and Party B;

(iv) A $500,000 payment in addition to the payment identified in Section 2(iii) in this Annex 1 above upon achievement of two million dollars ($2,000,000) in Net Revenue in a twelve month period for that device but by no later than December 31, 2026.

(v) A $500,000 payment upon clearance by the FDA of a tattoo removal device or other device as mutually agreed upon based upon market need with a FDA label agreed upon by the parties;

(vi) A $500,000 payment in addition to the payment identified in Section 2(v) in this Annex 1 above upon achievement of two million dollars ($2,000,000) in Net Revenue in a twelve month period for that device but by no later than December 31, 2026.

3. For the avoidance of doubt, Party B shall be under no obligation to proceed with any of the aforementioned devices, or any other devices identified in this Annex 1 or as otherwise identified in the Asset Purchase Agreement, should Party B in the exercise of commercially reasonable judgment determine that the aforesaid devices do not adequately address a market need or would not generate the revenue necessary to justify the required investment.

4. **Sellers' Representative**. Party B shall designate a single individual representative who shall be their sole representative with whom Party B shall address any or all matters related to the royalty, earn-out, and milestone payments.

Exhibit 23.1

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in the Registration Statement of STRATA Skin Sciences, Inc. and Subsidiary on Amendment No. 1 to Form S-3 on Form S-1 (File No.'s 333-205797 and 333-226296), Form S-3 (File No.'s 333-262150, 333-261090 and 333-258814) and Form S-8 (File No.'s 333-257867) of our report dated March 21, 2022, with respect to our audits of the consolidated financial statements of STRATA Skin Sciences, Inc. and Subsidiary as of December 31, 2021 and 2020 and for the years ended December 31, 2021 and 2020, which report is included in this Annual Report on Form 10-K of STRATA Skin Sciences, Inc. for the year ended December 31, 2021.

/s/ Marcum LLP

Marcum LLP
Philadelphia, Pennsylvania
March 21, 2022

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Robert Moccia, certify that:

(1) I have reviewed this annual report on Form 10-K of STRATA Skin Sciences, Inc.;

(2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

(3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

(4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

STRATA SKIN SCIENCES, INC.

Dated: March 21, 2022

By: /s/ Robert J. Moccia
Robert J. Moccia
President & Chief Executive Officer

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Christopher Lesovitz, certify that:

(1) I have reviewed this annual report on Form 10-K of STRATA Skin Sciences, Inc.;

(2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

(3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

(4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

STRATA SKIN SCIENCES, INC.

Dated: March 21, 2022

By: /s/ Christopher Lesovitz
Christopher Lesovitz
Chief Financial Officer

Exhibit 32.1

SECTION 906 CERTIFICATION

CERTIFICATION (1)

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. § 1350, as adopted), Robert Moccia, the President and Chief Executive Officer of STRATA Skin Sciences, Inc. (the "Company"), and Christopher Lesovitz, the Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Annual Report on Form 10-K for the year ended December 31, 2021, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended, and

2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 21, 2022

/s/ Robert J. Moccia	/s/ Christopher Lesovitz
Robert Moccia	Christopher Lesovitz
President & Chief Executive Officer	Chief Financial Officer

(1) This certification accompanies the Annual Report on Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of STRATA Skin Sciences, Inc. under the Securities Act of 1933, as amended, or the Exchange Act (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing. A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to STRATA Skin Sciences, Inc. and will be retained by STRATA Skin Sciences, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.