

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
FORM 10-Q**

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

For the quarterly period ended June 30, 2023

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 001-36514



**GOPRO, INC.**

*(Exact name of registrant as specified in its charter)*

**Delaware**

*(State or other jurisdiction of incorporation or organization)*

**3025 Clearview Way**

**San Mateo, California**

*(Address of principal executive offices)*

**77-0629474**

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

**94402**

*(Zip Code)*

**(650) 332-7600**

*(Registrant's telephone number, including area code)*

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common stock, \$0.0001 par value	GPRO	NASDAQ Global Select Market

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

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

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

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

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

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

As of July 31, 2023, 126,467,937 and 26,258,546 shares of Class A and Class B common stock were outstanding, respectively.

**GoPro, Inc.**  
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## Special Note About Forward-Looking Statements

This Quarterly Report on Form 10-Q of GoPro, Inc. (GoPro or we or the Company) includes forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical fact, including statements regarding guidance, industry prospects, product and marketing plans, or future results of operations or financial position, made in this Quarterly Report on Form 10-Q are forward-looking. To identify forward-looking statements, we use words such as “expect,” “anticipate,” “believe,” “may,” “will,” “estimate,” “intend,” “target,” “goal,” “plan,” “likely,” “potentially,” or variations of such words and similar expressions. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of their date. If any of management's assumptions prove incorrect or should unanticipated circumstances arise, the Company's actual results could materially differ from those anticipated by such forward-looking statements. The differences could be caused by a number of factors or combination of factors including, but not limited to, those factors identified and detailed in Risk Factors in Part II, Item 1A. of this Quarterly Report on Form 10-Q for the quarter ended June 30, 2023. Forward-looking statements include, but are not limited to, statements regarding our plans to expand and improve product offerings; projections of results of operations, research and development plans, marketing plans, plans to expand our global retail and distribution footprint, and revenue growth drivers, plans to manage our operating expenses effectively, plans to drive profitability, including our restructuring plans and the improved efficiencies in our operations that such plans may create; the impact of negative macroeconomic factors including rising interest rates and inflation, market volatility, and economic recession concerns; the ability for us to grow camera sales to drive meaningful volume and subscription growth; our ability to acquire and retain subscribers; the effects of global conflicts and geopolitical issues such as the conflict in Ukraine or China-Taiwan relations; plans to settle the note conversion in cash; expectations regarding the volatility of the Company's tax provision and resulting effective tax rate and projections of results of operations; the outcome of pending or future litigation and legal proceedings; the continuing impact of the COVID-19 pandemic and the economic recovery there from on our business, operations, liquidity and capital resources, employees, customers, supply chain, financial results, inflation, currency fluctuations and the world economy, and the scope and duration thereof; and any discussion of the trends and other factors that drive our business and future results, as discussed in Item 2 Management's Discussion and Analysis of Financial Condition and Results of Operations, and other sections of this Quarterly Report on Form 10-Q, including but not limited to Item 1A. Risk Factors. Readers are strongly encouraged to consider the foregoing including those factors when evaluating any forward-looking statements concerning the Company. The Company does not undertake any obligation to update any forward-looking statements in this Quarterly Report on Form 10-Q to reflect future events or developments.

## PART I. FINANCIAL INFORMATION

### Item 1. Financial Statements

### GoPro, Inc. Condensed Consolidated Balance Sheets (unaudited)

(in thousands, except par values)	June 30, 2023	December 31, 2022
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 189,913	\$ 223,735
Marketable securities	81,793	143,602
Accounts receivable, net	82,341	77,008
Inventory	135,409	127,131
Prepaid expenses and other current assets	33,738	34,551
Total current assets	523,194	606,027
Property and equipment, net	10,516	13,327
Operating lease right-of-use assets	19,691	21,819
Goodwill	146,459	146,459
Other long-term assets	309,237	289,293
Total assets	\$ 1,009,097	\$ 1,076,925
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 95,082	\$ 91,648
Accrued expenses and other current liabilities	100,142	118,877
Short-term operating lease liabilities	10,130	9,553
Deferred revenue	54,369	55,850
Total current liabilities	259,723	275,928
Long-term taxes payable	11,586	9,536
Long-term debt	141,493	141,017
Long-term operating lease liabilities	29,156	33,446
Other long-term liabilities	3,660	5,439
Total liabilities	445,618	465,366
Commitments, contingencies and guarantees (Note 9)		
Stockholders' equity:		
Preferred stock, \$0.0001 par value, 5,000 shares authorized; none issued	—	—
Common stock and additional paid-in capital, \$0.0001 par value, 500,000 Class A shares authorized, 126,468 and 128,629 shares issued and outstanding, respectively; 150,000 Class B shares authorized, 26,259 and 26,259 shares issued and outstanding, respectively	979,904	960,903
Treasury stock, at cost, 21,173 and 16,677 shares, respectively	(173,231)	(153,231)
Accumulated deficit	(243,194)	(196,113)
Total stockholders' equity	563,479	611,559
Total liabilities and stockholders' equity	\$ 1,009,097	\$ 1,076,925

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

**GoPro, Inc.**  
**Condensed Consolidated Statements of Operations**  
(unaudited)

(in thousands, except per share data)	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Revenue	\$ 241,020	\$ 250,685	\$ 415,740	\$ 467,390
Cost of revenue	165,248	154,681	287,466	280,910
Gross profit	75,772	96,004	128,274	186,480
Operating expenses:				
Research and development	41,903	36,218	80,088	67,816
Sales and marketing	39,906	39,439	77,961	74,812
General and administrative	16,457	15,692	32,533	31,035
Total operating expenses	98,266	91,349	190,582	173,663
Operating income (loss)	(22,494)	4,655	(62,308)	12,817
Other income (expense):				
Interest expense	(1,139)	(1,538)	(2,292)	(3,747)
Other income (expense), net	2,423	(488)	5,268	(807)
Total other income (expense), net	1,284	(2,026)	2,976	(4,554)
Income (loss) before income taxes	(21,210)	2,629	(59,332)	8,263
Income tax expense (benefit)	(3,998)	110	(12,251)	59
Net income (loss)	<u>\$ (17,212)</u>	<u>\$ 2,519</u>	<u>\$ (47,081)</u>	<u>\$ 8,204</u>
Net income (loss) per share:				
Basic	<u>\$ (0.11)</u>	<u>\$ 0.02</u>	<u>\$ (0.30)</u>	<u>\$ 0.05</u>
Diluted	<u>\$ (0.11)</u>	<u>\$ 0.02</u>	<u>\$ (0.30)</u>	<u>\$ 0.06</u>
Shares used to compute net income (loss) per share:				
Basic	154,562	156,645	154,980	156,751
Diluted	154,562	176,860	154,980	183,170

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

**GoPro, Inc.**  
**Condensed Consolidated Statements of Cash Flows**  
(unaudited)

(in thousands)	Six months ended June 30,	
	2023	2022
<b>Operating activities:</b>		
Net income (loss)	\$ (47,081)	\$ 8,204
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation and amortization	3,557	4,555
Non-cash operating lease cost	2,128	2,308
Stock-based compensation	21,431	20,087
Deferred income taxes	(16,073)	2,397
Other	(1,993)	2,016
Changes in operating assets and liabilities:		
Accounts receivable, net	(5,444)	26,244
Inventory	(8,278)	(39,598)
Prepaid expenses and other assets	(3,079)	12,199
Accounts payable and other liabilities	(17,054)	(101,719)
Deferred revenue	(3,068)	2,756
Net cash used in operating activities	(74,954)	(60,551)
<b>Investing activities:</b>		
Purchases of property and equipment, net	(961)	(1,294)
Purchases of marketable securities	(25,782)	(47,077)
Maturities of marketable securities	90,204	65,149
Net cash provided by investing activities	63,461	16,778
<b>Financing activities:</b>		
Proceeds from issuance of common stock	2,324	2,686
Taxes paid related to net share settlement of equity awards	(4,834)	(8,488)
Repurchase of outstanding common stock	(20,000)	(21,762)
Repayment of debt	—	(125,000)
Net cash used in financing activities	(22,510)	(152,564)
Effect of exchange rate changes on cash and cash equivalents	181	(1,471)
Net change in cash and cash equivalents	(33,822)	(197,808)
Cash and cash equivalents at beginning of period	223,735	401,087
Cash and cash equivalents at end of period	\$ 189,913	\$ 203,279

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

**GoPro, Inc.**  
**Condensed Consolidated Statements of Stockholders' Equity**  
(unaudited)

(in thousands)	Common stock and additional paid-in capital		Treasury stock	Accumulated deficit	Stockholders' equity
	Shares	Amount	Amount		
<b>Balances at December 31, 2021</b>	156,474	\$ 1,008,872	\$ (113,613)	\$ (279,345)	\$ 615,914
Common stock issued under employee benefit plans, net of shares withheld for tax	1,891	2,371	—	—	2,371
Taxes paid related to net share settlements	—	(7,175)	—	—	(7,175)
Stock-based compensation expense	—	9,836	—	—	9,836
Repurchase of outstanding common stock	(1,120)	—	(10,000)	—	(10,000)
Cumulative effect of adoption of new accounting standard	—	(78,230)	—	54,385	(23,845)
Net income	—	—	—	5,685	5,685
<b>Balances at March 31, 2022</b>	157,245	935,674	(123,613)	(219,275)	592,786
Common stock issued under employee benefit plans, net of shares withheld for tax	421	30	—	—	30
Taxes paid related to net share settlements	—	(1,313)	—	—	(1,313)
Stock-based compensation expense	—	10,251	—	—	10,251
Repurchase of outstanding common stock	(1,802)	—	(11,762)	—	(11,762)
Net income	—	—	—	2,519	2,519
<b>Balances at June 30, 2022</b>	155,864	\$ 944,642	\$ (135,375)	\$ (216,756)	\$ 592,511
<b>Balances at December 31, 2022</b>	154,888	\$ 960,903	\$ (153,231)	\$ (196,113)	\$ 611,559
Common stock issued under employee benefit plans, net of shares withheld for tax	1,960	2,397	—	—	2,397
Taxes paid related to net share settlements	—	(4,251)	—	—	(4,251)
Stock-based compensation expense	—	10,314	—	—	10,314
Repurchase of outstanding common stock	(890)	—	(5,000)	—	(5,000)
Net loss	—	—	—	(29,869)	(29,869)
<b>Balances at March 31, 2023</b>	155,958	969,363	(158,231)	(225,982)	585,150
Common stock issued under employee benefit plans, net of shares withheld for tax	375	7	—	—	7
Taxes paid related to net share settlements	—	(583)	—	—	(583)
Stock-based compensation expense (Note 6)	—	11,117	—	—	11,117
Repurchase of outstanding common stock	(3,606)	—	(15,000)	—	(15,000)
Net loss	—	—	—	(17,212)	(17,212)
<b>Balances at June 30, 2023</b>	152,727	\$ 979,904	\$ (173,231)	\$ (243,194)	\$ 563,479

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

## 1. Summary of business and significant accounting policies

GoPro, Inc. and its subsidiaries (GoPro or the Company) make it easy for the world to capture and share itself in immersive and exciting ways, helping people get the most out of their photos and videos. The Company is committed to developing solutions that create an easy, seamless experience for consumers to capture, create, manage and share engaging personal content. To date, the Company's cameras, mountable and wearable accessories, subscription and service, and implied post contract support have generated substantially all of its revenue. The Company sells its products globally on its website, and through retailers and wholesale distributors. The Company's global corporate headquarters are located in San Mateo, California.

**Basis of presentation.** The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with United States generally accepted accounting principles (GAAP) for financial information set forth in the Accounting Standards Codification (ASC), as published by the Financial Accounting Standards Board (FASB), and with the applicable rules and regulations of the Securities and Exchange Commission (SEC). The Company's fiscal year ends on December 31, and its fiscal quarters end on March 31, June 30 and September 30.

The condensed consolidated financial statements reflect all adjustments, which are normal and recurring in nature, that management believes are necessary for the fair statement of the Company's financial statements, but are not necessarily indicative of the results expected in future periods. The Condensed Consolidated Balance Sheet as of December 31, 2022, has been derived from the audited financial statements at that date, but does not include all the disclosures required by GAAP. This Quarterly Report on Form 10-Q should be read in conjunction with the Company's Annual Report on Form 10-K (Annual Report) for the year ended December 31, 2022. There have been no material changes in the Company's critical accounting policies and estimates from those disclosed in its Annual Report on Form 10-K.

**Principles of consolidation.** These condensed consolidated financial statements include all the accounts of the Company and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

**Use of estimates.** The preparation of condensed consolidated financial statements in accordance with GAAP requires management to make estimates and assumptions that affect the amounts reported and disclosed in the Company's condensed consolidated financial statements and accompanying notes. Significant estimates and assumptions made by management include those related to revenue recognition and the allocation of the transaction price (including sales incentives, sales returns and implied post contract support), inventory valuation, product warranty liabilities, the valuation, impairment and useful lives of long-lived assets (property and equipment, operating lease right-of-use assets, intangible assets and goodwill), fair value of convertible senior notes, and income taxes. The Company bases its estimates and assumptions on historical experience and on various other factors that it believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ materially from management's estimates. To the extent there are material differences between the estimates and the actual results, future results of operations could be affected.

**Comprehensive income (loss).** For all periods presented, comprehensive income (loss) approximated net income (loss). Therefore, the Condensed Consolidated Statements of Comprehensive Income (Loss) have been omitted.

**Revenue recognition.** The Company derives substantially all of its revenue from the sale of cameras, mounts, accessories, subscription and service, and implied post contract support to customers. The transaction price recognized as revenue represents the consideration the Company expects to be entitled to and is primarily comprised of product revenue, net of returns and variable consideration, which includes sales incentives provided to customers.

The Company's camera sales contain multiple performance obligations that can include the following four separate obligations: i) a camera hardware component (which may be bundled with hardware accessories) and the embedded firmware essential to the functionality of the camera component delivered at the time of sale, ii) a



GoPro, Inc.  
Notes to Condensed Consolidated Financial Statements

subscription and service, iii) the implied right for the customer to receive post contract support after the initial sale (PCS), and iv) the implicit right to the Company's downloadable free apps and software solutions. The Company's PCS includes the right to receive, on a when and if available basis, future unspecified firmware upgrades and features as well as bug fixes, and email, chat and telephone support.

The Company recognizes revenue from its sales arrangements when control of the promised goods or services are transferred to its customers, in an amount that reflects the amount of consideration expected to be received in exchange for the transferred goods or services. For the sale of hardware products, including related firmware and free software solutions, revenue is recognized when transfer of control occurs at a point in time, which generally is at the time the hardware product is shipped and collection is considered probable. For customers who purchase products directly from GoPro.com, the Company retains a portion of the risk of loss on these sales during transit, which are accounted for as fulfillment costs. For PCS, revenue is recognized ratably over 24 months, which represents the estimated period PCS is expected to be provided based on historical experience.

The Company's subscription and service revenue is recognized primarily from our GoPro subscription and Quik subscription offerings, and is recognized ratably over the subscription term, with any payments received in advance of services rendered recorded as deferred revenue. The Company offers the GoPro subscription which offers a range of services, including unlimited cloud storage of GoPro content supporting source video and photo quality, damaged camera replacement, highlight videos automatically delivered via the Company's mobile app when GoPro camera footage is uploaded to a GoPro cloud account using Auto Upload, access to a high-quality live streaming service on GoPro.com as well as discounts on GoPro cameras, gear, mounts and accessories. The Company also offers the Quik subscription that provides access to a suite of simple single-clip and multi-clip editing tools.

For the Company's camera sale arrangements with multiple performance obligations, revenue is allocated to each performance obligation based on its relative standalone selling price. Standalone selling prices are based on observable prices at which the Company separately sells its products, subscription and service. If a standalone selling price is not directly observable, then the Company estimates the standalone selling prices considering market conditions and entity-specific factors. For example, the standalone selling price for PCS is determined based on a cost-plus approach, which incorporates the level of support provided to customers, estimated costs to provide such support, and the amount of time and costs that are allocated to efforts to develop the undelivered elements.

The Company's standard terms and conditions of sale for non-web-based sales do not allow for product returns other than under warranty. However, the Company grants limited rights of return, primarily to certain large retailers. The Company reduces revenue and cost of sales for the estimated returns based on analyses of historical return trends by customer class and other factors. An estimated return liability along with a right to recover assets are recorded for future product returns. Return trends are influenced by product life cycles, new product introductions, market acceptance of products, product sell-through, the type of customer, seasonality and other factors. Return rates may fluctuate over time, but are sufficiently predictable to allow the Company to estimate expected future product returns.

The Company provides sales commissions to internal and external sales representatives which are earned in the period in which revenue is recognized. As a result, the Company expenses sales commissions as incurred.

Deferred revenue as of June 30, 2023 and December 31, 2022, includes amounts related to the Company's subscription and PCS. The Company's short-term and long-term deferred revenue balances totaled \$57.4 million and \$60.4 million as of June 30, 2023 and December 31, 2022, respectively. Of the deferred revenue balance as of December 31, 2022 and 2021, the Company recognized \$16.9 million and \$12.3 million of revenue during the three months ended June 30, 2023 and 2022, respectively, and \$38.3 million and \$28.9 million of revenue during the six months ended June 30, 2023 and 2022, respectively. Of the deferred revenue balance as of March 31, 2023 and 2022, the Company recognized \$22.5 million and \$17.2 million of revenue during the three months ended June 30, 2023 and 2022, respectively.

**Sales incentives.** The Company offers sales incentives through various programs, including cooperative advertising, price protection, marketing development funds and other incentives. Sales incentives are considered to be variable consideration, which the Company estimates and records as a reduction to revenue at the date of

GoPro, Inc.  
Notes to Condensed Consolidated Financial Statements

sale. The Company estimates sales incentives based on historical experience, product sell-through and other factors. In March 2023, the Company made a strategic pricing decision to reduce the manufacturer's suggested retail price (MSRP) of its cameras, effective May 2023. As a result, the Company recorded a total price protection charge of \$26.7 million for this program, based on estimated channel inventory levels as of the price drop date. Actual price protection claims may differ from the Company's estimates.

**Income taxes.** The Company utilizes the asset and liability method for computing its income tax provision, under which, deferred tax assets and liabilities are recognized for the expected future consequences of temporary differences between the financial reporting and tax bases of assets and liabilities using enacted tax rates. Management makes estimates, assumptions and judgments to determine the Company's provision for income taxes, deferred tax assets and liabilities, and any valuation allowance recorded against deferred tax assets. The Company assesses the likelihood that its deferred tax assets will be recovered from future taxable income in each tax jurisdiction and, to the extent the Company believes recovery is not likely, establishes a valuation allowance.

The Company recognizes the tax benefit from an uncertain tax position only if it is more likely than not the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized from such positions are then measured based on the largest benefit that has a greater than 50% likelihood of being realized upon settlement. Interest and penalties related to unrecognized tax benefits are recognized within income tax expense.

**Segment information.** The Company operates as one operating segment as it only reports financial information on an aggregate and consolidated basis to its Chief Executive Officer, who is the Company's chief operating decision maker.

**Recent accounting standards.** Although there are several new accounting standards issued or proposed by the FASB, which the Company has adopted or will adopt, as applicable, the Company does not believe any of these accounting pronouncements has had or will have a material impact on its condensed consolidated financial statements.

## 2. Fair value measurements

The Company's assets that are measured at fair value on a recurring basis within the fair value hierarchy are summarized as follows:

(in thousands)	June 30, 2023			December 31, 2022		
	Level 1	Level 2	Total	Level 1	Level 2	Total
Cash equivalents <sup>(1)</sup> :						
Money market funds	\$ 109,078	\$ —	\$ 109,078	\$ 138,394	\$ —	\$ 138,394
Total cash equivalents	\$ 109,078	\$ —	\$ 109,078	\$ 138,394	\$ —	\$ 138,394
Marketable securities:						
U.S. treasury securities	\$ —	\$ 22,645	\$ 22,645	\$ —	\$ 14,716	\$ 14,716
Commercial paper	—	35,564	35,564	—	87,436	87,436
Corporate debt securities	—	7,877	7,877	—	29,637	29,637
Government securities	—	15,707	15,707	—	11,813	11,813
Total marketable securities	\$ —	\$ 81,793	\$ 81,793	\$ —	\$ 143,602	\$ 143,602

<sup>(1)</sup> Included in cash and cash equivalents in the accompanying Condensed Consolidated Balance Sheets. Cash balances were \$80.8 million and \$85.3 million as of June 30, 2023 and December 31, 2022, respectively.

Cash equivalents are classified as Level 1 because the Company uses quoted market prices to determine their fair value. Marketable securities are classified as Level 2 because the Company uses alternative pricing sources and models utilizing market observable inputs to determine their fair value. The contractual maturities of available-for-sale marketable securities as of June 30, 2023 were all less than one year in duration. At June 30, 2023 and December 31, 2022, the Company had no financial assets or liabilities measured at fair value on a recurring basis that were classified as Level 3, which are valued based on inputs supported by little or no market activity.

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Notes to Condensed Consolidated Financial Statements

At June 30, 2023 and December 31, 2022, the amortized cost of the Company's cash equivalents and marketable securities approximated their fair value and there were no material realized or unrealized gains or losses, either individually or in the aggregate.

In November 2020, the Company issued \$143.8 million principal amount of Convertible Senior Notes due 2025 (2025 Notes) (see Note 4 Financing arrangements). The estimated fair value of the 2025 Notes is based on quoted market prices of the Company's instruments in markets that are not active and are classified as Level 2 within the fair value hierarchy. The Company estimated the fair value of the 2025 Notes by evaluating quoted market prices and calculating the upfront cash payment a market participant would require to assume these obligations. The calculated fair value of the 2025 Notes was \$127.2 million and \$130.1 million as of June 30, 2023 and December 31, 2022, respectively. The calculated fair value is highly correlated to the Company's stock price and as a result, significant changes to the Company's stock price will have a significant impact on the calculated fair value of the 2025 Notes.

For certain other financial assets and liabilities, including accounts receivable, accounts payable and other current assets and liabilities, the carrying amounts approximate their fair value primarily due to the relatively short maturity of these balances.

The Company also measures certain non-financial assets at fair value on a nonrecurring basis, primarily goodwill, intangible assets and operating lease right-of-use assets, in connection with periodic evaluations for potential impairment.

### 3. Condensed consolidated financial statement details

The following section provides details of selected balance sheet items.

#### Inventory

(in thousands)	June 30, 2023	December 31, 2022
Components	\$ 16,600	\$ 38,400
Finished goods	118,809	88,731
Total inventory	<u>\$ 135,409</u>	<u>\$ 127,131</u>

#### Property and equipment, net

(in thousands)	June 30, 2023	December 31, 2022
Leasehold improvements	\$ 32,572	\$ 32,472
Production, engineering and other equipment	43,162	46,475
Tooling	7,990	9,033
Computers and software	17,701	17,258
Furniture and office equipment	4,879	4,879
Tradeshow equipment and other	1,746	1,664
Construction in progress	29	59
Gross property and equipment	108,079	111,840
Less: Accumulated depreciation and amortization	(97,563)	(98,513)
Property and equipment, net	<u>\$ 10,516</u>	<u>\$ 13,327</u>

GoPro, Inc.  
Notes to Condensed Consolidated Financial Statements

### Other long-term assets

(in thousands)	June 30, 2023	December 31, 2022
Long-term deferred tax assets	\$ 294,989	\$ 279,045
Deposits and other	11,898	8,435
Point of purchase (POP) displays	2,335	1,798
Intangible assets, net	15	15
Other long-term assets	<u>\$ 309,237</u>	<u>\$ 289,293</u>

Intangible assets are comprised of purchased technology, which have a useful life between 20-72 months, and an indefinite life asset. Amortization expense was zero for the three months ended June 30, 2023 and 2022 and zero and \$0.1 million for the six months ended June 30, 2023 and 2022, respectively. As of June 30, 2023, all of the Company's purchased technology intangible assets were fully amortized.

### Accrued expenses and other current liabilities

(in thousands)	June 30, 2023	December 31, 2022
Accrued sales incentives	\$ 41,432	\$ 41,662
Accrued liabilities <sup>(1)</sup>	22,243	35,853
Employee related liabilities	11,797	11,261
Warranty liabilities	6,887	7,825
Return liability	4,716	6,002
Customer deposits	2,930	3,428
Purchase order commitments	1,124	782
Inventory received	692	233
Other	8,321	11,831
Accrued expenses and other current liabilities	<u>\$ 100,142</u>	<u>\$ 118,877</u>

<sup>(1)</sup> See Note 11 Restructuring charges for amounts associated with restructuring liabilities.

### Product warranty

(in thousands)	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Beginning balance	\$ 7,245	\$ 8,012	\$ 8,319	\$ 8,842
Charged to cost of revenue	4,719	4,363	8,474	7,248
Settlement of warranty claims	(4,660)	(4,515)	(9,489)	(8,230)
Warranty liability	<u>\$ 7,304</u>	<u>\$ 7,860</u>	<u>\$ 7,304</u>	<u>\$ 7,860</u>

At June 30, 2023 and December 31, 2022, \$6.9 million and \$7.8 million, respectively, of the warranty liability was recorded as a component of accrued expenses and other current liabilities, and \$0.4 million and \$0.5 million, respectively, was recorded as a component of other long-term liabilities.

## 4. Financing arrangements

### 2021 Credit Facility

In January 2021, the Company entered into a Credit Agreement which provides for a revolving credit facility (2021 Credit Facility) under which the Company may borrow up to an aggregate amount of \$50.0 million. In March 2023, the Company amended the 2021 Credit Agreement (collectively, 2021 Credit Agreement). The 2021 Credit Agreement will terminate and any outstanding borrowings become due and payable on the earlier of (i) January

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2027 and (ii) unless the Company has cash in a specified deposit account in an amount equal to or greater than the amount required to repay the Company's 1.25% convertible senior notes due November 2025, 91 days prior to the maturity date of such convertible notes.

The amount that may be borrowed under the 2021 Credit Agreement may be based on a customary borrowing base calculation if the Company's Asset Coverage Ratio is at any time less than 1.50. The Asset Coverage Ratio is defined as the ratio of (i) the sum of (a) the Company's cash and cash equivalents in the United States plus specified percentages of other qualified debt investments (Qualified Cash) plus (b) specified percentages of the net book values of the Company's accounts receivable and certain inventory to (ii) \$50.0 million.

Borrowed funds accrue interest at the greater of (i) a per annum rate equal to the base rate plus a margin of from 0.50% to 1.00% depending on the Company's Asset Coverage Ratio or (ii) a per annum rate equal to the Secured Overnight Financing Rate plus a 10 basis point premium and a margin of from 1.50% to 2.00% depending on the Company's Asset Coverage Ratio. The Company is required to pay a commitment fee on the unused portion of the 2021 Credit Facility of 0.25% per annum. Amounts owed under the 2021 Credit Agreement are guaranteed by certain of the Company's United States subsidiaries and secured by a first priority security interest in substantially all of the assets of the Company and certain of its subsidiaries (other than intellectual property, which is subject to a negative pledge restricting grants of security interests to third parties).

The 2021 Credit Agreement contains customary representations, warranties, and affirmative and negative covenants. The negative covenants include restrictions on the incurrence of liens and indebtedness, certain investments, dividends, stock repurchases and other matters, all subject to certain exceptions. In addition, the Company is required to maintain Liquidity (the sum of unused availability under the credit facility and the Company's Qualified Cash) of at least \$55.0 million (of which at least \$40.0 million shall be attributable to Qualified Cash), or, if the borrowing base is then in effect, minimum unused availability under the credit facility of at least \$10.0 million. The 2021 Credit Agreement also includes customary events of default that include, among other things, non-payment of principal, interest or fees, inaccuracy of representations and warranties, violation of certain covenants, cross default to certain other indebtedness, bankruptcy and insolvency events, material judgments and change of control. Upon an event of default, the lender may, subject to customary cure rights, require the immediate payment of all amounts outstanding.

At June 30, 2023, the Company was in compliance with all financial covenants contained in the 2021 Credit Agreement and has made no borrowings from the 2021 Credit Facility to date. However, there is an outstanding letter of credit under the 2021 Credit Agreement of \$5.2 million for certain duty-related requirements. This was not collateralized by any cash on hand.

## Convertible Notes

### 2025 Convertible Notes

In November 2020, the Company issued \$125.0 million aggregate principal amount of 1.25% Convertible Senior Notes due 2025 and granted an option to the initial purchasers to purchase up to an additional \$18.8 million aggregate principal amount of the 2025 Notes to cover over-allotments, of which \$18.8 million was subsequently exercised during November 2020, resulting in a total issuance of \$143.8 million aggregate principal amount of the 2025 Notes. The 2025 Notes are senior, unsecured obligations of the Company and mature on November 15, 2025, unless earlier repurchased or converted into shares of Class A common stock under certain circumstances. The 2025 Notes are convertible into cash, shares of the Company's Class A common stock, or a combination thereof, at the Company's election, at an initial conversion rate of 107.1984 shares of Class A common stock per \$1,000 principal amount of the 2025 Notes, which is equivalent to an initial conversion price of approximately \$9.3285 per share of common stock, subject to adjustment. The Company pays interest on the 2025 Notes semi-annually in arrears on May 15 and November 15 of each year.

The Company may redeem all or any portion of the 2025 Notes on or after November 20, 2023 for cash if the last reported sale price of the Company's common stock has been at least 130% of the conversion price then in effect for least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which the Company provides the redemption notice, at a redemption price equal to 100% of the principal amount of the 2025 Notes to be redeemed, plus accrued interest and unpaid interest to, but excluding the redemption date. No

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sinking fund is provided for the 2025 Notes. The indenture includes customary terms and covenants, including certain events of default after which the 2025 Notes may be due and payable immediately.

Holders have the option to convert the 2025 Notes in multiples of \$1,000 principal amount at any time prior to August 15, 2025, but only in the following circumstances:

- during any calendar quarter beginning after the calendar quarter ending on March 31, 2021, if the last reported sale price of Class A common stock for at least 20 trading days (whether or not consecutive) during the last 30 consecutive trading days of the immediately preceding fiscal quarter is greater than or equal to 130% of the conversion price of the 2025 Notes on each applicable trading day;
- during the five-business day period following any five consecutive trading day period in which the trading price for the 2025 Notes is less than 98% of the product of the last reported sale price of Class A common stock and the conversion rate for the 2025 Notes on each such trading day;
- if the Company calls any or all of the 2025 Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately before the redemption date; or
- upon the occurrence of specified corporate events.

At any time on or after August 15, 2025 until the second scheduled trading day immediately preceding the maturity date of the 2025 Notes on November 15, 2025, a holder may convert its 2025 Notes, in multiples of \$1,000 principal amount. Holders of the 2025 Notes who convert their 2025 Notes in connection with a make-whole fundamental change (as defined in the indenture) are, under certain circumstances, entitled to an increase in the conversion rate. In addition, in the event of a fundamental change prior to the maturity date, holders will, subject to certain conditions, have the right, at their option, to require the Company to repurchase for cash all or part of the 2025 Notes at a repurchase price equal to 100% of the principal amount of the 2025 Notes to be repurchased, plus accrued and unpaid interest up to, but excluding, the repurchase date. During the three months ended June 30, 2023, the conditions allowing holders of the 2025 Notes to convert were not met.

In connection with the offering of the 2025 Notes, the Company paid \$10.2 million to enter into privately negotiated capped call transactions with certain financial institutions (Capped Calls). The Capped Calls have an initial strike price of \$9.3285 per share, which corresponds to the initial conversion price of the 2025 Notes. The Capped Calls cover, subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the 2025 Notes, the number of Class A common stock initially underlying the 2025 Notes. The Capped Calls are generally expected to reduce potential dilution to the Company's Class A common stock upon any conversion of the 2025 Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of converted 2025 Notes, as the case may be, with such reduction and/or offset subject to a cap, initially equal to \$12.0925, and is subject to certain adjustments under the terms of the Capped Call transactions. The Capped Calls will expire in November 2025, if not exercised earlier.

The Capped Calls are subject to adjustment upon the occurrence of specified extraordinary events affecting the Company, including merger events, tender offers and announcement events. In addition, the Capped Calls are subject to certain specified additional disruption events that may give rise to a termination of the Capped Calls, including nationalization, insolvency or delisting, changes in law, failures to deliver, insolvency filings and hedging disruptions. For accounting purposes, the Capped Calls are separate transactions, and not part of the terms of the 2025 Notes. As these transactions meet certain accounting criteria, the Capped Calls are recorded in stockholders' equity as a reduction to additional paid-in capital and will not be remeasured as long as they continue to meet certain accounting criteria.

As of June 30, 2023 and December 31, 2022, the outstanding principal on the 2025 Notes was \$143.8 million, the unamortized debt issuance cost was \$2.3 million and \$2.8 million, respectively, and the net carrying amount of the liability was \$141.5 million and \$141.0 million, respectively, which was recorded as long-term debt within the Condensed Consolidated Balance Sheets. For the three months ended June 30, 2023 and 2022, the Company recorded interest expense of \$0.5 million and \$0.5 million, respectively, for contractual coupon interest, and \$0.3 million and \$0.3 million, respectively, for amortization of debt issuance costs. For the six months ended June 30, 2023 and 2022 the Company recorded interest expense of \$0.9 million and \$0.9 million, respectively, for contractual coupon interest, and \$0.5 million and \$0.5 million, respectively, for amortization of debt issuance

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costs.

2022 Convertible Notes

In April 2017, the Company issued \$175.0 million aggregate principal amount of 3.50% Convertible Senior Notes due 2022 (2022 Notes), which were repaid in full by their April 15, 2022 maturity date. The 2022 Notes were senior, unsecured obligations of the Company that could be converted into cash, shares of the Company's Class A common stock, or a combination thereof, at the Company's election, based on conversion rates as defined in the indenture. Concurrently with the November 2020 issuance of the 2025 Notes, the Company used \$56.2 million of the net cash proceeds from the 2025 Notes to repurchase \$50.0 million principal amount of the 2022 Notes through a single, privately negotiated transaction. On April 15, 2022, the Company repaid the remaining \$125.0 million of principal and \$2.2 million of accrued interest in cash to the debt holders to fully settle the 2022 Notes on the maturity date. For the three months ended June 30, 2022 the Company recorded interest expense of \$0.2 million for contractual coupon interest, and zero for amortization of debt issuance costs. For the six months ended June 30, 2022 the Company recorded interest expense of \$1.3 million for contractual coupon interest and \$0.2 million for amortization of debt issuance costs.

## 5. Stockholders' equity

**Stock Repurchase Program.** On January 27, 2022, the Company's board of directors authorized the repurchase of up to \$100 million of its Class A common stock, and on February 9, 2023, the Company's board of directors authorized the repurchase of an additional \$40 million of its Class A common stock. Stock repurchases under the program may be made periodically using a variety of methods, including without limitation, open market purchases, block trades or otherwise in compliance with all federal and state securities laws and state corporate law and in accordance with the single broker, timing, price, and volume guidelines set forth in Rule 10b-18 and Rule 10b5-1 under the Securities Exchange Act of 1934, as amended, as such guidelines may be modified by the SEC from time to time. This stock repurchase program has no time limit and may be modified, suspended, or discontinued at any time. The Company currently intends to hold its repurchased shares as treasury stock.

As of June 30, 2023, the remaining amount of share repurchases under the program was \$80.4 million. The following table summarizes share repurchases during the three and six months ended June 30, 2023 and 2022.

(in thousands, except per share data)	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Shares repurchased	3,606	1,802	4,496	2,922
Average price per share	\$ 4.16	\$ 6.53	\$ 4.45	\$ 7.45
Value of shares repurchased	\$ 15,000	\$ 11,762	\$ 20,000	\$ 21,762

## 6. Employee benefit plans

**Equity incentive plans.** The Company has outstanding equity grants from its three stock-based employee compensation plans: the 2014 Equity Incentive Plan (2014 Plan), the 2010 Equity Incentive Plan (2010 Plan) and the 2014 Employee Stock Purchase Plan (2014 ESPP). No new options or awards have been granted under the 2010 Plan since June 2014. Outstanding options and awards under the 2010 Plan continue to be subject to the terms and conditions of the 2010 Plan. Options granted under the 2014 Plan generally expire within ten years from the date of grant and generally vest over one to four years. Restricted stock units (RSUs) granted under the 2014 Plan generally vest over two to four years based upon continued service and are settled at vesting in shares of the Company's Class A common stock. Performance stock units (PSUs) granted under the 2014 Plan generally vest over three years based upon continued service and the Company achieving certain financial and operating targets, and are settled at vesting in shares of the Company's Class A common stock. The Company accounts for forfeitures of stock-based payment awards in the period they occur. The 2014 ESPP allows eligible employees to purchase shares of the Company's Class A common stock through payroll deductions at a price equal to 85% of the lesser of the fair market value of the stock as of the first date or the ending date of each six-

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month offering period. For additional information regarding the Company's equity incentive plans, refer to the 2022 Annual Report.

In June 2023, the Company's stockholders approved the 2024 Equity Incentive Plan (2024 Plan) and the 2024 Employee Stock Purchase Plan (2024 ESPP) which will be the successors to the Company's 2014 Plan and 2014 ESPP, respectively. The effective date of both the 2024 Plan and the 2024 ESPP is February 15, 2024. The 2014 Plan and the 2014 ESPP will each expire on February 15, 2024. Awards granted under the 2014 Plan will continue to be subject to the terms and provisions of the 2014 Plan. For more information related to the 2024 Plan and the 2024 ESPP, refer to the plan documents included as exhibits to this Quarterly Report on Form 10-Q.

### Stock options

A summary of the Company's stock option activity for the six months ended June 30, 2023 is as follows:

	Shares (in thousands)	Weighted-average exercise price	Weighted-average remaining contractual term (in years)	Aggregate intrinsic value (in thousands)
Outstanding at December 31, 2022	3,089	\$ 9.37	5.30	\$ 467
Granted	—	—		
Exercised	—	—		
Forfeited/Cancelled	(172)	12.94		
Outstanding at June 30, 2023	<u>2,917</u>	\$ 9.16	4.51	\$ 44
Vested and expected to vest at June 30, 2023	<u>2,917</u>	\$ 9.16	4.51	\$ 44
Exercisable at June 30, 2023	<u>2,551</u>	\$ 9.44	4.03	\$ 34

The aggregate intrinsic value of the stock options outstanding as of June 30, 2023 represents the value of the Company's closing stock price on June 30, 2023 in excess of the exercise price multiplied by the number of options outstanding.

### Restricted stock units

A summary of the Company's RSU activity for the six months ended June 30, 2023 is as follows:

	Shares (in thousands)	Weighted-average grant date fair value
Non-vested shares at December 31, 2022	8,727	\$ 7.19
Granted	6,237	5.69
Vested	(2,416)	6.68
Forfeited	(302)	7.26
Non-vested shares at June 30, 2023	<u>12,246</u>	\$ 6.52



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**Performance stock units**

A summary of the Company's PSU activity for the six months ended June 30, 2023 is as follows:

	Shares (in thousands)	Weighted-average grant date fair value
Non-vested shares at December 31, 2022	686	\$ 7.93
Granted	1,254	5.79
Vested	(319)	7.47
Forfeited	(18)	8.40
Non-vested shares at June 30, 2023	1,603	\$ 6.34

**Employee stock purchase plan.** For the six months ended June 30, 2023 and 2022, the Company issued 0.5 million and 0.3 million shares under its ESPP, respectively, at weighted-average prices of \$5.09 and \$7.70 per share, respectively.

**Stock-based compensation expense.** The Company measures compensation expense for all stock-based payment awards based on the estimated fair values on the date of the grant. The fair value of stock options granted and ESPP issuance is estimated using the Black-Scholes option pricing model. The fair value of RSUs and PSUs are determined using the Company's closing stock price on the date of grant. There have been no significant changes in the Company's valuation assumptions from those disclosed in its 2022 Annual Report.

The following table summarizes stock-based compensation expense included in the Condensed Consolidated Statements of Operations:

(in thousands)	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Cost of revenue	\$ 530	\$ 483	\$ 996	\$ 930
Research and development	4,922	4,405	9,668	8,563
Sales and marketing	2,359	2,229	4,537	4,352
General and administrative	3,306	3,134	6,230	6,242
Total stock-based compensation expense	\$ 11,117	\$ 10,251	\$ 21,431	\$ 20,087

The income tax benefit related to stock-based compensation expense was \$2.5 million and \$4.8 million for the three and six months ended June 30, 2023, respectively. The income tax benefit related to stock-based compensation expense was \$2.3 million and \$4.4 million for the three and six months ended June 30, 2022, respectively. See Note 8, Income taxes, for additional details.

As of June 30, 2023, total unearned stock-based compensation of \$70.6 million related to stock options, RSUs, PSUs and ESPP shares is expected to be recognized over a weighted-average period of 2.22 years.

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## 7. Net income (loss) per share

The following table presents the calculations of basic and diluted net income (loss) per share:

(in thousands, except per share data)	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
<b>Numerator:</b>				
Net income (loss) - Basic	\$ (17,212)	\$ 2,519	\$ (47,081)	\$ 8,204
Interest on convertible notes, income tax effected	—	715	—	2,236
Net income (loss) - Diluted	<u>\$ (17,212)</u>	<u>\$ 3,234</u>	<u>\$ (47,081)</u>	<u>\$ 10,440</u>
<b>Denominator:</b>				
Weighted-average common shares - basic for Class A and Class B common stock	154,562	156,645	154,980	156,751
Effect of dilutive securities	—	20,215	—	26,419
Weighted-average common shares - diluted for Class A and Class B common stock	<u>154,562</u>	<u>176,860</u>	<u>154,980</u>	<u>183,170</u>
<b>Net income (loss) per share</b>				
Basic	\$ (0.11)	\$ 0.02	\$ (0.30)	\$ 0.05
Diluted	<u>\$ (0.11)</u>	<u>\$ 0.02</u>	<u>\$ (0.30)</u>	<u>\$ 0.06</u>

The following potentially dilutive shares were not included in the calculation of diluted shares outstanding as the effect would have been anti-dilutive:

(in thousands)	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Stock-based awards	16,039	7,843	15,299	6,113
Shares related to convertible senior notes	15,410	—	15,410	—
Total anti-dilutive securities	<u>31,449</u>	<u>7,843</u>	<u>30,709</u>	<u>6,113</u>

The Company calculated the potential dilutive effect of its 2022 Notes and 2025 Notes under the if-converted method. Under the if-converted method, diluted net income per share was determined by assuming all of the 2022 Notes and the 2025 Notes were converted into shares of the Company's Class A common stock at the beginning of the reporting period. In addition, in periods of net income, interest charges on the 2022 Notes and 2025 Notes, which includes both coupon interest and amortization of debt issuance costs, were added back to net income on an after-tax effected basis.

The Company's 2022 Notes matured on April 15, 2022 and the Company's 2025 Notes will mature on November 15, 2025, unless earlier repurchased or converted into shares of Class A common stock under certain circumstances as described further in Note 4 Financing arrangements. The 2025 Notes are convertible into cash, shares of the Company's Class A common stock, or a combination thereof, at the Company's election.

The rights of the holders of Class A common stock and Class B common stock are identical, except with respect to voting and conversion. Each share of Class A common stock is entitled to one vote per share and each share of Class B common stock is entitled to ten votes per share. Each share of Class B common stock is convertible at any time at the option of the stockholder into one share of Class A common stock and has no expiration date. Each share of Class B common stock will convert automatically into one share of Class A common stock upon the date when the outstanding shares of Class B common stock represent less than 10% of the aggregate number of shares of common stock then outstanding. Class A common stock is not convertible into Class B common stock.

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The computation of the diluted net income (loss) per share of Class A common stock assumes the conversion of Class B common stock.

## 8. Income taxes

The following table provides the income tax expense (benefit) amount:

(dollars in thousands)	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Income tax expense (benefit)	\$ (3,998)	\$ 110	\$ (12,251)	\$ 59

The Company recorded an income tax benefit of \$4.0 million for the three months ended June 30, 2023 on pre-tax net loss of \$21.2 million. The Company's income tax benefit for the three months ended June 30, 2023 was composed of \$4.6 million of tax benefit incurred on pre-tax loss, and discrete items that primarily included \$0.3 million of nondeductible equity tax expense for employee stock-based compensation, \$0.1 million of tax expense related to the foreign provision to income tax return adjustments, and \$0.1 million of tax expense related to the restructuring charges. The Company recorded an income tax benefit of \$12.3 million for the six months ended June 30, 2023 on pre-tax net loss of \$59.3 million. The Company's income tax benefit for the six months ended June 30, 2023 was composed of \$13.4 million of tax benefit incurred on pre-tax loss, and discrete items that primarily included \$0.6 million of net nondeductible equity tax expense for employee stock-based compensation, \$0.2 million of tax expense related to the foreign provision to income tax return adjustments, and \$0.2 million of tax expense related to the restructuring charges.

For the three months ended June 30, 2022, the Company recorded an income tax expense of \$0.1 million on pre-tax net income of \$2.6 million. The Company's income tax expense for the three months ended June 30, 2022, was composed of \$0.6 million of tax expense incurred on pre-tax income, and discrete items that primarily included a \$0.2 million of net excess tax benefit for employee stock-based compensation and \$0.2 million of tax benefit related to the foreign provision to income tax return adjustments. The Company recorded an income tax expense of \$0.1 million for the six months ended June 30, 2022 on pre-tax net income of \$8.3 million. The Company's income tax expense for the six months ended June 30, 2022 was composed of \$1.9 million of tax expense incurred on pre-tax income, and discrete items that primarily included \$1.6 million of net excess tax benefit for employee stock-based compensation and \$0.3 million of tax benefit related to the foreign provision to income tax return adjustments.

At June 30, 2023 and December 31, 2022, the Company's gross unrecognized tax benefits were \$25.3 million and \$23.4 million, respectively. If recognized, \$11.6 million of these unrecognized tax benefits (net of United States federal benefit) at June 30, 2023 would reduce income tax expense. A material portion of the Company's gross unrecognized tax benefits, if recognized, would increase the Company's net operating loss carryforward. The Company conducts business globally and as a result, files income tax returns in the United States and foreign jurisdictions. The Company's unrecognized tax benefits relate primarily to unresolved matters with taxing authorities. While it is often difficult to predict the final outcome or the timing of resolution of any particular uncertain tax position, the Company believes that its reserves reflect the more likely outcome. The Company believes, due to statute of limitations expiration, that within the next 12 months, it is possible that up to \$2.4 million of uncertain tax position could be released. It is also reasonably possible that additional uncertain tax positions will be added. It is not reasonably possible at this time to quantify the net effect.

## 9. Commitments, contingencies and guarantees

**Facility leases.** The Company leases its facilities under long-term operating leases, which expire at various dates through 2027.

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The components of net lease cost, which were primarily recorded in operating expenses, were as follows:

(in thousands)	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Operating lease cost <sup>(1)</sup>	\$ 2,836	\$ 2,477	\$ 6,194	\$ 5,327
Sublease income	(723)	(730)	(1,446)	(1,461)
Net lease cost	<u>\$ 2,113</u>	<u>\$ 1,747</u>	<u>\$ 4,748</u>	<u>\$ 3,866</u>

<sup>(1)</sup> Operating lease cost includes variable lease costs, which are immaterial.

Supplemental cash flow information related to leases was as follows:

(in thousands)	Six months ended June 30,	
	2023	2022
Cash paid for amounts included in the measurement of lease liabilities		
Operating cash flows from operating leases	\$ 6,711	\$ 7,479
Right-of-use assets obtained in exchange for operating lease liabilities	1,321	873

Supplemental balance sheet information related to leases was as follows:

	June 30, 2023	December 31, 2022
Weighted-average remaining lease term (in years) - operating leases	3.41	3.81
Weighted-average discount rate - operating leases	6.1%	6.1%

As of June 30, 2023, maturities of operating lease liabilities were as follows:

(in thousands)	June 30, 2023
2023 (remaining 6 months)	\$ 5,796
2024	12,783
2025	12,337
2026	11,990
2027	973
Thereafter	—
Total lease payments	<u>43,879</u>
Less: Imputed interest	<u>(4,593)</u>
Present value of lease liabilities	<u>\$ 39,286</u>

**Other commitments.** In the ordinary course of business, the Company enters into multi-year agreements to purchase sponsorships with event organizers, resorts and athletes as part of its marketing efforts; software licenses related to its financial and IT systems; debt agreements; and various other contractual commitments. As of June 30, 2023, the Company's total undiscounted future expected obligations under multi-year agreements described above with terms longer than one year was \$213.8 million.

**Legal proceedings and investigations.** Since 2015, Contour IP Holdings LLC (CIPH) and related entities have filed lawsuits in various federal district courts alleging, among other things, patent infringement in relation to certain GoPro products. Following litigation in federal courts and the United States Patent and Trademark Office, CIPH's patents were ruled invalid in March 2022. Judgment was then entered in favor of the Company and against CIPH. CIPH later appealed, and the appeal is pending at the Federal Circuit. The Company believes that the appeal lacks merit and intends to vigorously defend against CIPH's appeal.

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The Company regularly evaluates the associated developments of the legal proceeding described above, as well as other legal proceedings that arise in the ordinary course of business. While litigation is inherently uncertain, based on the currently available information, the Company is unable to determine a loss or a range of loss, and does not believe the ultimate cost to resolve these matters will have a material adverse effect on its business, financial condition, cash flows or results of operations.

**Indemnifications.** The Company has entered into indemnification agreements with its directors and executive officers which requires the Company to indemnify its directors and executive officers against liabilities that may arise by reason of their status or service. In addition, in the normal course of business, the Company enters into agreements that contain a variety of representations and warranties, and provide for general indemnification. The Company's exposure under these agreements is unknown because it involves claims that may be made against the Company in the future, but have not yet been made. It is not possible to determine the maximum potential amount under these indemnification agreements due to the Company's limited history with indemnification claims and the unique facts and circumstances involved in each particular agreement. As of June 30, 2023, the Company has not paid any claims nor has it been required to defend any action related to its indemnification obligations. However, the Company may record charges in the future as a result of these indemnification obligations.

## 10. Concentrations of risk and geographic information

**Concentration of risk.** Financial instruments which potentially subject the Company to concentration of credit risk includes cash and cash equivalents, marketable securities, accounts receivable, and derivative instruments, including the Capped Calls associated with the 2025 Notes. The Company places cash and cash equivalents with high-credit-quality financial institutions; however, the Company maintains cash balances in excess of the FDIC insurance limits. The Company believes that credit risk for accounts receivable is mitigated by the Company's credit evaluation process, relatively short collection terms and dispersion of its customer base. The Company generally does not require collateral and losses on trade receivables have historically been within the Company's expectations. The Company believes its counterparty credit risk related to its derivative instruments is mitigated by transacting with major financial institutions with high credit ratings.

Customers who represented 10% or more of the Company's net accounts receivable balance were as follows:

	June 30, 2023	December 31, 2022
Customer A	31%	30%
Customer B	20%	11%

The following table summarizes the Company's accounts receivables sold, without recourse, and factoring fees paid:

(in thousands)	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Accounts receivable sold	\$ 24,605	\$ 26,872	\$ 41,039	\$ 50,821
Factoring fees	403	212	667	265

Third-party customers who represented 10% or more of the Company's total revenue were as follows:

	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Customer A	14%	11%	12%	*

\* Less than 10% of total revenue for the periods indicated.

**Supplier concentration.** The Company relies on third parties for the supply and manufacture of its products, some of which are sole-source suppliers. The Company believes that outsourcing manufacturing enables greater scale and flexibility. As demand and product lines change, the Company periodically evaluates the need and advisability of adding manufacturers to support its operations. In instances where a supply and manufacture

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Notes to Condensed Consolidated Financial Statements

agreement does not exist or suppliers fail to perform their obligations, the Company may be unable to find alternative suppliers or satisfactorily deliver its products to its customers on time, if at all. The Company also relies on third parties with whom it outsources supply chain activities related to inventory warehousing, order fulfillment, distribution and other direct sales logistics. In instances where an outsourcing agreement does not exist or these third parties fail to perform their obligations, the Company may be unable to find alternative partners or satisfactorily deliver its products to its customers on time.

### Geographic information

Revenue by geographic region was as follows:

(in thousands)	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Americas	\$ 121,644	\$ 126,377	\$ 211,163	\$ 228,960
Europe, Middle East and Africa (EMEA)	66,500	71,691	112,516	133,222
Asia and Pacific (APAC)	52,876	52,617	92,061	105,208
Total revenue	\$ 241,020	\$ 250,685	\$ 415,740	\$ 467,390

Revenue from the United States, which is included in the Americas geographic region, was \$106.5 million and \$108.0 million, for the three months ended June 30, 2023 and 2022, respectively, and \$182.1 million and \$193.2 million for the six months ended June 30, 2023 and 2022, respectively. No other individual country exceeded 10% of total revenue for any period presented. The Company does not disclose revenue by product category as it does not track sales incentives and other revenue adjustments by product category to report such data.

As of June 30, 2023 and December 31, 2022, long-lived assets, which represent net property and equipment, located outside the United States, primarily in Hong Kong and mainland China, were \$2.4 million and \$4.0 million, respectively.

### 11. Restructuring charges

Restructuring charges for each period were as follows:

(in thousands)	Three months ended June 30,		Six months ended June 30,	
	2023	2022	2023	2022
Cost of revenue	\$ (184)	\$ 10	\$ (183)	\$ 28
Research and development	(1)	87	10	239
Sales and marketing	—	49	6	134
General and administrative	—	27	3	76
Total restructuring charges	\$ (185)	\$ 173	\$ (164)	\$ 477

#### Fourth quarter 2022 restructuring

In December 2022, the Company approved a restructuring plan to reduce camera production-related costs by globally realigning its manufacturing footprint to concentrate production activities in two primary locations: China and Thailand. Under the fourth quarter 2022 restructuring, the Company recorded restructuring charges of \$8.1 million including \$7.0 million for camera production line closure costs and \$1.1 million for related transitional costs to migrate production to the Company's remaining manufacturing locations.

The following table provides a summary of the Company's restructuring activities and the movement in the related liabilities recorded in accrued expenses and other current liabilities on the Condensed Consolidated Balance Sheets under the fourth quarter 2022 restructuring.

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<b>(in thousands)</b>	<b>Contract and Other Costs</b>	<b>Total</b>
Restructuring liability as of December 31, 2022	\$ 7,833	\$ 7,833
Restructuring charges (releases)	(184)	(184)
Cash paid	(7,649)	(7,649)
Restructuring liability as of June 30, 2023	<u>\$ —</u>	<u>\$ —</u>

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A)

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our unaudited condensed consolidated financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q and our audited consolidated financial statements and the related notes and the discussion under the heading Management's Discussion and Analysis of Financial Condition and Results of Operations for the fiscal year ended December 31, 2022 included in our Annual Report on Form 10-K filed with the SEC. This discussion, particularly information with respect to our future results of operations or financial condition, business strategy and plans, and objectives of management for future operations, includes forward-looking statements that involve risks and uncertainties as described under the heading Special Note About Forward-Looking Statements in this Quarterly Report on Form 10-Q. Disclosures under the heading Risk Factors in this Quarterly Report on Form 10-Q include a discussion of important factors that could cause our actual results to differ materially from those anticipated in these forward-looking statements. Our MD&A is provided in addition to the accompanying condensed consolidated financial statements and accompanying notes to assist readers in understanding our results of operations, financial condition and cash flows.*

This MD&A is organized as follows:

- **Overview.** Discussion of our business, overall analysis of our financial performance and other highlights affecting the business in order to provide context for the remainder of the MD&A.
- **Results of Operations.** Analysis of our financial results comparing the second quarter and first six months of 2023 to 2022.
- **Liquidity and Capital Resources.** Analysis of changes in our balance sheets and cash flows, and discussion of our financial condition and potential sources of liquidity.
- **Critical Accounting Policies and Estimates.** Accounting estimates that we believe are important to understanding the assumptions and judgments incorporated in our reported financial results and forecasts.
- **Non-GAAP Financial Measures.** A reconciliation and discussion of our GAAP to non-GAAP financial measures.

### Overview

GoPro helps the world capture and share itself in immersive and exciting ways. We are committed to developing solutions that create an easy, seamless experience for consumers to capture, create and share engaging personal content. When consumers use our products and services, they often generate and share content that organically increases awareness for GoPro, driving a virtuous cycle and a self-reinforcing demand for our products. We believe revenue growth may be driven by the introduction of new cameras, accessories, lifestyle gear, and software and subscription offerings. We believe new camera features drive a replacement cycle among existing users and attract new users, expanding our total addressable market. Our investments in image stabilization, mobile app editing and sharing solutions, modular accessories, auto-upload capabilities, local language user-interfaces and voice recognition in more than 12 languages drive the expansion of our global market.

In September 2022, we began shipping our HERO11 Black flagship camera that includes our GP2 processor, a larger image sensor and HyperSmooth 5.0 image stabilization. The larger image sensor provides 10-bit color video at up to 5.3K video at 60 frames per second, 27 megapixel (MP) photo resolution, 8:7 aspect ratio video for a larger vertical field of view, and Hyperview, which allows for a 16:9 field of view. HyperSmooth 5.0 image stabilization includes 360-degree Horizon Lock, which keeps video footage steady. The HERO11 Black also includes the Enduro Battery, which improves the camera performance in both cold and moderate temperatures, TimeWarp 3.0, Night Effects Time Lapse, and a front-facing and rear touch display. We also began shipping our HERO11 Black Creator Edition which is an all-in-one content capturing bundle that makes vlogging, filmmaking and live streaming easier than ever. Creator Edition combines the HERO11 Black, Volta, Enduro Battery, Media Mod, and Light Mod to create professional-quality videos.



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In November 2022, we also began shipping our HERO11 Black Mini camera which has all the power of the HERO11 Black, but is smaller and lighter without a rear touch display, simpler with video only functionality, and features an easy one-button design. The HERO11 Black Mini includes our GP2 processor, the larger image sensor used in our HERO11 Black flagship camera, HyperSmooth 5.0 image stabilization and an embedded Enduro Battery.

In the first half of 2022, we expanded our software solutions with the launch of our new GoPro Player + ReelSteady desktop app, which provides industry-leading video stabilization and 360-reframing tools in a single post-production app. Additionally, we began shipping HERO10 Black Bones (Bones) which is a specifically built FPV (First Person View) drone camera that includes our GP2 processor, HyperSmooth 4.0, and the GoPro Player + ReelSteady desktop app. Bones delivers the same image quality and video frame rates as the HERO10 Black camera.

Our HERO11 Black, HERO11 Black Mini, HERO11 Black Creator Edition, HERO10 Black, HERO10 Black Creator Edition, HERO9 Black and MAX cameras are compatible with our ecosystem of mountable and wearable accessories.

We offer our GoPro subscription, which includes unlimited cloud storage of GoPro content supporting source video and photo quality, damaged camera replacement, highlight videos automatically delivered to you via our mobile app when GoPro camera footage is uploaded to your GoPro cloud account using Auto Upload, access to a high-quality live streaming service on GoPro.com, as well as discounts on GoPro cameras, gear, mounts and accessories.

In addition to the GoPro subscription, we offer the Quik subscription which makes it easy for users to get the most out of their favorite photos and videos, captured on any phone or camera, through the use of our mobile app's editing tools. These editing tools include features such as trim, color, crop, filtering, auto-sync of edits to music, and the ability to change video speed. We believe the Quik subscription is an important offering in expanding our total addressable market to those who may not own a GoPro camera. We also offer Open GoPro, an open API initiative that makes it easy for third-party developers to integrate their HERO camera into their own development efforts.

We continue to monitor the current evolving macroeconomic landscape. Inflation and recession concerns places pressure on many areas of our business, including our product pricing, operating expenses, component pricing and consumer spending. In fiscal year 2022, the strength of the U.S. dollar relative to other foreign currencies largely impacted our revenue and gross margin. If the U.S. dollar strengthens relative to other foreign currencies in the future, our financial results will be negatively impacted. See Item 1A. Risk Factors for further discussion of the possible impact of inflation and the strong U.S. dollar on our business.

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The following is a summary of measures presented in our condensed consolidated financial statements and key metrics used to evaluate our business, measure our performance, develop financial forecasts and make strategic decisions.

(units and dollars in thousands, except per share amounts)	% Change				
	Q2 2023	Q1 2023	Q2 2022	Q2 2023 vs. Q1 2023	Q2 2023 vs. Q2 2022
Revenue	\$ 241,020	\$ 174,720	\$ 250,685	38 %	(4) %
Camera units shipped <sup>(1)</sup>	704	462	640	52 %	10 %
Gross margin <sup>(2)</sup>	31.4 %	30.0 %	38.3 %	140 bps	(690) bps
Operating expenses	\$ 98,266	\$ 92,316	\$ 91,349	6 %	8 %
Net income (loss)	\$ (17,212)	\$ (29,869)	\$ 2,519	(42) %	(783) %
Diluted net income (loss) per share	\$ (0.11)	\$ (0.19)	\$ 0.02	(42) %	(650) %
Cash provided by (used in) operations	\$ (7,852)	\$ (67,102)	\$ 12,856	(88) %	(161) %
Other financial information:					
Adjusted EBITDA <sup>(3)</sup>	\$ (10,290)	\$ (27,526)	\$ 16,891	(63) %	(161) %
Non-GAAP net income (loss) <sup>(4)</sup>	\$ (11,291)	\$ (28,577)	\$ 12,790	(60) %	(188) %
Non-GAAP diluted net income (loss) per share	\$ (0.07)	\$ (0.18)	\$ 0.08	(61) %	(188) %

<sup>(1)</sup> Represents the number of camera units that are shipped during a reporting period, net of any returns.

<sup>(2)</sup> One basis point (bps) is equal to 1/100th of 1%.

<sup>(3)</sup> We define adjusted EBITDA as net income (loss) adjusted to exclude the impact of provision for income taxes, interest income, interest expense, depreciation and amortization, point of purchase (POP) display amortization, stock-based compensation, and restructuring and other costs, including right-of-use asset impairment charges.

<sup>(4)</sup> We define non-GAAP net income (loss) as net income (loss) adjusted to exclude stock-based compensation, acquisition-related costs, restructuring and other costs, including right-of-use asset impairment charges, and income tax adjustments. Acquisition-related costs include the amortization of acquired intangible assets and impairment charges (if applicable), as well as third-party transaction costs for legal and other professional services.

Reconciliations of non-GAAP adjusted measures to the most directly comparable GAAP measures are presented under Non-GAAP Financial Measures.

### Second quarter 2023 financial performance

Revenue for the second quarter of 2023 was \$241.0 million, or a 3.9% decrease from the same period in 2022, primarily driven by the impact of our strategic pricing decisions to reduce the manufacturer's suggested retail price (MSRP) across our camera lineup, and a corresponding shift in camera revenue mix as we offered entry level cameras at a sub-\$300 price point for the first time since 2019. The current entry level price point camera is also our lowest margin product and may remain low margin for the foreseeable future until we are able to replace it with a more cost-effective solution. As a result, our second quarter 2023 average selling price decreased 12.6% year-over-year to \$342, and our second quarter 2023 camera revenue mix from cameras with an MSRP equal to or greater than \$400 was 75% compared to 93% for the same period in 2022. These factors were partially offset by a 10.0% year-over-year increase in units shipped in the quarter to 704 thousand as unit volume from lower price point cameras experienced increased demand, which was in line with our strategic pricing objectives. Retail revenue was \$165.4 million in the second quarter of 2023, and represented 68.6% and 62.0% of total revenue for the second quarter of 2023 and 2022, respectively. The shift towards our retail channel reflects early efforts of our updated go-to-market strategy to refocus our retail presence and to drive retail consumers to our GoPro subscription offering via our mobile app or GoPro.com. GoPro.com revenue was \$75.6 million in the second quarter of 2023 and represented 31.4% of total revenue, compared to 38.0% of total revenue for the same period in 2022. Subscription and service revenue, which is included in the GoPro.com channel, was \$24.4 million in the second quarter of 2023, or a 21.0% increase year-over-year. We had 2.44 million GoPro subscribers as of

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June 30, 2023, a 27% increase year-over-year. Our GoPro subscriber attach rate from cameras purchased via GoPro.com exceeded 40% post our go-to-market strategy shift. Our GoPro subscriber attach rate from cameras purchased at retail through our mobile app exceeded 40% in the second quarter of 2023, up from approximately 33% a year ago. Our annual subscriber retention rate for the first-year renewal was in a range of approximately 60% to 65%. In addition, our annual subscriber retention rate for the second-year renewal was in a range of approximately 70% to 75%. Our gross margin percentage for the second quarter of 2023 was 31.4%, down from 38.3% in the second quarter of 2022. Net loss for the second quarter of 2023 was \$17.2 million compared to net income of \$2.5 million in the same period in 2022. Adjusted EBITDA for the second quarter of 2023 was a negative \$10.3 million, compared to a positive \$16.9 million for the same period in 2022.

Our annual GoPro subscriber retention rate represents the annual number of subscribers that renewed their subscription in the period over the number of annual GoPro subscribers with renewal dates in the same period. The number of churned GoPro subscribers represents those subscribers that did not renew their subscription on their renewal date. After the MSRP price reduction of our cameras in May 2023, our GoPro subscriber attach rate from sales on GoPro.com is defined as the number of subscriptions purchased either via GoPro.com at checkout or via our mobile app post checkout related to cameras purchased from GoPro.com in the period over the number of camera unit sales to customers eligible for a new GoPro subscription on GoPro.com for the same period. Our GoPro subscriber attach rate from cameras purchased through retail on our mobile app represents the number of new GoPro subscribers in the period over the corresponding number of estimated camera units sold through the retail channel.

### Factors affecting performance

We believe that our future success will be dependent on many factors, including those further discussed below. While these areas represent opportunities for us, they also represent challenges and risks that we must successfully address in order to operate our business and improve our results of operations.

*Driving profitability through improved efficiency, lower costs and better execution.* We incurred an operating loss in the first half of 2023, although we have previously generated positive operating income for the full years of 2022 and 2021, and continue to make strategic decisions to drive volume, growth and profitability in our business. Despite the operating loss in the first half of 2023, our 2022 and prior years restructuring actions, along with continued effective cost management, have enabled us to scale our on-going operating expenses based on our growth strategies, resulting in a more efficient global organization that has allowed for improved communication and better alignment among our functional teams. We remain focused on increasing sales volume and subscribers, which was the catalyst for our strategic price move in May 2023. We will continue to cultivate the partnerships with our distributors and retailers in order to further grow sales in the retail channel. Our expectation is sales from our retail channel will continue to increase relative to sales on GoPro.com. We have grown our subscribers and subscription revenue over the past several years and continue to make strategic decisions to enhance our subscription offerings, grow subscribers, and increase subscription revenue.

If we are unable to generate adequate unit sales and revenue growth as a result of the strategic price move, successfully increase retail sales, grow subscribers and subscription revenue, continue to effectively manage our expenses, and navigate the volatile macroeconomic environment (including interest rates, currency exchange rates, and recession fears), we may incur significant losses in the future and may not be able to return to profitability.

*Investing in research and development and enhancing our customer experience.* Our performance is significantly dependent on the investments we make in research and development, including our ability to attract and retain highly skilled and experienced research and development personnel. We expect the timing of new product releases to continue to have a significant impact on our revenue and we must continually develop and introduce innovative new cameras, mobile applications and other new offerings. We plan to further build upon our integrated mobile, desktop and cloud-based storytelling solutions, and subscription offerings. Our investments, including those for marketing and advertising, may not successfully drive increased revenue and our customers may not accept our new offerings. If we fail to innovate and enhance our brand, our products, our mobile and desktop app experience or the value proposition of our subscription, our market position and revenue will be adversely affected. Further, we have and will continue to incur substantial research and development expenses and if our efforts are not successful, we may not recover the value of these investments.

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**Improving profitability.** We believe that our continued focus on growing our total addressable market from our retail and GoPro.com channels, including subscription and service revenue, will support our ability to return to profitability on an annual basis due to expected increases in unit volume, subscribers and related revenue, and continued operating expense control. We continue to believe that international markets represent a significant opportunity to achieve profitability. While the total market for digital cameras has continued to decline as smartphone and tablet camera quality has improved, we continue to believe that our consumers' differentiated use of GoPro cameras, our mobile and desktop app and cloud solutions, our continued innovation of product features desired by our users, and our brand, all help support our business from many of the negative trends facing the digital camera market. However, we expect that the markets in which we conduct our business will remain highly competitive as we face new product introductions from competitors. Sales in international locations subject us to foreign currency exchange rate fluctuations and regional macroeconomic conditions that may cause us to adjust pricing which may make our products more or less attractive to the consumer. Continued fluctuations in foreign currency exchange rates and regional macroeconomic conditions could have a continued impact on our future operating results.

Our profitability also depends on the continued success of our subscription and service offerings. If we are not successful in maintaining our product sales, subscription and service offerings, increasing our paid subscriber base through both GoPro.com and retail aftermarket mobile app attach, and improving subscriber retention, we may not be able to return to profitably and we may not recognize benefits from our investment in new areas.

**Marketing the improved GoPro experience.** We intend to focus our marketing resources to highlight our camera features, subscription and service benefits, and further improve brand recognition. Historically, our growth has largely been fueled by the adoption of our products by people looking to self-capture images of themselves participating in exciting physical activities. Our goal of profitability depends on continuing to reach, expand and re-engage with this core user base in alignment with our strategic priorities. Sales and marketing investments will often occur in advance of any sales benefits from these activities, and it may be difficult for us to determine if we are efficiently allocating our resources in this area.

**Seasonality.** Historically, we have experienced the highest levels of total revenue in the fourth quarter of the year, coinciding with the holiday shopping season, particularly in the United States and Europe. While we have implemented operational changes aimed at reducing the impact of fourth quarter seasonality on full year performance, timely and effective product introductions and forecasting, whether just prior to the holiday season or otherwise, are critical to our operations and financial performance.

**Macroeconomic risks.** Macroeconomic conditions affecting the level of consumer spending include fluctuations in foreign exchange rates and interest rates, market volatility, inflation and volatility in the global banking system. Some product costs have become subject to inflationary pressure and we may not be able to fully offset such higher costs through price increases. Our inability or failure to adjust pricing could harm our business, financial condition, and operating results.

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## Results of Operations

The following table sets forth the components of our Condensed Consolidated Statements of Operations for each of the periods presented, and each component as a percentage of revenue:

(dollars in thousands)	Three months ended June 30,				Six months ended June 30,			
	2023		2022		2023		2022	
Revenue	\$ 241,020	100 %	\$ 250,685	100 %	\$ 415,740	100 %	\$ 467,390	100 %
Cost of revenue	165,248	69	154,681	62	287,466	69	280,910	60
Gross profit	75,772	31	96,004	38	128,274	31	186,480	40
Operating expenses:								
Research and development	41,903	17	36,218	14	80,088	19	67,816	15
Sales and marketing	39,906	17	39,439	16	77,961	19	74,812	16
General and administrative	16,457	7	15,692	6	32,533	8	31,035	7
Total operating expenses	98,266	41	91,349	36	190,582	46	173,663	38
Operating income (loss)	(22,494)	(10)	4,655	2	(62,308)	(15)	12,817	2
Other income (expense):								
Interest expense	(1,139)	—	(1,538)	(1)	(2,292)	(1)	(3,747)	(1)
Other income (expense), net	2,423	1	(488)	—	5,268	2	(807)	—
Total other income (expense), net	1,284	1	(2,026)	(1)	2,976	1	(4,554)	(1)
Income (loss) before income taxes	(21,210)	(9)	2,629	1	(59,332)	(14)	8,263	1
Income tax expense (benefit)	(3,998)	(2)	110	—	(12,251)	(3)	59	—
Net income (loss)	\$ (17,212)	(7)%	\$ 2,519	1 %	\$ (47,081)	(11)%	\$ 8,204	1 %

## Revenue

(camera units and dollars in thousands, except average selling price)	Three months ended June 30,			Six months ended June 30,		
	2023	2022	% Change	2023	2022	% Change
Camera units shipped	704	640	10 %	1,166	1,163	— %
Average selling price	\$ 342	\$ 392	(13)	\$ 356	\$ 402	(11)
Retail	\$ 165,375	\$ 155,415	6	\$ 245,184	\$ 283,495	(14)
<i>Percentage of revenue</i>	68.6 %	62.0 %		59.0 %	60.7 %	
GoPro.com	\$ 75,645	\$ 95,270	(21)	\$ 170,556	\$ 183,895	(7)
<i>Percentage of revenue</i>	31.4 %	38.0 %		41.0 %	39.3 %	
Total revenue	\$ 241,020	\$ 250,685	(4)%	\$ 415,740	\$ 467,390	(11)%
Americas	\$ 121,644	\$ 126,377	(4)%	\$ 211,163	\$ 228,960	(8)%
<i>Percentage of revenue</i>	50.5 %	50.4 %		50.8 %	49.0 %	
Europe, Middle East and Africa (EMEA)	\$ 66,500	\$ 71,691	(7)	\$ 112,516	\$ 133,222	(16)
<i>Percentage of revenue</i>	27.6 %	28.6 %		27.1 %	28.5 %	
Asia and Pacific (APAC)	\$ 52,876	\$ 52,617	—	\$ 92,061	\$ 105,208	(12)
<i>Percentage of revenue</i>	21.9 %	21.0 %		22.1 %	22.5 %	
Total revenue	\$ 241,020	\$ 250,685	(4)%	\$ 415,740	\$ 467,390	(11)%

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Revenue for the second quarter of 2023 was \$241.0 million, or a 3.9% decrease from the same period in 2022, primarily driven by the impact of our strategic pricing decisions to reduce the MSRPs across our camera lineup, and a corresponding shift in camera revenue mix as we offered entry level cameras at a sub-\$300 price point for the first time since 2019. The current entry level price point camera is also our lowest margin product and may remain low margin for the foreseeable future until we are able to replace it with a more cost-effective solution. As a result, our second quarter 2023 average selling price decreased 12.6% year-over-year to \$342, and our second quarter 2023 camera revenue mix from cameras with an MSRP equal to or greater than \$400 was 75% compared to 93% for the same period in 2022. These factors were partially offset by a 10.0% year-over-year increase in units shipped in the quarter to 704 thousand as unit volume from lower price point cameras experienced increased demand, which was in line with our strategic pricing objectives. Retail revenue was \$165.4 million in the second quarter of 2023, and represented 68.6% and 62.0% of total revenue for the second quarter of 2023 and 2022, respectively. The shift towards our retail channel reflects early efforts of our updated go-to-market strategy to refocus our retail presence and to drive retail consumers to our GoPro subscription offering via our mobile app or GoPro.com. GoPro.com revenue was \$75.6 million in the second quarter of 2023 and represented 31.4% of total revenue, compared to 38.0% of total revenue for the same period in 2022. Subscription and service revenue, which is included in the GoPro.com channel, was \$24.4 million in the second quarter of 2023, or a 21.0% increase year-over-year. We had 2.44 million GoPro subscribers as of June 30, 2023, a 27% increase year-over-year.

Revenue in the first six months of 2023 was \$415.7 million, or an 11.1% decrease from the same period in 2022, primarily driven by the impact of our strategic pricing decisions to reduce the MSRPs across our camera lineup, and a corresponding shift in camera revenue mix as we offered entry level cameras at a sub-\$300 price point for the first time since 2019. The reduction in MSRP resulted in a price protection charge of \$34.4 million for the six months ended June 30, 2023, which was based on estimated channel inventory levels as of the price drop date. Actual price protection claims may differ from our estimates. As a result of these changes in the first six months of 2023, our average selling price decreased 11.2% year-over-year to \$356 and our camera revenue mix from cameras with an MSRP equal to or greater than \$400 was 81% compared to 92% for the same period in 2022. Units shipped in the first six months of 2023 remained flat year-over-year at 1.2 million. Subscription and service revenue increased 23% year-over-year to \$47.5 million, which is included in the GoPro.com channel. GoPro.com revenue represented 41.0% and 39.3% of total revenue for the first six months of 2023 and 2022, respectively, while retail revenue represented 59.0% and 60.7% of total revenue for the first six months of 2023 and 2022, respectively. On a constant currency basis, we estimated that our revenue in the first six months of 2023 was negatively impacted by approximately \$7.4 million compared to the same period in 2022.

**Cost of revenue and gross margin**

(dollars in thousands)	Three months ended June 30,			Six months ended June 30,		
	2023	2022	% Change	2023	2022	% Change
Cost of revenue	\$ 164,902	\$ 154,188	7 %	\$ 286,653	\$ 279,905	2 %
Stock-based compensation	530	483	10	996	930	7
Acquisition-related costs	—	—	—	—	47	(100)
Restructuring costs	(184)	10	(1,940)	(183)	28	(754)
Total cost of revenue	\$ 165,248	\$ 154,681	7 %	\$ 287,466	\$ 280,910	2 %
<i>Gross margin</i>	<i>31.4 %</i>	<i>38.3 %</i>	<i>(690) bps</i>	<i>30.9 %</i>	<i>39.9 %</i>	<i>(900) bps</i>

Gross margin of 31.4% for the second quarter of 2023 decreased from 38.3% in the same period of 2022, or 690 bps, primarily due to the impact of our strategic pricing decisions to reduce the MSRPs across our camera lineup (810 bps), which includes a total second quarter 2023 price protection charge of \$11 million, a 150% increase in the sale of entry level price point cameras which carry lower margins compared to our higher priced cameras, and an increase to our retail sales channel mix, partially offset by increased margin contribution from subscriptions of 120 bps.

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Gross margin of 30.9% in the first half of 2023 decreased from 39.9% in the same period of 2022, or 900 bps, primarily due to the impact of our strategic pricing decisions to reduce the MSRP's across our camera lineup (970 bps), which includes total price protection charges of \$34.4 million, an increase in the sale of entry level price point cameras which carry lower margins compared to our higher priced cameras, and an increase to our retail sales channel mix. Gross margin was also impacted by the effect of foreign currencies (120 bps), partially offset by increased margin contribution from subscriptions of 180 bps.

**Research and development**

(dollars in thousands)	Three months ended June 30,			Six months ended June 30,		
	2023	2022	% Change	2023	2022	% Change
Research and development	\$ 36,982	\$ 31,726	17 %	\$ 70,410	\$ 59,014	19 %
Stock-based compensation	4,922	4,405	12	9,668	8,563	13
Restructuring costs	(1)	87	(101)	10	239	(96)
Total research and development	\$ 41,903	\$ 36,218	16 %	\$ 80,088	\$ 67,816	18 %
<i>Percentage of revenue</i>	<i>17.4 %</i>	<i>14.4 %</i>		<i>19.3 %</i>	<i>14.5 %</i>	

The year-over-year increase of \$5.7 million, or 16%, in total research and development expense for the second quarter of 2023 compared to the same period of 2022 was primarily driven by a \$3.2 million increase in development work on our next generation system-on-chip and a \$2.8 million increase in cash based personnel-related costs, partially offset by a \$0.3 million increase in R&D foreign tax credits.

The year-over-year increase of \$12.3 million, or 18%, in total research and development expense in the first half of 2023 compared to the same period of 2022 was primarily driven by a \$7.2 million increase in development work on our next generation system-on-chip, and a \$5.5 million increase in cash based personnel-related costs, partially offset by a \$0.3 million increase in R&D foreign tax credits, and a \$0.2 million decrease in restructuring expenses.

**Sales and marketing**

(dollars in thousands)	Three months ended June 30,			Six months ended June 30,		
	2023	2022	% Change	2023	2022	% Change
Sales and marketing	\$ 37,547	\$ 37,161	1 %	\$ 73,418	\$ 70,326	4 %
Stock-based compensation	2,359	2,229	6	4,537	4,352	4
Restructuring costs	—	49	(100)	6	134	(96)
Total sales and marketing	\$ 39,906	\$ 39,439	1 %	\$ 77,961	\$ 74,812	4 %
<i>Percentage of revenue</i>	<i>16.6 %</i>	<i>15.7 %</i>		<i>18.8 %</i>	<i>16.0 %</i>	

The year-over-year increase of \$0.5 million, or 1%, in total sales and marketing expense for the second quarter of 2023 compared to the same period of 2022 was primarily driven by a \$1.4 million increase in online advertising campaigns, partially offset by a \$1.1 reduction in marketing events.

The year-over-year increase of \$3.1 million, or 4%, in total sales and marketing expense in the first half of 2023 compared to the same period of 2022 was primarily driven by a \$2.1 million increase in consulting and professional services, and the HERO11 Black + HERO11 Black Mini one million dollar challenge occurring in the first quarter of 2023 compared to the HERO10 Black one million dollar challenge occurring in the fourth quarter of 2021.

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**General and administrative**

(dollars in thousands)	Three months ended June 30,			Six months ended June 30,		
	2023	2022	% Change	2023	2022	% Change
General and administrative	\$ 13,151	\$ 12,531	5 %	\$ 26,300	\$ 24,717	6 %
Stock-based compensation	3,306	3,134	5	6,230	6,242	—
Restructuring costs	—	27	(100)	3	76	(96)
Total general and administrative	\$ 16,457	\$ 15,692	5 %	\$ 32,533	\$ 31,035	5 %
<i>Percentage of revenue</i>	<i>6.8 %</i>	<i>6.3 %</i>		<i>7.8 %</i>	<i>6.6 %</i>	

The year-over-year increase of \$0.8 million, or 5%, in total general and administrative expense for the second quarter of 2023 compared to the same period of 2022 primarily reflected a \$1.5 million increase in consulting and professional services, partially offset by a \$0.4 million decrease in allocated facilities, depreciation and other supporting overhead expenses, a \$0.2 million decrease in bad debt expense, and a \$0.2 million decrease in cash based personnel-related costs.

The year-over-year increase of \$1.5 million, or 5%, in total general and administrative expense in the first half of 2023 compared to the same period of 2022 was primarily driven by a \$2.6 million increase in consulting and professional services, partially offset by a \$0.8 million decrease in cash based personnel-related costs, and a \$0.6 million decrease in allocated facilities, depreciation and other supporting overhead expenses.

**Restructuring costs**

*Fourth quarter 2022 restructuring.* In December 2022, we approved a restructuring plan to reduce camera production-related costs by globally realigning our manufacturing footprint to concentrate our production activities in two primary locations: China and Thailand. Under the fourth quarter 2022 restructuring, we recorded restructuring charges of \$8.1 million, including \$7.0 million for camera production line closure costs and \$1.1 million for related transitional costs to migrate production to our remaining manufacturing locations.

See Note 11 Restructuring charges, to the Notes to Condensed Consolidated Financial Statements.

**Other income (expense)**

(dollars in thousands)	Three months ended June 30,			Six months ended June 30,		
	2023	2022	% Change	2023	2022	% Change
Interest expense	\$ (1,139)	\$ (1,538)	(26)%	\$ (2,292)	\$ (3,747)	(39)%
Other income (expense), net	2,423	(488)	(597)	5,268	(807)	(753)
Total other income (expense), net	\$ 1,284	\$ (2,026)	(163)%	\$ 2,976	\$ (4,554)	(165)%

Total other expense, net, decreased \$3.3 million for the second quarter of 2023 compared to the same period of 2022, primarily due to higher available yields on our cash and marketable securities resulting in an increase in interest income of \$2.5 million, a \$0.4 million decrease in cash interest expense as our 2022 Notes matured and were paid in the second quarter of 2022, and a \$0.4 million increase in net foreign exchange rate-based gains.

Total other expense, net decreased \$7.5 million in the first half of 2023 compared to the same period of 2022, primarily due to higher available yields on our cash and marketable securities resulting in an increase in interest income of \$5.2 million, a \$1.4 million decrease in cash interest expense as our 2022 Notes matured and were paid in the second quarter of 2022, and a \$0.9 million increase in net foreign exchange rate-based gains.



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## Income taxes

(dollars in thousands)	Three months ended June 30,			Six months ended June 30,		
	2023	2022	% Change	2023	2022	% Change
Income tax expense (benefit)	\$ (3,998)	\$ 110	(3,735)%	\$ (12,251)	\$ 59	(20,864)%

We recorded an income tax benefit of \$4.0 million for the three months ended June 30, 2023, on pre-tax net loss of \$21.2 million. Our income tax benefit for the three months ended June 30, 2023 primarily resulted from a tax benefit on pre-tax book loss, partially offset by the nondeductible equity tax expense from stock-based compensation, an income tax expense related to the foreign provision to income tax return adjustments, and an income tax expense related to the restructuring charges.

We recorded an income tax benefit of \$12.3 million for the six months ended June 30, 2023 on pre-tax net loss of \$59.3 million. Our income tax benefit for the six months ended June 30, 2023 primarily resulted from a tax benefit on pre-tax book loss, partially offset by the nondeductible equity tax expense from stock-based compensation, an income tax expense related to the foreign provision to income tax return adjustments, and an income tax expense related to the restructuring charges.

See Note 8 Income taxes, to the Notes to Condensed Consolidated Financial Statements for additional information.

## Liquidity and Capital Resources

The following table presents selected financial information as of June 30, 2023 and December 31, 2022:

(dollars in thousands)	June 30, 2023	December 31, 2022
Cash and cash equivalents	\$ 189,913	\$ 223,735
Marketable securities	81,793	143,602
Total cash, cash equivalents and marketable securities	<u>\$ 271,706</u>	<u>\$ 367,337</u>
<i>Percentage of total assets</i>	<i>27 %</i>	<i>34 %</i>

Our primary source of cash is receipts from sales of our products, and subscription and service. Other sources of cash are from proceeds from the issuance of convertible notes, employee participation in the employee stock purchase plan, the exercise of employee stock options, tax refunds and facility subleases. Our primary uses of cash are for inventory procurement, payroll-related expenses, general operating expenses, including advertising, marketing, office rent, purchases of property and equipment, other costs of revenue, share repurchases, repurchases of convertible notes, interest and taxes.

Our liquidity position has been historically impacted by seasonality, which is primarily driven by higher revenues during the second half of the year as compared to the first half. For example, net cash provided by operating activities during the second half of 2022 was \$66.3 million, which represented more than 100% of the total cash provided by operating activities for the full year 2022.

As of June 30, 2023, our cash, cash equivalents and marketable securities totaled \$271.7 million. Our cash, net of the outstanding principal balance of the 2025 Notes, as of June 30, 2023 was \$128.0 million. The overall cash used in operating activities of \$75.0 million for the six months ended June 30, 2023 was primarily attributable to a net loss of \$47.1 million and net cash outflows from changes in our working capital of \$36.9 million, and a deferred income tax benefit of \$16.1 million, partially offset by net cash inflows from other non-cash expenses of \$25.1 million. Working capital changes for the six months ended June 30, 2023 of \$36.9 million were the result of a decrease in accounts payable and other liabilities of \$17.1 million, an increase in inventory of \$8.3 million, an increase in accounts receivable of \$5.4 million, an increase in prepaid expenses and other assets of \$3.1 million,

and a decrease in deferred revenue of \$3.0 million. As of June 30, 2023, \$12.8 million of cash was held by our foreign subsidiaries.

### Convertible Notes

In November 2020, we issued \$143.8 million aggregate principal amount of 2025 Notes in a private placement to purchasers for resale to qualified institutional buyers. The 2025 Notes mature on November 15, 2025, unless earlier repurchased or converted into shares of Class A common stock subject to certain conditions. The 2025 Notes are convertible into cash, shares of the Class A common stock, or a combination thereof, at our election, at an initial conversion rate of 107.1984 shares of common stock per \$1,000 principal amount of the 2025 Notes, which is equivalent to an initial conversion price of approximately \$9.3285 per share of common stock, subject to adjustment. We pay interest on the 2025 Notes semi-annually, which is due on May 15 and November 15 of each year.

In connection with the offering of the 2025 Notes, we entered into privately negotiated capped call transactions with certain financial institutions (Capped Calls). We used \$10.2 million of the net proceeds from the sale of the 2025 Notes to purchase the Capped Calls and \$56.2 million of the net proceeds to repurchase \$50.0 million of the \$175.0 million aggregate principal amount of the 2022 Notes, which we issued in April 2017. The remaining net proceeds were used for general corporate purposes. On April 15, 2022, we repaid the remaining \$125.0 million of principal and \$2.2 million of accrued interest in cash to the debt holders to fully settle the 2022 Notes on the maturity date.

There have been no significant changes to our contractual obligations and commitments disclosed in our 2022 Annual Report.

### Liquidity

Based on our most current projections, we believe that our cash, cash equivalents, marketable securities and amounts available under our credit facility, will be sufficient to address our working capital needs, capital expenditures, outstanding commitments and other liquidity requirements for at least one year from the issuance of these financial statements.

- We expect that operating expenses and inventory purchases will constitute a material use of our cash balances. We intend to continue to manage our operating activities in line with our existing cash and available financial resources.
- In January 2021, we entered into the 2021 Credit Agreement, which provides for a revolving credit facility under which we may borrow up to an aggregate amount of \$50.0 million. As amended in March 2023, our credit facility will terminate and any outstanding borrowings become due and payable on the earlier of (i) January 2027 and (ii) unless we have cash in a specified deposit account in an amount equal to or greater than the amount required to repay our 1.25% convertible senior notes due November 2025, 91 days prior to the maturity date of such convertible notes. No borrowings have been made from the credit facility to date (See Note 4 Financing arrangements, in the Notes to Condensed Consolidated Financial Statements for additional information).
- The \$143.8 million aggregate principal amount of the 2025 Notes matures on November 15, 2025, unless earlier repurchased or converted into shares of Class A common stock subject to certain conditions. We intend to deliver cash up to the principal amount of the 2025 Notes, based on our current and projected liquidity levels.

In the future, we may require additional financing to respond to business opportunities, challenges or unforeseen circumstances. If we are unable to obtain adequate debt or equity financing when we require it or on terms acceptable to us, our ability to grow or support our business, repay debt and respond to business challenges could be significantly limited. Although we believe we have adequate sources of liquidity over the long term, the success of our operations and the global economic outlook, among other factors, could impact our business and liquidity.

## Summary of Cash Flow

The following table summarizes our cash flows for the periods indicated:

(in thousands)	Six months ended June 30,		
	2023	2022	% Change
Net cash provided by (used in):			
Operating activities	\$ (74,954)	\$ (60,551)	24 %
Investing activities	\$ 63,461	\$ 16,778	278 %
Financing activities	\$ (22,510)	\$ (152,564)	(85)%

### Cash flows from operating activities

Cash used in operating activities of \$75.0 million for the six months ended June 30, 2023 was primarily attributable to a net loss of \$47.1 million, net cash outflows from changes in our working capital of \$36.9 million, and a deferred income tax benefit of \$16.1 million, partially offset by net cash inflows from other non-cash expenses of \$25.1 million. Working capital changes for the six months ended June 30, 2023 of \$36.9 million were the result of a decrease in accounts payable and other liabilities of \$17.1 million, an increase in inventory of \$8.3 million, an increase in accounts receivable of \$5.4 million, an increase in prepaid expenses and other assets of \$3.1 million, and a decrease in deferred revenue of \$3.0 million.

### Cash flows from investing activities

Cash provided by investing activities of \$63.5 million for the six months ended June 30, 2023 was primarily attributable to maturities of marketable securities of \$90.2 million, partially offset by purchases of marketable securities of \$25.8 million and net purchases of property and equipment of \$1.0 million.

### Cash flows from financing activities

Cash used in financing activities of \$22.5 million for the six months ended June 30, 2023 was primarily attributable to repurchases of our outstanding common stock of \$20.0 million and \$4.8 million in tax payments for net restricted stock unit (RSU) settlements, partially offset by \$2.3 million of cash inflows from stock purchases made through our employee stock purchase plan and employee stock option exercises.

## Indemnifications

The information set forth under Note 9 Commitments, contingencies and guarantees to the condensed consolidated financial statements under the caption Indemnifications is incorporated herein by reference.

## Critical Accounting Policies and Estimates

There have been no material changes to our critical accounting policies and estimates from those disclosed in our 2022 Annual Report.

## Non-GAAP Financial Measures

We report net income (loss) and diluted net income (loss) per share in accordance with United States generally accepted accounting principles (GAAP) and on a non-GAAP basis. We additionally report non-GAAP adjusted EBITDA. Revenue is presented on a constant currency basis to show performance unaffected by fluctuations in currency exchange rates. We calculate constant currency amounts by translating current period amounts at the prior period's average exchange rate and compare that to current period performance. We use non-GAAP financial measures to help us understand and evaluate our core operating performance and trends, to prepare and approve our annual budget, and to develop short-term and long-term operational plans. Our management uses, and believes that investors benefit from referring to these non-GAAP financial measures in assessing our operating results. These non-GAAP financial measures should not be considered in isolation from, or as an

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alternative to, the measures prepared in accordance with GAAP, and are not based on any comprehensive set of accounting rules or principles. We believe that these non-GAAP measures, when read in conjunction with our GAAP financials, provide useful information to investors by facilitating:

- the comparability of our on-going operating results over the periods presented;
- the ability to identify trends in our underlying business; and
- the comparison of our operating results against analyst financial models and operating results of other public companies that supplement their GAAP results with non-GAAP financial measures.

These non-GAAP financial measures have limitations in that they do not reflect all of the amounts associated with our results of operations as determined in accordance with GAAP. Some of these limitations are:

- adjusted EBITDA does not reflect tax payments that reduce cash available to us;
- adjusted EBITDA excludes depreciation and amortization and, although these are non-cash charges, the property and equipment being depreciated and amortized often will have to be replaced in the future, and adjusted EBITDA does not reflect any cash capital expenditure requirements for such replacements;
- adjusted EBITDA excludes the amortization of point of purchase (POP) display assets because it is a non-cash charge, and is treated similarly to depreciation of property and equipment and amortization of acquired intangible assets;
- adjusted EBITDA and non-GAAP net income (loss) exclude restructuring and other related costs which primarily include severance-related costs, stock-based compensation expenses, manufacturing consolidation charges, facilities consolidation charges recorded in connection with restructuring actions, including right-of-use asset impairment charges, and the related ongoing operating lease cost of those facilities recorded under ASC 842, *Leases*. These expenses do not reflect expected future operating expenses and do not contribute to a meaningful evaluation of current operating performance or comparisons to the operating performance in other periods;
- adjusted EBITDA and non-GAAP net income (loss) exclude stock-based compensation expense related to equity awards granted primarily to our workforce. We exclude stock-based compensation expense because we believe that the non-GAAP financial measures excluding this item provide meaningful supplemental information regarding operational performance. In particular, we note that companies calculate stock-based compensation expense for the variety of award types that they employ using different valuation methodologies and subjective assumptions. These non-cash charges are not factored into our internal evaluation of net income (loss) as we believe their inclusion would hinder our ability to assess core operational performance;
- non-GAAP net income (loss) excludes acquisition-related costs including the amortization of acquired intangible assets (primarily consisting of acquired technology), the impairment of acquired intangible assets (if applicable), as well as third-party transaction costs incurred for legal and other professional services. These costs are not factored into our evaluation of potential acquisitions, or of our performance after completion of the acquisitions, because these costs are not related to our core operating performance or reflective of ongoing operating results in the period, and the frequency and amount of such costs vary significantly based on the timing and magnitude of our acquisition transactions and the maturities of the businesses being acquired. Although we exclude the amortization of acquired intangible assets from our non-GAAP net income (loss), management believes that it is important for investors to understand that such intangible assets were recorded as part of purchase accounting and contribute to revenue generation;
- non-GAAP net income (loss) includes income tax adjustments. We utilize a cash-based non-GAAP tax expense approach (based upon expected annual cash payments for income taxes) for evaluating operating performance as well as for planning and forecasting purposes. This non-GAAP tax approach eliminates the effects of period specific items, which can vary in size and frequency and does not necessarily reflect our long-term operations. Historically, we computed a non-GAAP tax rate based on non-GAAP pre-tax income on a quarterly basis, which considered the income tax effects of the adjustments above;

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- GAAP and non-GAAP net income (loss) per share includes the dilutive, tax effected cash interest expense associated with our 2022 Notes and 2025 Notes in periods of net income, as if converted at the beginning of the period; and
- other companies may calculate these non-GAAP financial measures differently than we do, limiting their usefulness as comparative measures.

The following table presents a reconciliation of net income (loss) to adjusted EBITDA:

(in thousands)	Three months ended		
	June 30, 2023	March 31, 2023	June 30, 2022
Net income (loss)	\$ (17,212)	\$ (29,869)	\$ 2,519
Income tax expense (benefit)	(3,998)	(8,253)	110
Interest (income) expense, net	(1,635)	(1,683)	1,244
Depreciation and amortization	1,748	1,809	2,253
POP display amortization	405	417	430
Stock-based compensation	11,117	10,314	10,251
Restructuring and other costs	(715)	(261)	84
Adjusted EBITDA	<u>\$ (10,290)</u>	<u>\$ (27,526)</u>	<u>\$ 16,891</u>

The following table presents a reconciliation of net income (loss) to non-GAAP net income (loss):

(in thousands, except per share data)	Three months ended		
	June 30, 2023	March 31, 2023	June 30, 2022
Net income (loss)	\$ (17,212)	\$ (29,869)	\$ 2,519
Stock-based compensation	11,117	10,314	10,251
Restructuring and other costs	(715)	(261)	84
Income tax adjustments	(4,481)	(8,761)	(64)
Non-GAAP net income (loss)	<u>\$ (11,291)</u>	<u>\$ (28,577)</u>	<u>\$ 12,790</u>
GAAP net income (loss) - basic	\$ (17,212)	\$ (29,869)	\$ 2,519
Add: Interest on convertible notes, tax effected	—	—	715
GAAP net income (loss) - diluted	<u>\$ (17,212)</u>	<u>\$ (29,869)</u>	<u>\$ 3,234</u>
Non-GAAP net income (loss) - basic	\$ (11,291)	\$ (28,577)	\$ 12,790
Add: Interest on convertible notes, tax effected	—	—	715
Non-GAAP net income (loss) - diluted	<u>\$ (11,291)</u>	<u>\$ (28,577)</u>	<u>\$ 13,505</u>
GAAP diluted net income (loss) per share	<u>\$ (0.11)</u>	<u>\$ (0.19)</u>	<u>\$ 0.02</u>
Non-GAAP diluted net income (loss) per share	<u>\$ (0.07)</u>	<u>\$ (0.18)</u>	<u>\$ 0.08</u>
GAAP shares for basic net income (loss) per share	154,562	155,402	156,645
Add: Effect of dilutive securities	—	—	20,215
GAAP and non-GAAP shares for diluted net income (loss) per share	<u>154,562</u>	<u>155,402</u>	<u>176,860</u>

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

We are exposed to market risks in the ordinary course of our business. These risks primarily include foreign currency and interest rate risks as follows:

**Foreign currency risk.** Revenue generated from GoPro.com is denominated in U.S. dollars and various foreign currencies. To date, the majority of our inventory purchases have been denominated in our functional currency of the U.S. dollar. Our operations outside of the United States hold foreign denominated cash balances and incur a majority of their operating expenses in foreign currencies. We therefore have foreign currency risk related to these currencies, which are primarily the Euro, British pound, Australian dollar, Canadian dollar, and Japanese Yen. Changes in exchange rates, and in particular, a weakening of foreign currencies relative to the U.S. dollar will negatively affect our revenue and operating income as expressed in U.S. dollars.

To date, we have not entered into any foreign currency exchange contracts or derivatives and we will continue to reassess our approach to manage our risk relating to fluctuations in currency rates. The volatility of exchange rates depends on many factors that we cannot forecast with reliable accuracy.

**Interest rate risk.** Our exposure to market risk for changes in interest rates primarily relates to our cash and cash equivalents and marketable securities. Our cash equivalents and marketable securities are comprised of money market funds, U.S. treasury securities, commercial paper, government securities and corporate debt securities. The primary objectives of our investment activities are to preserve principal and provide liquidity without significantly increasing risk. Our cash and cash equivalents are held for working capital purposes. We do not enter into investments for trading or speculative purposes. Due to the nature of our investment portfolio, we do not believe that an immediate 10% shift in interest rates would have a material effect on the fair value of our investment portfolio.

The fair value of our 2025 Convertible Senior Notes (2025 Notes) is subject to interest rate risk, market risk and other factors due to the conversion feature. The capped call that was entered into concurrently with the issuance of our 2025 Notes were completed to reduce the potential dilution from the conversion of the 2025 Notes. The fair value of the 2025 Notes will generally increase as interest rates fall and decrease as interest rates rise. In addition, the fair value of the 2025 Notes will generally increase as our Class A common stock price increases and will generally decrease as our Class A common stock price declines. The interest and market value changes affect the fair value of the 2025 Notes but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligation.

### Item 4. Controls and Procedures

#### Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures based on the criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934, as amended (Exchange Act)), as of June 30, 2023. Based on such evaluation, our principal executive officer and principal financial officer have concluded that, as of June 30, 2023, our disclosure controls and procedures were effective to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

#### Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rules 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the three months ended June 30, 2023 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II

### Item 1. Legal Proceedings

Refer to Legal proceedings and investigations included in Part I, Item 1, Note 9 Commitments, contingencies and guarantees, to the Notes to Condensed Consolidated Financial Statements of this Quarterly Report on Form 10-Q for the three months ended June 30, 2023.

### Item 1A. Risk Factors

The risks described in Risk Factors in our 2022 Annual Report on Form 10-K (the 2022 Annual Report), and as supplemented below, could materially and adversely affect our business, financial condition and results of operations. The risk factors below do not identify all risks that we face; our operations or financial condition could also be affected by factors that are not presently known to us or that we currently consider to be immaterial to our operations. In that event, the trading price of our shares may decline, and you may lose part or all of your investment.

#### Risk Factor Summary

- *We may not be able to achieve revenue growth or profitability in the future, and if revenue growth or profitability is achieved, we may not be able to sustain it.*
- *An economic downturn or economic uncertainty in the United States and international markets, as well as inflation, market volatility, increasing interest rates or fluctuations in currency exchange rates may adversely affect consumer spending and demand for our products, which could impact our operating results or financial position.*
- *Our goal to grow revenue and be profitable relies upon our ability to grow unit sales, and we may not be successful in doing so.*
- *We may not be able to acquire and retain subscribers at all or at historical rates, which could adversely impact our results of operations and our ability to be profitable.*
- *To remain competitive and stimulate consumer demand, we must effectively manage product introductions, product transitions, product pricing and marketing.*
- *If our sales fall below our forecasts, especially during the holiday season, our overall financial condition and results of operations could be adversely affected.*
- *We rely on third-party suppliers, some of which are sole-source suppliers, to provide services and components for our products which may lead to supply shortages and other services, long lead times for components, and supply changes, any of which could disrupt our supply chain or our operations and may increase our costs.*
- *If we do not successfully coordinate or if we encounter issues with our manufacturers, suppliers, or supply chain, business, brand, and results of operations could be harmed and we could lose sales.*
- *Our future growth depends, in part, on further penetrating our total addressable market, and we may not be successful in doing so.*
- *We depend on sales of our cameras, mounts and accessories for substantially all of our revenue, and any decrease in the sales or change in sales mix of these products could harm our business.*
- *We face substantial risks related to inventory, purchase commitments and long-lived assets, and we could incur material charges related to these items that adversely affect our operating results.*

- *Security and data breaches and cyber-attacks could disrupt our web platform, products, services, internal operations, information technology systems, or those of our strategic partners, and any such disruption could reduce our expected revenue, increase our expenses, damage our reputation, and cause our stock price to decline significantly.*
- *Our international operations account for a significant portion of our revenue and operating expenses and are subject to challenges and risks. Adverse developments in global economic or geopolitical conditions, or the occurrence of other world events, could materially adversely affect our revenue and results of operations.*
- *We depend on key personnel and qualified personnel to operate our business. If we are unable to attract, engage and retain qualified personnel, our ability to develop, transform and successfully operate our business could be harmed.*
- *Our gross margin can vary significantly depending on multiple factors, which can result in unanticipated fluctuations in our operating results.*
- *We operate in a highly competitive market and the size and resources of some of our competitors may allow them to compete more effectively than we can. New entrants also enter the digital imaging market category from time-to-time. These market factors could result in a loss of our market share and a decrease in our revenue and profitability.*
- *Adverse changes to trade agreements, trade policies, tariffs and import/export regulations may have a negative effect on our business and results of operations.*
- *If we fail to manage our operating expenses effectively, our financial performance may suffer.*
- *A small number of retailers and distributors account for a substantial portion of our revenue, and if our relationships with any of these retailers or distributors were to be terminated or the level of business with them significantly reduced, our business could be harmed.*
- *Our success depends on our ability to maintain the value and reputation of our brand.*
- *Consumers may be injured while engaging in activities with our products, and we may be exposed to claims, or regulations could be imposed, which could adversely affect our brand, operating results and financial condition.*
- *We may be subject to warranty claims that could result in significant direct or indirect costs, or we could experience greater returns from retailers and customers than expected, which could harm our business and operating results.*
- *We may grow our business in part through acquisitions, joint ventures, investments and partnerships, which could require significant management attention, disrupt our business, dilute stockholder value and adversely affect our operating results.*
- *Catastrophic events or political instability could disrupt and cause harm to our business.*
- *Our aspirations and disclosures related to environmental, social and governance (ESG) matters expose us to risks that could adversely affect our reputation and performance.*

## **Risks related to our business and industry**

*We may not be able to achieve revenue growth or profitability in the future, and if revenue growth or profitability is achieved, we may not be able to sustain it.*

Our cumulative GAAP income from the past three years may not be sustainable in future periods. We may not be able to achieve our forecast, sustain revenue growth or profitability, and our operating results may fluctuate unpredictably. For example, our annual revenue decreased slightly from 2021 to 2022 from \$1.16 billion to \$1.09 billion, respectively. In addition, we incurred operating income of \$39.0 million and \$113.2 million for the full year in 2022 and 2021, respectively. In future periods, sales or revenue could decline, remain flat, or grow more slowly



than we expect, or we could be negatively impacted by foreign currency exchange rate fluctuations, which could have a material negative effect on our future operating results. For example, foreign currency exchange rate fluctuations negatively impacted revenue and operating income by \$50.4 million in 2022.

Lower levels of revenue, lower product margins or higher levels of operating expenses in future periods may result in losses or limited profitability. We may experience lower levels of revenue, lower product margins or higher levels of operating expenses for a variety of reasons, including, among other factors: ineffective investments in product innovation; advertising and marketing; increasing freight rates; shipping delays; increased supply chain costs; impact of currency exchange rates; failure to maintain higher average sales pricing for our cameras; or a recession or other sustained adverse market events that materially impacts consumer purchases of discretionary items, such as our products. For example, in the second quarter of 2023, our margins were negatively impacted by price protection charges, an increased volume of sales of our entry level price point cameras, and an increase to our retail sales channel mix.

Additionally, we have implemented company-wide restructurings of our business resulting in a reduction in our global workforce and the elimination of certain open positions, consolidation of certain leased office facilities, as well as the elimination of several high-cost initiatives, in order to focus our resources on cameras, accessories, and subscription and service. We may continue to experience fluctuating revenue, expenses and profitability for a number of reasons, including other risks described in this Quarterly Report on Form 10-Q and in our 2022 Annual Report, and we may encounter unforeseen expenses, difficulties, complications, delays and other unknown factors.

***An economic downturn or economic uncertainty in the United States and international markets, as well as inflation, market volatility, increasing interest rates or fluctuations in currency exchange rates may adversely affect consumer spending and demand for our products, which could impact our operating results or financial position.***

Factors affecting the level of consumer spending include general market conditions, macroeconomic conditions, geopolitical conditions, tax rates, inflation, fluctuations in foreign exchange rates and interest rates, and other factors such as consumer confidence, the availability and cost of consumer credit, levels of unemployment and a reduction in consumer spending or disposable income that may affect us more significantly than companies in other industries and companies with more diversified products.

The majority of our sales occur in United States dollars (U.S. dollar). An increase or decrease in the value of the U.S. dollar against the Euro and other foreign currencies could impact sales of our products, which could have a material impact on our operating results. For example, a strengthening U.S. dollar relative to other currencies could increase the real cost to consumers of our products in those markets outside the United States, which could lower sales and/or cause us to reduce our selling price to retailers and distributors in those markets. If global economic conditions are volatile or deteriorate, consumers may delay or reduce purchases of our products resulting in lower consumer demand for our products such that we may not reach our sales targets. Some product costs have become subject to inflationary pressure and we may not be able to fully offset such higher costs through price increases; our inability or failure to offset any such higher costs as necessary could harm our business, financial condition, and operating results. Additionally, in 2022, the Euro, Japanese yen and British pound all experienced declines in value relative to the U.S. dollar, which negatively affected our results of operations during the second, third, and fourth quarter of 2022 when compared to the prior year periods, and could continue to negatively impact our results of operations in future periods if the U.S. dollar strengthens relative to foreign currencies.

Moreover, there has been recent turmoil in the global banking system. For example, in March 2023, Silicon Valley Bank (SVB) was closed by the California Department of Financial Protection and Innovation, which appointed the Federal Deposit Insurance Corporation (FDIC) as receiver. While we did not hold any cash directly at SVB, we regularly maintain cash balances at third-party financial institutions more than the FDIC insurance limit and there is no guarantee that the federal government would guarantee all depositors if such financial institutions were to fail, as they did with SVB depositors, in the event of further bank closures and continued instability in the global banking system. Any future adverse developments in the global banking system could directly or indirectly negatively impact our results of operations.

***Our goal to grow revenue and be profitable relies upon our ability to grow unit sales, and we may not be successful in doing so.***

Our ability to grow revenue and be profitable relies on increasing unit sales. We depend upon maintaining and developing effective sales channels between our retailers, distributors and direct-to-consumer via GoPro.com.

Our future growth relies, in part, on increasing sales through our current retail partners and distributors, as well as expanding our retail footprint, and building and maintaining strong relationships with retail partners and distributors to promote our brand and to market and sell our products. Slower than forecasted growth or any reduction in sales by our retail and distribution channels could adversely affect our revenue, operating results and financial condition. We depend on retailers to provide adequate and attractive space for our products and POP displays in their stores and acquiesce to our policies. Due to macroeconomic factors and risk of theft, some retailers carry and display less inventory, which has impacted sales. We further depend on our retailers to employ, educate and motivate their sales personnel to effectively sell our products. If our retailers do not adequately display our products, choose to reduce the space for our products and POP displays in their stores or locate them in less than premium positioning, or choose not to carry some or all of our products or promote competitors' products over ours or do not effectively explain to customers the advantages of our products, our sales could decrease and our business could be harmed. Increasing retail and distributor sales requires significant investment and resources. For example, we are investing in new POP displays and updating existing POP displays for both existing stores and new retailers which we believe will attract, inform consumers and assist sales personnel to effectively sell our products, however, there can be no assurance that this investment will lead to increased revenue and profit.

Our future growth also relies, in part, on our continued ability to attract consumers to our GoPro.com sales channel, which has and will require significant expenditures in marketing, software development and infrastructure. There can be no assurance that this investment will be successful.

***We may not be able to acquire and retain subscribers at all or at historical rates, which could adversely impact our results of operations and our ability to be profitable.***

We have experienced continuous growth in our subscription service over the past several years, but we may not be able to sustain such growth in the future. Our revenue growth and profitability is dependent on our ability to continuously attract and retain subscribers, and we cannot be certain that efforts to do so will be successful. Any changes to our subscription offerings could have an adverse effect on the success of our subscription service, attracting new subscribers and retaining existing subscribers. There are many factors that could lead to slowing subscriber growth or a decline in subscribers, including a decline in camera sales, attach rates or retention rates, our failure to introduce new features, benefits, products, or services that customers desire, changes to existing products, services and pricing that are not favorably received by our customers, or changes in the perceived value of our offerings. For example, part of our subscription growth strategy is dependent on expanding our distribution and retail channels and increasing unit sales which we believe will lead to an increase in subscribers. If the attach rate is less than what we forecasted, particularly the retail attach rate, this could have a negative impact on our overall subscriber growth plans. A decline in subscribers could have an adverse effect on our business, financial condition, and operating results.

***To remain competitive and stimulate consumer demand, we must effectively manage product introductions, product transitions, product pricing and marketing.***

We believe that we must continually develop and introduce new products, enhance our existing products, anticipate consumer preferences, and effectively stimulate consumer demand for new and upgraded products and services to maintain or increase our revenue. Our products and services are subject to changing consumer preferences that cannot be predicted with certainty and development lead times may make it more difficult for us to respond rapidly to new or changing consumer preferences. The markets for our products and services are characterized by intense competition, evolving distribution models, disruptive technology developments, short product life cycles, customer price sensitivity and frequent product introductions. Additionally, increasing concern over climate change could also result in shifting customer preferences with respect to our products, including reduced demand for our products and services based on their environmental impact, such as recyclability of components or packaging and energy usage required to develop and manufacture our products.

The success of new product introductions, such as the HERO11 Black, HERO11 Black Creator Edition, HERO11 Black Mini, and HERO10 Black Bones, depends on a number of factors including, but not limited to, timely and successful research and development of next generation systems, pricing, market and consumer acceptance, the ability to successfully identify and originate product trends, effective forecasting and management of product demand, purchase commitments and inventory levels, availability of products in appropriate quantities to meet anticipated demand, ability to obtain timely and adequate delivery of components for our new products from third-party suppliers, management of any changes in major component suppliers, management of manufacturing and supply costs, management of risks and delays associated with new product design and production ramp-up issues, logistics, and the risk that new products may have quality issues or other defects or bugs in the early stages of introduction including testing of new parts and features.

Our research and development efforts are complex and require us to incur substantial expenses to support the development of our next generation cameras, editing applications and other products and services. Our research and development expenses were \$139.9 million, \$141.5 million and \$131.6 million for 2022, 2021 and 2020, respectively and we expect that our research and development expenses will continue to be substantial into the second half of 2023 as we develop innovative technologies. Unanticipated problems in developing products could divert substantial resources, which may impair our ability to develop new products and enhancements of existing products, and could further increase our costs. We may not be able to achieve an acceptable return, if any, on our research and development efforts, and our business may be adversely affected. As we continually seek to enhance our products, we will incur additional costs to incorporate new or revised features. We might not be able to, or determine that it is not in our interests to, raise prices to compensate for any additional costs.

Additionally, as a result of the macroeconomic environment, we may not be able to accurately forecast consumer demand and inventory requirements and appropriately manage inventory to meet demand. For example, inflationary pressures may have an impact on consumers' share of wallet or our ability to raise prices. We have, and may in the future, reduce prices to stimulate demand. We offer retroactive price protection to certain of our retailers and distributors. For example, as a result of our May 2023 price drop, we recorded a total price protection charge of \$26.7 million in the six months ended June 30, 2023, based on estimated channel inventory levels. Actual price protection claims may differ from our estimates. If price protection adjustments are higher than expected, our future results of operations could be materially and adversely affected. With respect to management and supply costs, we may be impacted by heightened demand for specialty memory, components and batteries that are not supported by our manufacturing partners. Such supply shortages may affect our ability to manage appropriate supply levels of our products and pricing pressures may negatively affect our gross margins.

In addition, the introduction or announcement of new products or product enhancements may shorten the life cycle of our existing products or reduce demand for our current products, thereby offsetting any benefits of successful product introductions and potentially lead to challenges in managing inventory of existing products.

Additionally, our brand and product marketing efforts are critical to stimulating consumer demand. We market our products globally through a range of advertising and promotional programs and campaigns, including social media. If we do not successfully market our products or invest in the right campaigns or promotions for the right products at the right time, the lack of success or increased costs of promotional programs could have an adverse effect on our business, financial condition and results of operations.

***If our sales fall below our forecasts, especially during the holiday season, our overall financial condition and results of operations could be adversely affected.***

Seasonal consumer shopping patterns significantly affect our business. We have traditionally experienced greater revenue in the fourth quarter of each year due to demand related to the holiday season, and in some years, including 2022, greater demand associated with the launch of new products heading into the holiday season. Fourth quarter revenue comprised 29%, 34% and 40% of our 2022, 2021 and 2020 revenue, respectively. Given the strong seasonal nature of our sales, appropriate forecasting is critical to our operations. We anticipate that this seasonal impact is likely to continue and any shortfalls in expected fourth quarter revenue due to macroeconomic conditions, the inflationary impact on consumers' share of wallet, product release patterns, declines in the effectiveness of our promotional activities or product mix, charges incurred against new products to support promotional activities for such new products, pricing pressures, supply chain disruptions, shipping delays, or for any other reason, could cause our annual results of operations to suffer significantly.

In addition, we typically experience lower revenue in the first half of the year as a percentage of total revenue for the year, as compared to second half revenue. First half revenue comprised 43%, 39% and 28% of our annual 2022, 2021 and 2020 revenue, respectively.

***We rely on third-party suppliers, some of which are sole-source suppliers, to provide services and components for our products which may lead to supply shortages and other services, long lead times for components, and supply changes, any of which could disrupt our supply chain or our operations and may increase our costs.***

Our ability to meet customer demand depends, in part, on our ability to obtain timely and adequate delivery of components for our products. We do not have internal manufacturing capabilities and rely on several contract manufacturers, located in China and Thailand, to manufacture our products. All of the components that go into the manufacturing of our cameras and accessories are sourced from third-party suppliers. We do not control our contract manufacturers or suppliers, including their capacity, bandwidth, or costs of their labor, environmental or other practices.

Some of the key components used to manufacture our products come from a limited or single source of supply, or by a supplier that could potentially become a competitor. Our contract manufacturers generally purchase these components on our behalf from approved suppliers. We are subject to the risk of shortages and long lead times in the supply of these components and the risk that our suppliers discontinue or modify components used in our products. In addition, the lead times associated with certain components are lengthy and preclude rapid changes in quantities and delivery schedules and such lead times could increase as a result of shipping disruptions, global conflicts (including the ongoing conflict in Ukraine), or other factors. We have in the past experienced and may in the future experience component shortages, and the availability of these components may be unpredictable, including as a result of global conflict and pandemics.

If we lose access to components from a particular supplier or experience a significant disruption in the supply of products and components from a current supplier, we may be unable to locate alternative suppliers of comparable quality at an acceptable price, or at all, and our business could be materially and adversely affected. In addition, if we experience a significant increase in demand for our products, our suppliers might not have the capacity or elect not to meet our needs as they allocate components to other customers. Developing suitable alternate sources of supply for these components may be time-consuming, difficult and costly, and we may not be able to source these components on terms that are acceptable to us, or at all, which may adversely affect our ability to meet our development requirements or to fill our orders in a timely or cost-effective manner.

We also rely on third-party distribution facilities and logistics operators for substantially all of our product distribution to distributors, retailers, and to consumers. Our distribution facilities include computer controlled and automated equipment, which means their operations may be vulnerable to computer viruses or other security risks, the proper operation of software and hardware, electronic or power interruptions or other system failures.

Our reliance on single source, or a small number of suppliers, involves a number of additional risks, including risks related to supplier capacity constraints, component availability, price increases, timely delivery, component quality, failure of a key supplier to remain in business and adjust to market conditions, delays in, or the inability to execute on, a supplier roadmap for components and technologies, and natural disasters, fire, acts of terrorism, global conflicts, pandemics or other catastrophic events.

In particular, for our camera designs we incorporate system on chips, sensors, lens, batteries and memory solutions that critically impact the performance of our products. These components have unique design and performance profiles, and as a result, it is not commercially practical to support multiple sources for these components for our products. For example, we incorporate the GP1 system on chip in our MAX camera as well as our HERO9 and HERO8 Black cameras and the GP2 system on chip in our HERO11 Black, HERO11 Black Mini, HERO10 Black and HERO10 Black Bones cameras and rely on a single source for GP1 and GP2, and we are subject to price increases for those components. Costs for the components that comprise GP1 and GP2 could continue to increase even as prices for commodity hardware declines.

Additionally, we rely on third parties to provide software and enterprise services. For example, we host our software applications and firmware upgrades for our cameras using Amazon Web Services (AWS). A prolonged AWS service disruption affecting our subscription products would negatively impact our ability to serve our consumers and could damage our reputation with current and potential consumers, expose us to liability, cause us to lose consumers, or otherwise harm our business. In the event that our AWS service agreements are terminated, or there is a lapse of service, elimination of AWS services or features that we use, interruption of internet service provider connectivity, or damage to such facilities, we could experience interruptions in access to the GoPro or Quik subscription as well as significant delays and additional expense in arranging or creating new facilities and services and/or re-architecting our solutions for deployment on a different cloud infrastructure service provider, which could materially adversely affect our business, results of operations and financial condition.

***If we do not successfully coordinate or if we encounter issues with our manufacturers, suppliers, or supply chain, business, brand, and results of operations could be harmed and we could lose sales.***

Our business requires us to coordinate the manufacture and distribution of our products. Our manufacturers and supply chain partners may experience disruptions in their operations due to equipment breakdowns, component or material shortages, labor strikes or shortages, shipping delays, transportation or logistics challenges, natural disasters, cyber-attacks, cost increases, pandemics, or other similar problems. If we do not successfully coordinate with our service providers, we may have insufficient supply of products to meet customer demand or face increased or additional costs, and as a result, we could lose sales, and our financial performance may be adversely affected.

The effect of seasonal demand fluctuations on supply chains, transportation costs, fuel costs, labor unrest, natural disasters, global conflicts, regional or global pandemics, and other adverse effects on our ability, timing and cost of delivering products can increase our inventory, decrease our margins, adversely affect our relations with distributors and other customers and otherwise adversely affect our results of operations and financial condition.

Environmental regulations or changes in the supply, demand or available sources of natural resources may affect the availability and cost of goods and services necessary to run our business. We require our contract manufacturers and suppliers to comply with our formal supplier code of conduct and relevant standards and have ongoing audit programs in place to assess our suppliers' compliance with our requirements. We periodically conduct audits of our contract manufacturers' and suppliers' compliance with our code of conduct, applicable laws and good industry practices. However, these audits may not be frequent or thorough enough to detect non-compliance. Deliberate violations of labor, environmental or other laws by our contract manufacturers or suppliers, or a failure of these parties to follow ethical business practices, could lead to negative publicity and harm our reputation or brand.

As a company engaged in manufacturing and distribution, we are subject to the risks inherent in such activities, including disruptions or delays in supply chain. During the course of the COVID-19 pandemic and as a result of governmental responses to the COVID-19 pandemic among other macroeconomic factors, certain of our suppliers and manufacturers have experienced disruptions, resulting in supply shortages and costs increases, staffing shortages, manufacturing facility closures, and similar disruptions could occur in the future. Any increases in the costs of goods and services for our business may also adversely affect our profit margins particularly if we are unable to achieve higher price increases or otherwise increase cost or operational efficiencies to offset the higher costs.

***Our future growth depends, in part, on further penetrating our total addressable market, and we may not be successful in doing so.***

Historically, the majority of our growth has been fueled by the adoption of our products by people looking to self-capture images of themselves participating in exciting physical activities and our subscription products to help those people create compelling edits to share with friends, family and followers. We believe that our future growth depends on continuing to reach and expand our core community of customers of our products and services, followers and fans, and then utilizing that energized community as brand ambassadors to an extended community.

We may not be able to expand our subscription and service offerings and cannot be certain that these efforts will be successful, and as a result, we may not be able to increase our total addressable market, revenue or operating profit. We may not be able to expand our market, revenue and gross margin through this strategy on a timely basis, or at all, or recognize the benefits of our investments in this strategy, and we may not be successful in providing tools that our users adopt or believe are easy to use, which will negatively affect our future growth.

Our growth also depends on expanding the market with new capture perspectives with our 360-degree camera, MAX, our FPV (first person view) lightweight camera HERO10 Black Bones, and our all-in-one vlogging and filmmaking offering, HERO11 Black Creator Edition, which are initiatives in highly competitive markets, and by adding versatility to our products with expansion mods for HERO11 Black, HERO10 Black, and HERO9 Black. We cannot be assured that we will be successful in expanding the market with new capture perspectives or by adding new versatility to our products. If we are not successful in penetrating additional markets, we might not be able to grow our revenue and we may not recognize benefits from our investment in new areas.

***We depend on sales of our cameras, mounts and accessories for substantially all of our revenue, and any decrease in the sales or change in sales mix of these products could harm our business.***

We expect to derive the majority of our revenue from sales of cameras, mounts and accessories for the foreseeable future and an increasing amount of revenue attributable from our subscription and service. A decline in the price or unit demand for these products, whether due to a shift in our sales channel strategy, or macroeconomic conditions, including variable tariff rates, competition or otherwise, or our inability to increase sales of higher price point products, would harm our business and operating results more seriously than it would if we derived significant revenue from a variety of product lines and services. In particular, a decline in the price or unit demand of our HERO camera line or MAX camera, or our inability to increase sales of these products, could materially harm our business and operating results. Further, any delays or issues with our new product launches could have a material adverse effect on our business, financial condition and results of operations.

***We face substantial risks related to inventory, purchase commitments and long-lived assets, and we could incur material charges related to these items that adversely affect our operating results.***

To ensure adequate inventory supply and meet the demands of our retailers and distributors, we must forecast inventory needs and place orders with our contract manufacturers and component suppliers based on our estimates of future demand for particular products as well as accurately track the level of product inventory in the channel to ensure we are not in an over or under supply situation. To the extent we discontinue the manufacturing and sales of any products or services, we must manage the inventory liquidation, supplier commitments and customer expectations.

No assurance can be given that we will not incur additional charges in future periods related to our inventory management or that we will accurately forecast sales in a future period. Our ability to accurately forecast demand for our products is affected by many factors, including product introductions by us and our competitors, channel inventory levels, unanticipated changes in general market demand, macroeconomic conditions, including inflation or recession, and consumer confidence. If we do not accurately forecast customer demand for our products, we may in future periods be unable to meet consumer, retailer or distributor demand for our products, or may be required to incur higher costs to secure the necessary production capacity and components, and our business and operating results could be adversely affected.

***Security and data breaches and cyber-attacks could disrupt our web platform, products, services, internal operations, information technology systems, or those of our strategic partners, and any such disruption***



***could reduce our expected revenue, increase our expenses, damage our reputation, and cause our stock price to decline significantly.***

We are increasingly dependent on information systems to process transactions, manage our supply chain and inventory, ship goods on a timely basis, maintain cost-efficient operations, complete timely and accurate financial reporting, operate GoPro.com and respond to customer inquiries. Cyber-attacks may threaten our information systems and are increasing in their frequency, sophistication and intensity, and have become increasingly difficult to detect. Despite the implementation of security measures designed to protect against such threats, our information technology systems, and those of our strategic partners and third parties on whom we rely, are vulnerable to cyber-attacks, security breaches, computer viruses damage, unauthorized access, natural disasters, terrorism, war, and telecommunication and electrical failures.

Our products, services and operating systems may contain unknown security vulnerabilities. For example, the firmware and software that are installed on our products may be susceptible to hacking or misuse, or we may experience disruptions to our GoPro.com platform. In addition, we offer a comprehensive online cloud management service through our GoPro subscription. If malicious actors compromise our products and services, including without limitation hacking or breach of such products and services, our business and our reputation will be harmed.

In the ordinary course of our business, we electronically maintain sensitive data, including our intellectual property, our proprietary business information and that of our customers and suppliers, and personally identifiable information of our customers and employees. We store and collect user data uploaded by users through the GoPro cloud, mobile and desktop apps and through certain marketing activities. For all of the foregoing, we collect and store that information in our or our third-party providers' systems. These systems may be targets of attacks, malware, viruses or phishing attempts by cyber criminals or other wrongdoers seeking to steal our users' content or data, or our customers' information for financial gain or to harm our business operations or reputation.

Any security breach, unauthorized access or usage, or similar breach or disruption of our systems, or the systems of third parties on which we rely including web hosting services, billing and payment processing, or software could result in a disruption to our business or the loss of confidential information, costly investigations, remediation efforts and costly notification to affected consumers. If such content were accessed by unauthorized third parties or deleted inadvertently by us or third parties, our brand and reputation could be adversely affected. Cyberattacks could also adversely affect our operating results, consume internal resources and result in litigation or potential liability for us and otherwise harm our business and our reputation.

While we maintain industry standard cybersecurity insurance, our insurance may be insufficient for a particular incident or may not cover all liabilities incurred by any such attacks. We also cannot be certain that our insurance coverage will be adequate for data handling or data security liabilities actually incurred, that insurance will continue to be available to us on economically reasonable terms, or at all, or that any insurer will not deny coverage as to any future claim. The successful assertion of one or more large claims against us that exceed available insurance coverage, litigation to pursue claims under our insurance policies or the occurrence of changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, or denials of coverage, could have a material adverse effect on our business, reputation, operating results and financial condition. Moreover, many of our employees, service providers and third parties work more frequently on a remote or hybrid arrangement basis, which may also result in heightened risks related to consumer privacy, network security and fraud. System disruptions, failures and slowdowns, whether caused by cyber-attacks, update failures or other causes, could affect our financial systems and operations. This could cause delays in our supply chain or cause information, including data related to customer orders, to be lost or delayed which could result in delays in the delivery of merchandise to our stores and to customers, or lost sales, especially if the disruption or slowdown occurred during our quarters of peak demand.

***Our international operations account for a significant portion of our revenue and operating expenses and are subject to challenges and risks. Adverse developments in global economic or geopolitical conditions, or the occurrence of other world events, could materially adversely affect our revenue and results of operations.***

Revenue from outside the United States comprised 59%, 55% and 52% of our revenue in 2022, 2021 and 2020, respectively, and we expect international revenue to continue to be significant in the future. Further, we currently have foreign operations in China, France, Germany, Hong Kong, Japan, Netherlands, Philippines, Romania, the United Kingdom (U.K.) and a number of other countries in Europe and Asia. Operating in foreign countries requires significant resources and considerable management attention, and we may enter new geographic markets where we have limited or no experience in marketing, selling, and deploying our products. International expansion has required and will continue to require us to invest significant funds and other resources and we cannot be assured our efforts will be successful. International sales and operations may be subject to risks such as:

- difficulties in staffing and managing foreign operations;
- burdens of complying with a wide variety of laws and regulations, including environmental, packaging and labeling, which can change based on new political conditions;
- delays or disruptions in our supply chain;
- adverse tax effects and foreign exchange controls making it difficult to repatriate earnings and cash;
- changes to the taxation of undistributed foreign earnings;
- the effect of foreign currency exchange rates and interest rates, including any fluctuations caused by, inflation, recessionary concerns, or the strengthening of the U.S. dollar relative to the foreign currencies in which we conduct business;
- political conditions, economic instability, geopolitical turmoil, civil disturbances, or social unrest in a specific country or region in which we operate, which could have an adverse impact on our operations in that location, for example, the effects of China-Taiwan relations;
- organized crime activity;
- terrorist activities, acts of war, natural disasters, and pandemics;
- wars and global conflicts, including the ongoing conflict in Ukraine;
- quarantines or other disruptions to our operations resulting from pandemics or other widespread public health problems;
- trade restrictions;
- the effects of climate change;
- differing employment practices and laws and labor disruptions;
- the imposition of government controls;
- lesser degrees of intellectual property protection;
- tariffs and customs duties and the classifications of our goods by applicable governmental bodies;
- a legal system subject to undue influence or corruption; and
- a business culture in which illegal sales practices may be prevalent.

The occurrence of any of these risks could negatively affect our international business and consequently our business, operating results and financial condition.

***We depend on key personnel and qualified personnel to operate our business. If we are unable to attract, engage and retain qualified personnel, our ability to develop, transform and successfully operate our business could be harmed.***

We believe that our future success is highly dependent on the contributions of our CEO and our executive officers, as well as our ability to attract and retain highly skilled and experienced research and development and other personnel in the United States and abroad. All of our employees, including our executive officers, are free to



terminate their employment relationship with us at any time, and their knowledge of our business and industry may be difficult to replace.

We previously implemented restructuring actions to reduce our operating expenses. Our past restructuring actions and any future restructuring actions could have an adverse effect on our business as a result of decreases in employee morale and the failure to meet operational targets due to the loss of employees. If key employees leave, we may not be able to fully integrate new personnel or replicate the prior working relationships, and our operations could suffer as a result.

Qualified individuals are in high demand, and we may incur significant costs to attract and retain them, including circumstances beyond our control such as increased wages due to inflation, increasing competition among employers in the prevailing labor market, and labor market constraints. We have limited control over these factors. Competition for qualified personnel globally is challenging. In particular, we compete with many other companies for skilled positions and we may not be successful in attracting and retaining the professionals we need. While we utilize competitive salary, bonus and long-term incentive packages to recruit new employees, many of the companies with which we compete for experienced personnel also have greater resources to do so.

We have from time to time experienced, and we expect to continue to experience, difficulty in hiring and retaining highly skilled employees with appropriate qualifications.

Further, job candidates and existing employees often consider the value of the equity awards they receive in connection with their employment. Fluctuations in the price of our Class A common stock may make it more difficult or costly to use equity compensation to motivate, incentivize and retain our employees. For example, during 2022, our closing stock price ranged from a high of \$10.91 in the first quarter to a low of \$4.76 in the fourth quarter. If we are unable to attract and retain highly skilled personnel, we may not be able to achieve our strategic objectives, and our business, financial condition and operating results could be adversely affected.

***Our gross margin can vary significantly depending on multiple factors, which can result in unanticipated fluctuations in our operating results.***

Our gross margin can vary due to consumer demand, competition, product pricing, product lifecycle, product mix, new product introductions, GoPro.com sales mix, subscription activation, renewals, and cancellations, commodity costs, supply chain, logistics costs and shipping costs, currency exchange rates, trade policy and tariffs, and the complexity and functionality of new product innovations and other factors. For example, our gross margin was 37.2%, 41.1% and 35.3% for 2022, 2021 and 2020, respectively. In particular, if we are not able to introduce new products in a timely manner at the product cost we expect, if consumer demand for our products is less than we anticipate, if cancellation rates for GoPro subscriptions are higher than expected or if there are product pricing, marketing and other initiatives by our competitors to which we need to react or that are initiated by us to drive sales that lower our margins, then our overall gross margin will be less than we project.

As we innovate with new products, we may have lower gross margins that do not deliver a sufficient return on investment. In addition, depending on competition or consumer preferences, we may face higher up-front investments in development to compete or market our products, and increased inventory write-offs. If we are unable to offset these potentially lower margins by enhancing the margins in our product categories, our profitability may be adversely affected.

The impact of these factors on gross margin can create unanticipated fluctuations in our operating results, which may cause volatility in the price of our shares.

***We operate in a highly competitive market and the size and resources of some of our competitors may allow them to compete more effectively than we can. New entrants also enter the digital imaging market category from time-to-time. These market factors could result in a loss of our market share and a decrease in our revenue and profitability.***

The digital imaging market is highly competitive. Further, competition has intensified in digital imaging as new market entrants and existing competitors have introduced new products and more competitive offerings into our markets. Increased competition, tariffs, and changing consumer preferences may result in pricing pressures, reduced profit margins and may impede our ability to continue to increase the sales of our products or cause us to lose market share, any of which could substantially harm our business and results of operations.

We compete against established, well-known camera manufacturers such as Canon Inc. and Nikon Corporation, as well as large, diversified electronics companies such as Samsung Electronics Co. and Sony Corporation, and specialty companies such as Garmin Ltd., the Ricoh Company, Ltd., Arashi Vision Inc (d.b.a. Insta360) and SZ DJI Technology Co., Ltd. Many of our competitors have substantial market share, diversified product lines, well-established supply and distribution systems, strong worldwide brand recognition and greater financial, marketing, research and development and other resources than we do. Additionally, many of our existing and potential competitors enjoy substantial competitive advantages, such as longer operating histories, the capacity to leverage their sales efforts and marketing expenditures across a broader portfolio of products, broader distribution and established relationships with channel partners or vertically integrated business units, access to larger established customer bases, greater resources to make acquisitions, larger intellectual property portfolios, and the ability to bundle competitive offerings with other products and services. Further, new companies may emerge and offer competitive products directly in our category. Certain companies have developed cameras designed and packaged to appear similar to our products, which may confuse consumers or distract consumers from purchasing GoPro products.

Moreover, smartphones and tablets with photo and video functionality have significantly displaced the market for traditional cameras, and the makers of those devices also have mobile and other content editing applications and storage for content captured with those devices. Our mobile app, and GoPro and Quik subscriptions may not be as compelling as those offered by other companies, such as Apple, Adobe or Google, although the mobile application supports content from other platforms including content from iOS and Android. Manufacturers of smartphones and tablets, such as Apple, Google and Samsung, may continue to design their products for use in a range of conditions similar to our products, including in challenging physical environments and with waterproof capabilities, or develop products with features similar to ours. We rely in part on application marketplaces, such as the Apple App Store and Google Play, to distribute our mobile and desktop apps. Apple and Google may raise commissions, change or modify rules or functionality for apps on the marketplaces, or make access to our apps more difficult, which could adversely impact our business and results of operations.

***Adverse changes to trade agreements, trade policies, tariffs and import/export regulations may have a negative effect on our business and results of operations.***

The United States and other countries in which our products are produced or sold internationally have imposed and may impose additional quotas, duties, tariffs, or other restrictions or regulations, or may adversely adjust prevailing quota, duty, tariff levels, or export or other licensing requirements. Countries impose, modify and remove tariffs and other trade restrictions in response to a diverse array of factors, including global and national economic and political conditions, which make it impossible for us to predict future developments regarding tariffs and other trade restrictions. Trade restrictions, including tariffs, quotas, embargoes, safeguards and customs restrictions, could increase the cost or reduce the supply of products, including components and materials, available to us or may require us to modify our supply chain organization or other current business practices, any of which could harm our business, financial condition and results of operations. We are dependent on international trade agreements and regulations. If the United States were to withdraw from or materially modify certain international trade agreements, our business and operating results could be materially and adversely affected.

We do not have internal manufacturing capabilities and rely on several contract manufacturers, including component vendors, located in China, Thailand and in other countries to manufacture our products. Our contract manufacturer locations expose us to risks associated with doing business globally, including risks related to changes in tariffs or other export and import restrictions, and increased security costs. Additionally, the current United States administration continues to signal that it may continue to alter global trade agreements and terms. For example, the United States imposed additional tariffs on imports from China and continues to potentially impose other restrictions on exports from China to the United States. Any announcement by the United States Trade Representative (USTR) to impose tariffs on GoPro cameras could have a material adverse effect on our United States bound production, business and results of our United States operations. If these duties are imposed on our cameras, we may be required to raise our prices, which may result in the loss of customers and harm our business and results of operations, or we may choose to pay for these tariffs without raising prices which may negatively impact our results of operations and profitability. Sales of our products in China are material to our business and represent a significant portion of our revenue. This revenue stream from China is at risk in the event

China imposes retaliatory tariffs impacting in-bound sales of our products or imposes any other export restrictions on our products.

We continue to monitor manufacturing capabilities outside of China and currently manufacture certain cameras in Thailand to mitigate risks of additional tariffs, duties or other restrictions on our products destined for the United States and may choose to transition more manufacturing outside of China.

***If we fail to manage our operating expenses effectively, our financial performance may suffer.***

Our success will depend in part upon our ability to manage our operating expenses, including but not limited to our cash management, effectively. We generated positive operating income for the full year of 2022 and 2021, though we incurred significant operating losses in 2020. As of June 30, 2023, we had an accumulated deficit of \$243.2 million. We have implemented global reductions-in-force and other restructuring actions to reduce our operating expenses. However, we may not realize the cost savings expected from cost reduction actions.

We will need to continue to maintain and improve our operational, financial and management controls, reporting processes and procedures, and financial and business information systems. We are also investing in areas we believe will grow revenue and our operating expenses might increase as a result of these investments. If we are unable to operate efficiently and manage our costs, we may continue to incur significant losses in the future and may not be able to maintain or achieve profitability.

***A small number of retailers and distributors account for a substantial portion of our revenue, and if our relationships with any of these retailers or distributors were to be terminated or the level of business with them significantly reduced, our business could be harmed.***

Our ten largest third-party customers, measured by the revenue we derive from them, accounted for 41%, 46% and 44% of our revenue in 2022, 2021 and 2020, respectively. One retailer accounted for 8%, 11% and 10% of our revenue for 2022, 2021 and 2020, respectively. The loss of a small number of our large customers, or the reduction in business with one or more of our large customers, could have a significant adverse effect on our operating results. In addition, we may choose to temporarily or permanently stop shipping product to customers who do not follow the policies and guidelines in our sales agreements, which could have a material negative effect on our revenues and operating results. Our sales agreements with these large customers do not require them to purchase any meaningful amount of our products annually and we grant limited rights to return product to some of these large customers.

***Our success depends on our ability to maintain the value and reputation of our brand.***

Our success depends on the value and reputation of our brand, including our primary trademarks “GOPRO,” “HERO,” and the GoPro logos. The GoPro brand is integral to the growth of our business and expansion into new markets. Maintaining, promoting and positioning our brand will largely depend on the success of our marketing and merchandising efforts, including through establishing relationships with high profile sporting and entertainment events, venues, sports leagues and sports associations, athletes and celebrity personalities, our ability to provide consistent, high quality products and services, and our consumers’ satisfaction with the technical support and software updates we provide, each of which requires significant expenditures. Failure to grow and maintain our brand, launch new products on schedule and free of defects or negative publicity related to our products, our consumers’ user-generated content, the athletes we sponsor, the celebrities we are associated with, or the labor policies of any of our suppliers or manufacturers could adversely affect our brand, business and operating results. Maintaining and enhancing our brand also requires substantial financial investments, although there is no guarantee that these investments will increase sales of our products or positively affect our operating results.

***Consumers may be injured while engaging in activities with our products, and we may be exposed to claims, or regulations could be imposed, which could adversely affect our brand, operating results and financial condition.***

Consumers use our cameras, and their associated mounts and accessories to self-capture their participation in a wide variety of physical activities, including extreme sports, which in many cases carry the risk of significant injury or death. We may be subject to claims that users have been injured or harmed while using our products, including false claims or erroneous reports relating to safety, security or privacy issues. Although we maintain insurance to

help protect us from the risk of such claims, such insurance may not be sufficient or may not apply to all situations. Similarly, proprietors of establishments at which consumers engage in challenging physical activities could seek to ban the use of our products in their facilities to limit their own liability. In addition, if lawmakers or governmental agencies were to determine that the use of our products increased the risk of injury or harm to all or a subset of our users or should otherwise be restricted to protect consumers, they may pass laws or adopt regulations that limit the use of our products or increase our liability associated with the use of our products. Any of these events could adversely affect our brand, operating results and financial condition.

***We may be subject to warranty claims that could result in significant direct or indirect costs, or we could experience greater returns from retailers and customers than expected, which could harm our business and operating results.***

We generally provide a 12-month warranty on all of our cameras, except in the European Union (the EU), where we provide a two-year warranty. For certain mounts and accessories, where permitted, we provide a lifetime or limited lifetime warranty. The occurrence of any material defects in our products could make us liable for damages and warranty claims in excess of our current reserves. In addition, we could incur significant costs to correct any defects, warranty claims or other problems, including costs related to product recalls. Any negative publicity related to the perceived quality and safety of our products could affect our brand image, decrease retailer, distributor and consumer confidence and demand, and adversely affect our operating results and financial condition. Additionally, if defects are not discovered until after consumers purchase our products, they could lose confidence in the technical attributes of our products and our business could be harmed. Also, while our warranty is limited to repairs or returns and replacement, warranty claims may result in litigation, the occurrence of which could adversely affect our business and operating results. Based on our historical experience with our camera products, we have an established methodology for estimating warranty liabilities with respect to cameras and accessories; however, this methodology may not accurately predict future rates of warranty claims.

***We may grow our business in part through acquisitions, joint ventures, investments and partnerships, which could require significant management attention, disrupt our business, dilute stockholder value and adversely affect our operating results.***

We have completed several acquisitions and may evaluate additional acquisitions, partnerships or joint ventures with, or strategic investments in, other companies, products or technologies that we believe are complementary to our business. Negotiating these transactions can be time-consuming, difficult and expensive, and our ability to close these transactions may be subject to third-party or government approvals, which are beyond our control. Consequently, we can make no assurance that these transactions, once undertaken and announced, will close.

If we do complete acquisitions, we may not ultimately strengthen our competitive position or achieve our goals, and any acquisitions we complete could be viewed negatively by users or investors. In addition, if we encounter difficulties assimilating or integrating the businesses, technologies, products, personnel, or operations of acquired companies, particularly if the key personnel of the acquired business choose not to work for us, or we have difficulty retaining the customers of any acquired business, the revenue and operating results of the combined company could be adversely affected. Acquisitions may disrupt our ongoing operations, divert management from their primary responsibilities, subject us to additional liabilities, increase our expenses and adversely affect our business, financial condition, operating results and cash flows. In addition, our original estimates and assumptions used in assessing any transaction may be inaccurate, including estimates of accounting charges. We have recorded significant goodwill and intangible assets in connection with our acquisitions, and in the future, if our acquisitions do not yield expected revenue, we may be required to take material impairment charges that could adversely affect our results of operations.

We may have to pay cash, incur debt or issue equity securities to enter into any such acquisition, joint venture, strategic alliances or partnership, which could affect our financial condition or the value of our capital stock. Furthermore, acquisitions may require large one-time charges and can result in increased debt or contingent liabilities, adverse tax consequences, additional stock-based compensation expense and the recording and subsequent amortization or impairments of amounts related to certain purchased intangible assets, any of which could negatively affect our future results of operations. We cannot assure investors that the anticipated benefits of any acquisition or investment will be realized.

***Catastrophic events or political instability could disrupt and cause harm to our business.***

Our headquarters are located in the San Francisco Bay Area of California, an area susceptible to earthquakes. A major earthquake or other natural disaster, fire, threat of fire, act of terrorism, public health issues or other catastrophic event in California or elsewhere that results in the destruction or disruption of any of our critical business operations or information technology systems could severely affect our ability to conduct normal business operations and, as a result, our future operating results could be harmed. Our key manufacturing, supply and distribution partners have global operations in, among other countries, China, Thailand, Hong Kong, Japan, Mexico, Netherlands, Singapore, Taiwan and the United States. Political instability, global conflicts, public health issues, crises, pandemics, or other catastrophic events in any of those countries, including as a result of climate change, could adversely affect our business in the future, our financial condition and operating results. For example, in March 2020, the World Health Organization declared the outbreak of the novel coronavirus, COVID-19, a pandemic and public health emergency of international concern. The COVID-19 pandemic has had a material impact on the U.S. and global economies and any resurgence of the COVID-19 pandemic or other pandemic could materially and adversely impact on our employees, vendors, suppliers, manufacturers, retailers, distributors, and customers, which could adversely and materially impact our business, financial condition, and results of operations.

***Our aspirations and disclosures related to environmental, social and governance (ESG) matters expose us to risks that could adversely affect our reputation and performance.***

In November 2022, we published our inaugural Sustainability Report to highlighting our efforts to address the environmental impact on the use of materials in our consumer packaging, our commitment to focus on strategic recruiting practices to serve as the foundation for our diverse workforce, and our commitment to legal and ethical business practices. These statements reflect our current plans and aspirations and are not guarantees that we will be able to achieve them. Our ability to achieve any ESG objective is subject to numerous risks, many of which are outside of our control. Examples of such risks include the evolving consumer protection laws applicable to ESG matters and the availability of materials and suppliers that can meet our sustainability and other ESG goals.

Standards for tracking and reporting ESG matters continue to evolve. Our selection of voluntary disclosure frameworks and standards, and the interpretation or application of those frameworks and standards, may change from time to time or differ from those of others. Methodologies for reporting ESG data may be updated and previously reported ESG data may be adjusted to reflect improvement in availability and quality of third-party data, changing assumptions, changes in the nature and scope of our operations and other changes in circumstances. Our processes and controls for reporting ESG matters across our operations and supply chain are evolving along with multiple disparate standards for identifying, measuring, and reporting ESG metrics, including ESG-related disclosures that may be required by the SEC and other regulators, and such standards may change over time, which could result in significant revisions to our current goals, reported progress in achieving such goals, or ability to achieve such goals in the future.

***Risks related to our Intellectual Property and technology licenses***

***Our intellectual property and proprietary rights may not adequately protect our products and services, and our business may suffer if third parties infringe our rights.***

We own patents, trademarks, copyrights, trade secrets, and other intellectual property (collectively, intellectual property) related to aspects of our products, software, services and designs. Our commercial success may depend in part on our ability to obtain, maintain and protect these rights in the United States and abroad.

We regularly file patent applications to protect innovations arising from our research, development and design as we deem appropriate. We may fail to apply for patents on important products, services, technologies or designs in a timely fashion, or at all. We may not have sufficient intellectual property rights in all countries where unauthorized third-party copying or use of our proprietary technology occurs and the scope of our intellectual property might be more limited in certain countries. Our existing and future patents may not be sufficient to protect our products, services, technologies or designs and/or may not prevent others from developing competing products, services, technologies or designs. We cannot predict the validity and enforceability of our patents and other intellectual property with certainty.

We have registered, applied to register, and/or used certain of our trademarks in several jurisdictions worldwide. In some of those jurisdictions, third-party registrations, filings, or common law use exist for the same, similar or otherwise related products or services, which could block the registration of or ability to use our marks. Even if we are able to register our marks, competitors may adopt or file similar marks to ours, seek to cancel our trademark registrations, register domain names that mimic or incorporate our marks, or otherwise infringe upon or harm our trademark rights. Although we police our trademark rights carefully, there can be no assurance that we are aware of all third-party uses or that we will prevail in enforcing our rights in all such instances. Any of these negative outcomes could affect the strength, value and effectiveness of our brand, as well as our ability to market our products.

We have also registered domain names for websites (URLs) that we use in our business, such as GoPro.com, as well as social media handles. If we are unable to protect our domain names or social media handles, our brand, business, and operating results could be adversely affected. Domain names or social media handles similar to ours have already been registered in the United States and elsewhere, and we may not be able to prevent third parties from acquiring and using domain names or social media handles that infringe, are similar to, or otherwise decrease the value of, our trademarks. In addition, we might not be able to, or may choose not to, acquire or maintain trademark registrations, domain names, social media handles or other related rights in certain jurisdictions.

Unauthorized third parties may try to copy or reverse engineer our products, infringe upon or misappropriate our intellectual property, or otherwise gain access to our technology. We may discover unauthorized products in the marketplace that are knock-offs, infringements or counterfeit reproductions of our products. If we are unable to stop producers or sellers of infringing or counterfeit products, sales of these products could adversely impact our brand and business.

Litigation may be necessary to enforce our intellectual property rights. Initiating infringement proceedings against third parties can be expensive, may take significant time, and may divert management's attention from other business concerns. We may not prevail in litigation to enforce our intellectual property rights against unauthorized use.

***We have been, and in the future may be, subject to intellectual property and proprietary rights claims from third parties, and may be sued by third parties for alleged infringement.***

Third parties, including competitors and non-practicing entities, have made allegations of and brought intellectual property infringement, misappropriation, and other intellectual property rights claims against us, including the matter described in Note 9 Commitments, contingencies and guarantees in the Notes to Condensed Consolidated Financial Statements of this Quarterly Report on Form 10-Q. While we will defend ourselves vigorously against any such existing and future legal proceedings, the effort and expense to support such disputes and litigation is considerable and we may not prevail or obtain favorable outcomes against all such allegations, including in the matter described in Note 9 Commitments, contingencies and guarantees in the Notes to Condensed Consolidated Financial Statements of this Quarterly Report on Form 10-Q.

We may seek licenses from third parties where appropriate, but they could refuse to grant us a license or demand commercially unreasonable terms. Further, an adverse ruling in an infringement proceeding could force us to suspend or permanently cease the production or sale of products/services, face a temporary or permanent injunction, redesign or rebrand our products/services, pay significant settlement costs, pay third-party license fees or damage awards or give up some of our intellectual property. The occurrence of any of these events may materially and adversely affect our business, financial condition, operating results or cash flows.

***If we are unable to maintain, license, or acquire rights to include intellectual property owned by others in the products, services or content distributed by us, our marketing, sales or future business strategy could be affected or we could be subject to lawsuits relating to our use of this content.***

The distribution of GoPro content helps to market our brand, products, and subscription and service. If we cannot continue to acquire rights to distribute user-generated content or to use and distribute music, athlete and celebrity names and likenesses or other content for our original productions or third-party entertainment distribution channels or for our mobile app, our marketing efforts could be diminished, our sales could be harmed and our future content strategy could be adversely affected. In addition, third-party content providers or owners may allege



that we have violated their intellectual property rights. If we are unable to obtain sufficient rights, successfully defend our use of or otherwise alter our business practices on a timely basis in response to claims of infringement, misappropriation, misuse or other violation of third-party intellectual property rights, our business may be adversely affected. As a user and distributor of content, we face potential liability for rights of publicity and privacy, as well as copyright, or trademark infringement or other claims based on the nature and content of materials that we distribute. If we are found to violate such third-party rights, then our business may suffer.

***We use open source software in our platform that may subject our technology to general release or require us to re-engineer our solutions, which may harm our business.***

We use open source software in connection with our products and services. From time to time, companies that incorporate open source software into their products or services have faced claims challenging the ownership of open source software and/or compliance with open source license terms. Therefore, we could be subject to suits by parties claiming ownership of what we believe to be open source software or noncompliance with open source licensing terms. Some open source software licenses require users who distribute or make available open source software as part of their software to publicly disclose all or part of the source code to such software or make available any derivative works of the open source code on unfavorable terms or at no cost. While we monitor our use of open source software and try to ensure that none is used in a manner that would require us to disclose the source code or that would otherwise breach the terms of an open source agreement, such use could nevertheless occur despite policies and controls that we have in place, and we may be required to publicly release our proprietary source code, pay damages for breach of contract, re-engineer our applications, discontinue sales in the event re-engineering cannot be accomplished on a timely basis or take other remedial action that may divert resources away from our development efforts, any of which could adversely affect our business, financial condition or operating results.

In addition to risks related to license requirements, use of open source software can involve greater risks than those associated with use of third-party commercial software, as open source licensors generally do not provide warranties, assurances of title, performance, non-infringement, or controls on the origin of the software. There is typically no support available for open source software, and we cannot assure you that the authors of such open source software will not abandon further development and maintenance. Open source software may contain security vulnerabilities, and we may be subject to additional security risk by using open source software. Many of the risks associated with the use of open source software cannot be eliminated, and could, if not properly addressed, negatively affect our business. We have established processes to help alleviate these risks, including a review process for screening requests from our development organizations for the use of open source software, but we cannot be sure that all open source software is identified or submitted for approval prior to use in our solution.

### **Risks related to regulatory compliance**

***We are subject to governmental regulation and other legal obligations, particularly related to privacy, data protection and information security, and our actual or perceived failure to comply with such obligations could adversely affect our business and operating results.***

Personal privacy, data protection and information security are significant issues in the United States and the other jurisdictions where we offer our products and services. The regulatory framework for privacy and security issues worldwide is rapidly evolving and is likely to remain uncertain for the foreseeable future. Our handling of data is subject to a variety of laws and regulations, including regulation by various government agencies, including the United States Federal Trade Commission (FTC) and various state, local and foreign regulators and agencies. Our agreements with certain customers and business partners may also subject us to certain requirements related to our processing of personal information, including obligations to use industry-standard or reasonable security measures to safeguard personal information.

The United States and various state and foreign governments have adopted or proposed limitations on the collection, distribution, use and storage of personal information of individuals, including end-customers and employees. In the United States, the FTC and many state attorneys general are applying federal and state consumer protection laws to the online collection, use, processing, storage, deletion and dissemination of

personal information. Further, all states have enacted laws requiring companies to notify individuals, regulatory authorities and others of security breaches involving personal information.

We also expect that there will continue to be new proposed laws, regulations and industry standards concerning privacy, data protection and information security in the United States, the EU and other jurisdictions, and we cannot yet determine the impact of such future laws, regulations and standards may have on our business. We expect that existing laws, regulations and standards may even be interpreted differently in the future. For example, California implemented the California Privacy Rights Act (CRPA), effective as of January 1, 2023, with enforcement beginning on July 1, 2023, which amends the existing California Consumer Privacy Act. Additionally, comparable consumer privacy laws are set to take effect in 2023 in other several states, such as the Virginia Consumer Data Protection Act (effective January 1, 2023), the Colorado Privacy Act and the Connecticut Data Privacy Act (both effective July 1, 2023), and the Utah Consumer Privacy Act (effective December 31, 2023). Failure to comply with these new state regulations may result in significant civil penalties, injunctive relief, or statutory or actual damages. Complying with this new privacy legislation may result in additional costs and expenses.

Additionally, many foreign countries and governmental bodies, including Australia, the EU, India, Japan and numerous other jurisdictions in which we operate or conduct our business, have laws and regulations concerning the collection, use, processing, storage and deletion of personal information obtained from their residents or by businesses operating within their jurisdiction. These laws and regulations often are more restrictive than those in the United States.

For example, in the EU, the General Data Protection Regulation (GDPR) imposes more stringent data protection requirements, provides an enforcement authority, and imposes large penalties for noncompliance. If we fail to comply with the GDPR or if regulators assert that we have failed to comply with the GDPR, we may be subject to fines of up to 4% of our worldwide annual revenue.

Among other requirements, the GDPR regulates transfers of personal data outside of the EU to countries that have not been found to provide adequate protection to personal data, including the United States, requiring that certain steps are taken to legitimize those transfers. We have undertaken certain efforts to conform transfers of personal data from the EU to the United States and other jurisdictions based on our understanding of current regulatory obligations and the guidance of data protection authorities. Despite this, we may be unsuccessful in establishing or maintaining conforming means of transferring such data from the European Economic Area (EEA) particularly as a result of continued legal and legislative activity within the EU that has challenged or called into question the legal basis for existing means of data transfers to countries that have not been found to provide adequate protection for personal data.

Further, the U.K. exited the EU on January 31, 2020 (also known as “Brexit”), which resulted in additional regulation of data protection in the U.K. that may continue to lead to further legislative and regulatory changes. In response to Brexit, the U.K. implemented the Data Protection Act that contains provisions that substantially implements the GDPR, including its own derogations for how GDPR is applied in the U.K., with penalties for noncompliance of up to the greater of £17.5 million (€20 million) or up to 4% of our worldwide revenues. These changes have led and may continue to lead to additional costs as we try to ensure compliance with new privacy legislation and will increase our overall risk exposure.

In addition to government regulation, privacy advocates and industry groups may propose new and different self-regulatory standards. These and other industry standards may legally or contractually apply to us, or we may elect to comply with such standards. It is possible that if our practices are not consistent, or are viewed as not consistent, with legal and regulatory requirements, including changes in laws, regulations and standards or new interpretations or applications of existing laws, regulations and standards, we may become subject to audits, inquiries, whistleblower complaints, adverse media coverage, investigations, loss of export privileges, or severe criminal or civil sanctions, all of which may have a material adverse effect on our business, operating results, reputation, and financial condition. One example of such a self-regulatory standard is the Payment Card Industry Data Security Standard (PCI DSS), which relates to the processing of payment card information. In the event we are required to comply with the PCI DSS but fail to do so, fines and other penalties could result, and we may suffer reputational harm and damage to our business.



Future laws, regulations, standards and other obligations, as well as changes in the interpretation of existing laws, regulations, standards and other obligations could impair our ability to collect, use or disclose information relating to individuals, which could decrease demand for our products, require us to restrict our business operations, increase our costs and impair our ability to maintain and grow our customer base and increase our revenue.

Any inability to adequately address privacy and security concerns, even if unfounded, or comply with applicable laws, regulations, policies, industry standards, contractual obligations or other legal obligations could result in additional cost and liability to us, damage our reputation, inhibit sales, and adversely affect our business and operating results.

***We could be adversely affected by violations of the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act or similar anti-bribery laws in other jurisdictions in which we operate.***

The global nature of our business and the significance of our international revenue create various domestic and local regulatory challenges and subject us to risks associated with our international operations. The United States Foreign Corrupt Practices Act (FCPA), the United Kingdom Bribery Act 2010 (the U.K. Bribery Act), and similar anti-bribery and anti-corruption laws in other jurisdictions generally prohibit United States based companies and their intermediaries from making improper payments to non-United States officials for the purpose of obtaining or retaining business, directing business to another, or securing a competitive advantage. In addition, United States public companies are required to maintain records that accurately and fairly represent their transactions and have an adequate system of internal accounting controls. Under the FCPA, United States companies may be held liable for the corrupt actions taken by their directors, officers, employees, agents, or other strategic or local partners or representatives. As such, if we or our intermediaries fail to comply with the requirements of the FCPA or similar legislation, governmental authorities in the United States and elsewhere could seek to impose substantial civil and/or criminal fines and penalties, which could have a material adverse effect on our business, reputation, operating results and financial condition.

We operate in areas of the world that experience corruption by government officials to some degree and, in certain circumstances, compliance with anti-bribery and anti-corruption laws may conflict with local customs and practices. Our global operations require us to import and export to and from several countries, which geographically expands our compliance obligations. In addition, changes in such laws could result in increased regulatory requirements and compliance costs which could adversely affect our business, financial condition and results of operations. We cannot be assured that our directors, officers, employees, agents or other strategic or local partners or representatives will not engage in prohibited conduct and render us responsible under the FCPA or the U.K. Bribery Act. While we have compliance programs in place, they may not be effective to prevent violations from occurring and our directors, officers, employees, or agents may engage in prohibited conduct nonetheless. If we are found to be in violation of the FCPA, the U.K. Bribery Act or other anti-bribery or anti-corruption laws (either due to the acts or inadvertence of our employees or due to the acts or inadvertence of others), we could suffer criminal or civil penalties or other sanctions, which could have a material adverse effect on our business, reputation, operating results and financial condition.

***If we fail to comply with environmental regulations and conflict minerals disclosures, our business, financial condition, operating results and reputation could be adversely affected.***

We are subject to various federal, state, local and international environmental laws and regulations including laws regulating the manufacture, import, use, discharge and disposal of hazardous materials, labeling and notice requirements relating to potential consumer exposure to certain chemicals, and laws relating to the collection of and recycling of electrical and electronic equipment and their packaging.

We are also subject to the SEC's conflict minerals rule which requires disclosure by public companies of the origin, source and chain of custody of specified minerals, known as conflict minerals, that are necessary to the functionality or production of products manufactured or contracted to be manufactured. We have and will continue to incur costs associated with complying with the rule, such as costs related to sourcing of certain minerals (or derivatives thereof), the determination of the origin, source and chain of custody of the minerals used in our products, the adoption of conflict minerals-related governance policies, processes and controls, and possible changes to products or sources of supply as a result of such activities. Within our supply chain, we may not be

able to sufficiently verify the origins of the relevant minerals used in our products through the data collection and due diligence procedures that we implement, which may harm our reputation.

Although we have policies and procedures in place requiring our contract manufacturers and major component suppliers to comply with applicable federal, state, local and international requirements, we cannot confirm that our manufacturers and suppliers consistently comply with these requirements. In addition, if there are changes to these or other laws (or their interpretation) or if new similar laws are passed in other jurisdictions, we may be required to re-engineer our products to use components compatible with these regulations. This re-engineering and component substitution could result in additional costs to us or disrupt our operations or logistics.

Changes in interpretation of any federal, state, local or international regulation may cause us to incur costs or have additional regulatory requirements to meet in the future in order to comply with such regulations, or with any similar laws adopted in other jurisdictions. Our failure to comply with past, present and future similar laws could result in reduced sales of our products, substantial product inventory write-offs, reputational damage, penalties and other sanctions, which could harm our business and financial condition.

We also expect that our products will be affected by new environmental laws and regulations, including but not limited to laws and regulations focused on climate change, on an ongoing basis. Concerns about climate change have driven significant legislative and regulatory changes on a global basis, and there are expected to be additional changes to the regulations in these areas. These changes could directly increase the cost of energy, which may have an impact on the way we manufacture products or utilize energy to produce our products. We may also become subject to regulations resulting in increased disclosure obligations with respect to our greenhouse gas emissions. In addition, any new regulations or laws in the environmental area might increase the cost of raw materials we use in our products and the cost of compliance, or cause disruptions in the manufacture of our products and result in increased procurement, production, and distribution costs. Our reputation and brand could be harmed if we fail, or are perceived as having failed, to respond responsibly and effectively to changes in legal and regulatory measures adopted to address climate change. Other regulations in the environmental area may require us to continue to monitor and ensure proper disposal or recycling of our products. Since we operate on a global basis, this is a complex process that requires continual monitoring.

To date, our expenditures for environmental compliance have not had a material effect on our results of operations or cash flows and, although we cannot predict the future effect of such laws or regulations, they will likely result in additional costs and may increase penalties associated with violations or require us to change the content of our products or how they are manufactured, which could have a material adverse effect on our business and financial condition.

***We are subject to governmental export and import controls and economic sanctions laws that could subject us to liability and impair our ability to compete in international markets.***

The United States and various foreign governments have imposed controls, export license requirements and restrictions on the import or export of some technologies. Our products are subject to United States export controls, and exports of our products must be made in compliance with various economic and trade sanctions laws. Furthermore, United States export control laws and economic sanctions prohibit the provision of products and services to countries, governments and persons targeted by United States sanctions. Even though we take precautions to prevent our products from being provided to targets of United States sanctions, our products, including our firmware updates, could be provided to those targets or provided by our customers. Any such provision could have negative consequences, including government investigations, penalties and reputational harm. Our failure to obtain required import or export approval for our products could harm our international and domestic sales and adversely affect our revenue.

We could be subject to future enforcement action with respect to compliance with governmental export and import controls and economic sanctions laws that result in penalties, costs, and restrictions on export privileges that could have a material effect on our business and operating results.

## **Risks related to our need for additional capital**

*We may not be able to secure additional financing on favorable terms, or at all, to meet our future capital needs.*

In the future, we may require additional capital to respond to business opportunities, challenges, acquisitions or unforeseen circumstances and may determine to engage in equity or debt financings or enter into credit facilities for other reasons. We may not be able to timely secure additional financing on favorable terms, or at all, due to among other things, general macroeconomic conditions, including rising interest rates, market volatility, and inflation.

Additionally, our current credit facilities contain restrictive covenants relating to our capital raising activities and other financial and operational matters, and any debt financing obtained by us in the future could involve further restrictive covenants, which may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. Further, even if we are able to obtain additional financing, we may be required to use such proceeds to repay a portion of our debt.

If we raise additional funds through the issuance of equity or convertible debt or other equity-linked securities, our existing stockholders could suffer significant dilution. If we are unable to obtain adequate financing under our credit facility, or alternative sources, when we require it, our ability to grow or support our business and to respond to business challenges could be significantly limited. In the event additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us or at all.

## **Risks related to ownership of our Class A common stock**

*Our stock price has been and will likely continue to be volatile.*

Since shares of our Class A common stock were sold in our initial public offering in July 2014 at a price of \$24.00 per share, our closing stock price has ranged from \$2.01 to \$93.85 per share through June 30, 2023. Our stock price may fluctuate in response to a number of events and factors, such as quarterly operating results, changes in our financial projections provided to the public or our failure to meet those projections, the public's reaction to our press releases, other public announcements and filings with the SEC, significant transactions, or new features, products or services offered by us or our competitors, changes in our business lines and product lineup, changes in financial estimates and recommendations by securities analysts, media coverage of our business and financial performance, the operating and stock price performance of, or other developments involving, other companies that investors may deem comparable to us, trends in our industry, any significant change in our management, and general economic conditions. These factors, as well as the volatility of our Class A common stock, could also affect the price of our convertible senior notes.

In addition, the stock market in general, and the market prices for companies in our industry, have experienced volatility that often has been unrelated to operating performance. These broad market and industry fluctuations may adversely affect the price of our stock, regardless of our operating performance. Price volatility over a given period may cause the average price at which we repurchase our own stock to exceed the stock's price at a given point in time. Volatility in our stock price also affects the value of our equity compensation, which affects our ability to recruit and retain employees. In addition, some companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We have been subject to past shareholder class action lawsuits as well as derivative lawsuits and may continue to be a target for such litigation in the future. Securities litigation against us could result in substantial costs and liability and divert our management's attention from other business concerns, which could harm our business. See Note 9 Commitments, contingencies and guarantees, in the Notes to Condensed Consolidated Financial Statements of this Quarterly Report on Form 10-Q for a discussion on legal proceedings.

If we fail to meet expectations related to future growth, profitability, or other market expectations, our stock price may decline significantly, which could have a material adverse effect on investor confidence and employee retention. A sustained decline in our stock price and market capitalization could lead to impairment charges.

***The dual class structure of our common stock has the effect of concentrating voting control with our CEO and we cannot predict the effect our dual class structure may have on our stock price or our business.***

Our Class B common stock has 10 votes per share, and our Class A common stock has one vote per share. Stockholders who hold shares of Class B common stock hold approximately 67.5% of the voting power of our outstanding capital stock as of June 30, 2023 with Mr. Woodman, our Chairman and CEO, holding approximately 64.5% of the outstanding voting power. Mr. Woodman is able to control all matters submitted to our stockholders, including the election of directors, amendments of our organizational documents and any merger, consolidation, sale of all or substantially all of our assets or other major corporate transaction. This concentrated control could delay, defer, or prevent a change of control, merger, consolidation, or sale of all or substantially all of our assets that our other stockholders support, or conversely this concentrated control could result in the consummation of such a transaction that our other stockholders do not support. This concentrated control could also discourage a potential investor from acquiring our Class A common stock due to the limited voting power of such stock relative to the Class B common stock and might harm the trading price of our Class A common stock.

In addition, we cannot predict whether our dual class structure, combined with the concentrated control by Mr. Woodman, will result in a lower or more volatile market price of our Class A common stock or in adverse publicity or other adverse consequences. For example, certain index providers, including FTSE Russell and S&P Dow Jones, previously announced restrictions on including companies with multiple-class share structures in certain of their indexes that were then reversed. Because of our dual class structure, we may be excluded from these indexes in the future if new restrictions are announced, and we cannot assure you that other stock indexes will not take similar actions. Given the sustained flow of investment funds into passive strategies that seek to track certain indexes, exclusion from stock indexes would likely preclude investment by many of these funds and could make our Class A common stock less attractive to other investors. As a result, the market price of our Class A common stock could be adversely affected.

***Delaware law and provisions in our restated certificate of incorporation and amended and restated bylaws could make a merger, tender offer or proxy contest difficult, thereby depressing the trading price of our Class A common stock.***

Our status as a Delaware corporation and the anti-takeover provisions of the Delaware General Corporation Law may discourage, delay or prevent a change in control by prohibiting us from engaging in a business combination with an interested stockholder for a period of three years after the person becomes an interested stockholder, even if a change in control would be beneficial to our existing stockholders. In addition, our restated certificate of incorporation and amended and restated bylaws contain provisions that may make the acquisition of our company more difficult without the approval of our board of directors, or otherwise adversely affect the rights of the holders of our Class A and Class B common stock.

## **Risks related to our indebtedness and capped call transactions**

***We have indebtedness in the form of convertible senior notes.***

In November 2020, we completed an offering of \$143.8 million aggregate principal amount of 1.25% convertible senior notes due 2025 (2025 Notes). As a result of the 2025 Notes, we incurred an additional \$143.8 million principal amount of indebtedness, the principal amount of which we may be required to pay at maturity in 2025.

Holders of the 2025 Notes will have the right to require us to repurchase their 2025 Notes upon the occurrence of a fundamental change at a purchase price equal to 100% of the principal amount of the 2025 Notes to be purchased, plus accrued and unpaid interest, if any. In addition, the indentures for the 2025 Notes provides that we are required to repay amounts due under such indenture in the event that there is an event of default for the 2025 Notes that results in the principal, premium, if any, and interest, if any, becoming due prior to maturity date for the 2025 Notes. There can be no assurance that we will be able to repay our indebtedness when due, or that we will be able to refinance our indebtedness, all or in part, on acceptable terms. In addition, our indebtedness could, among other things:

- heighten our vulnerability to adverse general economic conditions and heightened competitive pressures;
- require us to dedicate a larger portion of our cash flow from operations to interest payments, limiting the availability of cash for other purposes;

- limit our flexibility in planning for, or reacting to, changes in our business and industry; and
- impair our ability to obtain additional financing in the future for working capital, capital expenditures, acquisitions, general corporate purposes or other purposes.

In addition, our ability to purchase the 2025 Notes or repay prior to maturity any accelerated amounts under the 2025 Notes upon an event of default or pay cash upon conversion of the 2025 Notes may be limited by law, by regulatory authority or by agreements governing our indebtedness outstanding at the time, including our credit facility. Our credit facility restricts our ability to repurchase the 2025 Notes for cash or repay prior to maturity any accelerated amounts under the 2025 Notes upon an event of default or pay cash upon conversion of the 2025 Notes, to the extent that on the date of such repurchase, repayment or conversion, as the case may be, we do not meet certain financial criteria set forth in the credit facility.

Any of our future indebtedness may contain similar restrictions. Our failure to repurchase the 2025 Notes at a time when the repurchase is required by the indentures (whether upon a fundamental change or otherwise under the indentures) or pay cash payable on future conversions of the 2025 Notes as required by the indentures would constitute a default under the indentures. A default under the indentures or the fundamental change itself could also lead to a default under agreements governing our existing or future indebtedness, including our credit facility. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness, repurchase the 2025 Notes or make cash payments upon conversions thereof.

***Our credit facility imposes restrictions on us that may adversely affect our ability to operate our business.***

Our credit facility contains restrictive covenants relating to our capital raising activities and other financial and operational matters which may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. In addition, our credit facility contains, and the agreements governing the 2025 Notes will contain, a cross-default provision whereby a default under one agreement would likely result in cross defaults under agreements covering other borrowings. The occurrence of a default under any of these borrowing arrangements would permit the holders of the 2025 Notes or the lenders under our credit facility to declare all amounts outstanding under those borrowing arrangements to be immediately due and payable. If the 2025 Note holders or the trustee under the indentures governing the 2025 Notes or the lenders under our credit facility accelerate the repayment of borrowings, we cannot assure you that we will have sufficient assets to repay those borrowings.

***Conversion of the 2025 Notes will, to the extent we deliver shares upon conversion of such 2025 Notes, dilute the ownership interest of existing stockholders, including holders who had previously converted their 2025 Notes, or may otherwise depress our stock price or may adversely affect our financial condition.***

The conversion of some or all of the 2025 Notes will dilute the ownership interests of existing stockholders to the extent we deliver shares upon conversion of any of the 2025 Notes. Any sales in the public market of the common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the 2025 Notes may encourage short selling by market participants because the conversion of the 2025 Notes could be used to satisfy short positions, or anticipated conversion of the 2025 Notes into shares of our common stock could depress our stock price.

In the event the conditional conversion feature of the 2025 Notes is triggered, holders of the 2025 Notes will be entitled to convert the 2025 Notes at any time during specified periods at their option. If one or more holders elect to convert their 2025 Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than cash in lieu of any fractional share), we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders of the 2025 Notes do not elect to convert their 2025 Notes, we could be required under applicable

accounting rules to reclassify all or a portion of the outstanding principal of the 2025 Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

***The accounting method for convertible debt securities that may be settled in cash, such as the 2025 Notes, may have a material effect on our reported financial results.***

Under current GAAP, effective January 1, 2022, the treasury stock method for convertible instruments has been eliminated and instead, the application of the “if-converted” method is required for the determination of diluted net income (loss) per share on a GAAP and non-GAAP basis. Under the if-converted method, diluted net income (loss) per share for GAAP and non-GAAP would generally be calculated assuming that all of the 2025 Notes were converted solely into shares of Class A common stock at the beginning of the reporting period, unless the result would be anti-dilutive, which would negatively affect diluted net income (loss) per share. The impact from the “if converted” method added approximately 15 million shares to the diluted share count. Under the if-converted method, some of the incremental dilution is offset as we are able to add back the after tax effected interest expense from the 2025 Notes, to the extent the result would not be anti-dilutive.

In addition, if the conditional conversion feature of the 2025 Notes is triggered, even if holders do not elect to convert their 2025 Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the 2025 Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

***The Capped Call transactions may affect the value of the 2025 Notes and our Class A Common Stock and we are subject to counterparty risk with respect to Capped Call transactions.***

In connection with the pricing of the 2025 Notes, we entered into privately negotiated capped call transactions (Capped Calls) with one or more financial institutions. The Capped Calls are expected generally to reduce the potential economic dilution to holders of our Class A common stock upon any conversion of the 2025 Notes, with such reduction and/or offset subject to a cap.

The capped call counterparties and/or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our Class A common stock and/or purchasing or selling our Class A common stock or other securities of ours in secondary market transactions prior to the maturity of the 2025 Notes (and are likely to do so during any observation period related to a conversion of the 2025 Notes or following an repurchase of the 2025 Notes by the Company on any fundamental change repurchase date or otherwise). This activity could also cause or avoid an increase or a decrease in the market price of our Class A common stock or the 2025 Notes.

The potential effect, if any, of these transactions and activities on the trading price of our Class A common stock or the 2025 Notes will depend in part on market conditions. Any of these activities could adversely affect the trading price of our Class A common stock or the 2025 Notes.

Additionally, we will be subject to the risk that the capped call counterparties might default under the Capped Calls. Our exposure to the credit risk of the capped call counterparties is not secured by any collateral. Global economic conditions have in the recent past resulted in, and may again result in, the actual or perceived failure or financial difficulties of many financial institutions. If the capped call counterparties become subject to insolvency proceedings, we will become an unsecured creditor in those proceedings, with a claim equal to our exposure at that time under our transactions with the capped call counterparties. Our exposure will depend on many factors, but, generally, an increase in our exposure will be correlated to an increase in the market price of our Class A common stock. In addition, upon a default by the capped call counterparties, we may suffer more dilution than we



currently anticipate with respect to our Class A common stock. We can provide no assurances as to the financial stability or viability of the capped call counterparties to the Capped Calls.

## General Risk Factors

*Our effective tax rate and the intended tax benefits of our corporate structure and intercompany arrangements depend on the application of the tax laws of various jurisdictions and on how we operate our business, and such tax rates and tax benefits may change in the future.*

We are subject to income taxes in the United States and various jurisdictions outside the United States. Our effective tax rate could be adversely affected by changes in, or our interpretation of, tax law changes and related new or revised guidance and regulations, changes in our geographical earnings mix, unfavorable government reviews of our tax returns, material differences between our forecasted and actual annual effective tax rates, or by evolving enforcement practices.

In 2017, the Tax Cuts and Jobs Act (the Tax Act) was enacted, which contained significant and impactful changes to the U.S. tax law, including, effective as of January 1, 2022, requiring the capitalization and amortization of research and development expenses, which accelerates the utilization of our net operating losses. There are various proposals in Congress to amend certain provisions of the Tax Act. The state of these proposals and other future legislation remains uncertain and, if enacted, may materially affect our financial position.

On August 16, 2022, the United States enacted the Inflation Reduction Act (IRA), which introduced, among other items, an excise tax that would impose a 1% surcharge on stock repurchases, net of stock issuances beginning in 2023. We repurchase our Class A common stock on the open market pursuant to a repurchase program initially authorized by the Company's board of directors on January 27, 2022 for the repurchase of up to \$100 million of our Class A common stock as supplemented by a subsequent authorization by the board of directors on February 9, 2023 for the repurchase of an additional \$40 million of our Class A common stock. We could be subject to this new excise tax, depending on various factors, including the amount and frequency of any future stock repurchases and any permitted reductions or exceptions to the amount subject to the tax. We are continuing to evaluate the impact the IRA may have on our financial position and results of operations in connection with our repurchase program.

The United States, the European Commission, countries in the EU, Australia, and other countries where we do business have been considering changes in relevant tax, accounting and other laws, regulations and interpretations, including changes to tax laws applicable to corporate multinationals. Changes in the tax laws of foreign jurisdictions could arise as a result of the base erosion and profit shifting (BEPS) project that was undertaken by the Organization for Economic Co-operation and Development (OECD). The OECD, which represents a coalition of member countries, recommended changes to numerous long-standing tax principles related to transfer pricing and continues to develop new proposals including allocating greater taxing rights to countries where customers are located and establishing a minimum tax on global income. A global consensus has been reached among approximately 138 countries, including the European Union and the OECD regarding a planned two-pillar approach to address tax challenges in the digital commerce era. The first pillar focuses on profit allocation and nexus, while the second pillar aims to establish a minimum global effective tax rate of 15%. The United States has not implemented Pillar Two legislation, but other OECD members including the European Union, plan to do so with Pillar Two taking effect in 2024, which would likely affect large U.S. and non-U.S. multinational enterprises (MNEs). These changes, as adopted by countries, may increase tax uncertainty and may adversely affect our provision for income taxes and cash flows.

We are subject to the examination of our income tax returns by the United States Internal Revenue Service (IRS) and other domestic and foreign tax authorities. We regularly assess the likelihood of outcomes resulting from these examinations to determine the adequacy of our provision for income taxes and other taxes and have reserved for adjustments that may result from the current examinations. The final determination of tax audits and any related legal proceedings could materially differ from amounts reflected in our income tax provisions and accruals. In such case, our income tax provision and cash flows in the period or periods in which that determination is made could be negatively affected.

We maintain significant deferred tax assets related to net operating losses, temporary differences, and tax credits. Our ability to use these tax attributes are dependent upon having sufficient future taxable income in the relevant

jurisdiction and, in the case of tax credits, how such credits are treated under current and potential future tax law. Changes to the Tax Act, other regulatory changes, and changes in our forecasts of future income could result in an adjustment to the deferred tax asset and a related charge to earnings that could materially affect our financial results.

***Our reported financial results may be negatively impacted by the changes in the accounting principles generally accepted in the United States.***

Generally accepted accounting principles in the United States are subject to interpretation by the Financial Accounting Standards Board (FASB), the SEC and various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our reported financial results and may even affect the reporting of transactions completed before the announcement or effectiveness of a change. Other companies in our industry may apply these accounting principles differently than we do, which may affect the comparability of our condensed consolidated financial statements.

***If our estimates or judgments relating to our critical accounting policies and estimates prove to be incorrect, our operating results could be adversely affected.***

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, as provided in our 2022 Annual Report in the section titled Management's Discussion and Analysis of Financial Condition and Results of Operations. The results of these estimates form the basis for making judgments about the carrying values of assets, liabilities and equity, and the amount of revenue and expenses that are not readily apparent from other sources. Our operating results may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our operating results to fall below the expectations of securities analysts and investors, resulting in a decline in our stock price. Significant estimates and assumptions made by management include those related to revenue recognition (including sales incentives, sales returns and implied post contract support), inventory valuation, product warranty liabilities, the valuation, impairment and useful lives of long-lived assets (property and equipment, operating lease right-of-use assets, intangible assets and goodwill), the fair value of our convertible senior notes, and income taxes.



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

None.

***Issuer Purchases of Equity Securities***

Share repurchase activity for our Class A and Class B common stock during the three months ended June 30, 2023 was as follows (in thousands, except per share amounts):

Period	Total Number of Shares Repurchased (1)	Average Price Paid per Share (2)	Total Number of Shares Purchased as Part of Publicly Announced Plans	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans (1)
April 1 - 30, 2023	304	\$ 4.50	304	\$ 94,013
May 1 - 31, 2023	3,302	\$ 4.13	3,302	\$ 80,382
June 1 - 30, 2023	—	\$ —	—	\$ 80,382
Total	3,606		3,606	

(1) Represents shares repurchased pursuant to the stock repurchase program. On January 27, 2022, our board of directors authorized the repurchase of up to \$100 million of our Class A common stock, and on February 9, 2023, our board of directors authorized the repurchase of an additional \$40 million of our Class A common stock. This stock repurchase program has no time limit and may be modified, suspended, or discontinued at any time.

(2) Represents the average price paid per share, inclusive of commissions.

**Item 3. Defaults upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Other Information**

None of the Company's directors or officers adopted, modified or terminated a Rule 10b5-1 trading arrangement or a non-Rule 10b5-1 trading arrangement during the Company's fiscal quarter ended June 30, 2023, as such terms are defined under Item 408(a) of Regulation S-K.

## Item 6. Exhibits

### Exhibit Listing

Exhibit Number	Exhibit Title	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
<a href="#">31.01</a>	Certification of Principal Executive Officer Required Under Rule 13(a)-14(a) and 15(d)-14(a) of the Securities Exchange Act of 1934, as amended.					X
<a href="#">31.02</a>	Certification of Principal Financial Officer Required Under Rule 13(a)-14(a) and 15(d)-14(a) of the Securities Exchange Act of 1934, as amended.					X
<a href="#">32.01</a> ‡	Certification of the Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350.					X
<a href="#">10.01</a>	GoPro, Inc. 2024 Equity Incentive Plan and related form agreements.	8-K	001-36514	10.1	June 9, 2023	
<a href="#">10.02</a>	GoPro, Inc. 2024 Employee Stock Purchase Plan.	8-K	001-36514	10.2	June 9, 2023	
<a href="#">10.03</a>	Office lease agreement between Carlsbad1-Commerce, LLC and the Registrant dated April 17, 2023.					X
101.INS	Inline XBRL Instance Document					X
101.SCH	Inline XBRL Taxonomy Extension Schema					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase					X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase					X
104	Inline XBRL For the cover page of this Quarterly Report on Form 10-Q, included in the Exhibit 101 Inline XBRL Document Set					X

‡ As contemplated by SEC Release No. 33-8212, these exhibits are furnished with this Quarterly Report on Form 10-Q and are not deemed filed with the SEC and are not incorporated by reference in any filing of GoPro, Inc. under the Securities Act of 1933 or the Exchange Act of 1934, whether made before or after the date hereof and irrespective of any general incorporation language in such filings.

## SIGNATURES

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

**GoPro, Inc.**

(Registrant)

Dated: August 3, 2023

By: /s/ Nicholas Woodman

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Nicholas Woodman  
Chief Executive Officer  
(Principal Executive Officer)

Dated: August 3, 2023

By: /s/ Brian McGee

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Brian McGee  
Chief Financial Officer and Chief Operating Officer  
(Principal Financial Officer)

Dated: August 3, 2023

By: /s/ Charles Lafrades

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Charles Lafrades  
Chief Accounting Officer  
(Principal Accounting Officer)

EXHIBIT 10.03

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made this 17 day of April, 2023, between

**CARLSBAD1-COMMERCE, LLC**, a Delaware limited liability company ("Landlord"), and **GOPRO, INC.**, a Delaware corporation ("Tenant").

BASIC LEASE PROVISIONS

**Building:** 5225 Avenida Encinas, Carlsbad, California 92008

**Premises:** The entire Building, containing approximately 11,742 rentable square feet, as shown on **Exhibit A**.

**Project:** The real property on which the Building in which the Premises are located, together with all improvements thereon and appurtenances thereto as described on **Exhibit B**.

**Base Rent:** \$2.40 per rentable square feet of the Premises month, subject to adjustment pursuant to Section 4 hereof.

**Rentable Area of Premises:** 11,742 sq. ft. Landlord and Tenant hereby stipulate to the rentable square footage of the Premises set forth herein for all purposes and the same shall not be subject to remeasurement; provided, however, that Landlord shall have the right to increase the square footage of the Premises on a pro rata basis in the event Project Amenities are added to the Project and the core factor changes.

**Rentable Area of Building:** 11,742 sq. ft.

**Rentable Area of Project:** 128,623 sq. ft.

**Tenant's Share of Operating Expenses of Building:** 100% **Building's Share of**

**Operating Expenses of Project:** 9.13% **Tenant's Share of Operating Expenses of**

**Project:** 9.13% **Security Deposit:** \$45,421.80

**Target Commencement Date:** August 31, 2023

**Rent Adjustment Percentage:** 4.0%

**Base Term:** Beginning on the Commencement Date and ending 67 months from the first day of the first full month following the Commencement Date, subject to the termination rights set forth in Section 40 and Section 41 below. For clarity, if the Commencement Date occurs on the first day of a month, the expiration of the Base Term shall be measured from that date. If the Commencement Date occurs on a day other than the first day of a month, the expiration of the Base Term shall be measured from the first day of the following month.

**Permitted Use:** Office, storage, and related uses consistent with the character of the Project and otherwise in compliance with the provisions of Section 7 hereof.

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**Address for Rent Payment: Landlord's Notice Address:**

Carlsbad1-Commerce, LLC 26 North Euclid Avenue  
P.O. Box 102746 Pasadena, CA 91101  
Pasadena, CA 91189-2744 Attention: Corporate Secretary

**Tenant's Notice Address:**

GoPro, Inc.  
3025 Clearview Way San Mateo, CA 94402

Attention: General Counsel and

GoPro, Inc.  
3025 Clearview Way San Mateo, CA 94402  
Attention: Director, Workplace

The following Exhibits and Addenda are attached hereto and incorporated herein by this reference:

**EXHIBIT A** - PREMISES DESCRIPTION  **EXHIBIT B** - DESCRIPTION OF PROJECT  
 **EXHIBIT C** - IMPROVEMENTS  **EXHIBIT D** - COMMENCEMENT DATE  
 **EXHIBIT E** - RULES AND REGULATIONS  **EXHIBIT F** - TENANT'S PERSONAL PROPERTY  
 **EXHIBIT G** - ASBESTOS DISCLOSURE

1. **Lease of Premises.** Upon and subject to all of the terms and conditions hereof, Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord. The portions of the Project that are for the non-exclusive use of tenants of the Project are collectively referred to herein as the "**Common Areas**." The Common Areas shall include, without limitation, any amenities now or hereafter located in, on or otherwise serving the Project, if any, as may exist from time to time (as determined by Landlord, in Landlord's sole and absolute discretion) and made available, except for temporary interruptions and/or Force Majeure (as defined in Section 34), for use by Tenant and one or more other tenants of the Project and/or third parties (each, a "**Project Amenity**" and collectively, the "**Project Amenities**"). Landlord reserves the right to modify Common Areas, provided that such modifications do not materially adversely affect Tenant's access to or use of the Premises for the Permitted Use. From and after the Commencement Date through the expiration of the Term, Tenant shall have access to the Building and the Premises 24 hours a day, 7 days a week, except in the case of emergencies, as the result of Legal Requirements, the performance by Landlord of any installation, maintenance or repairs, or any other temporary interruptions, and otherwise subject to the terms of this Lease.

2. **Delivery; Acceptance of Premises; Commencement Date.**

(a) **Delivery.** Landlord shall use reasonable efforts to deliver the Premises to Tenant on or before the Target Commencement Date with the improvements described on the space plans and scope of work set forth on **Exhibit C** attached hereto (the "**Improvements**") Substantially Completed (as defined below) using Building standard materials ("**Delivery**" or "**Deliver**"). Landlord shall, at Landlord's sole cost, be responsible for the compliance of the Premises with Legal Requirements as of the Commencement Date. Landlord shall cause the Improvements to be completed at Landlord's sole cost and expense, in a good and workmanlike manner and in compliance with Legal Requirements. The space plans and scope of work attached hereto as **Exhibit C** have been mutually agreed upon by Landlord and Tenant, and Tenant shall have no right to request any changes thereto. If Landlord fails to timely Deliver the Premises, Landlord shall not be liable to Tenant for any loss or damage resulting therefrom, and this Lease shall not be void or voidable except as provided herein. If Landlord does not Deliver the Premises within 90 days of the Target Commencement Date for any reason other than Force Majeure or delays caused by Tenant, this Lease may be terminated by Tenant by written notice to Landlord; provided, however, that if Tenant delivers a termination notice to Landlord pursuant to this Section 2(a), Landlord may suspend such termination notice

if Landlord reasonably believes that it will Deliver the Premises within 30 days after Tenant's delivery of such termination notice, in which case this Lease shall continue in effect. If the Premises are not Delivered by the end of such 30-day period, then this Lease shall automatically terminate on the day immediately following the expiration of such 30-day period. If the Lease is terminated by Tenant pursuant to this paragraph, then: (a) the Security Deposit, or any balance thereof (i.e., after deducting therefrom all amounts to which Landlord is entitled under the provisions of this Lease), shall be returned to Tenant, and (b) neither Landlord nor Tenant shall have any further rights, duties or obligations under this Lease, except with respect to provisions which expressly survive termination of this Lease. As used herein, "**Substantially Completed**" shall mean the substantial completion of the Improvements in a good and workmanlike manner, in accordance with applicable permits and applicable Legal Requirements, subject to normal "punch list" items of a non-material nature that do not interfere with the use of the Premises. If Tenant does not elect to void this Lease within 5 business days of the lapse of such 90 day period, such right to void this Lease shall be waived and this Lease shall remain in full force and effect.

If the Commencement Date occurs after August 31, 2023 (as extended 1 day for each day of Force Majeure and/or delays caused by Tenant), then Landlord shall reimburse Tenant in the form of cash or a Base Rent credit for the Holdover Premium actually required to be paid by Tenant, no later than 30 days after Landlord's receipt of an invoice evidencing Tenant's payment of the same, pursuant to Tenant's existing lease dated March 31, 2015 ("**Tenant's Existing Lease**") with Carlsbad1-Make, LLC, a Delaware limited liability company (the "**Current Landlord**"), at 5600 Avenida Encinas, Carlsbad, California (the "**Existing Premises**"). As used herein, the "**Holdover Premium**" shall mean the current penalty amount required to be paid by Tenant over and above the amount of rent that is otherwise payable by Tenant each month during the last year of the term under Tenant's Existing Lease in order for Tenant to hold over in the Existing Premises. If Tenant agrees to any amendments or modifications to Tenant's Existing Lease which in any way increases or results in an increase in the Holdover Premium as of the date hereof, Tenant shall be solely responsible for paying the increased portion of such Holdover Premium.

(b) **Acceptance of Premises; Commencement Date.** The "**Commencement Date**" shall be the earlier of (i) the date Landlord Delivers the Premises to Tenant and (ii) the date Landlord would have Delivered the Premises but for delays caused by Tenant. Upon request of Landlord, Tenant shall execute and deliver a written acknowledgment of the Commencement Date, the Abatement Period (as defined below) and the expiration date of the Term when such are established in the form of the "Acknowledgement of Commencement Date" attached to this Lease as **Exhibit D**; provided, however, Tenant's failure to execute and deliver such acknowledgment shall not affect Landlord's rights hereunder. The "**Term**" of this Lease shall be the Base Term, as defined in the Basic Lease Provisions.

Landlord shall permit Tenant access to the Premises commencing on the date that is 30 days prior to the Commencement Date for Tenant's installation and set-up of its furniture, fixtures and equipment in the Premises (collectively, "**FF&E Installation**"), provided that such FF&E Installation is coordinated with Landlord and does not delay Landlord's construction of the Improvements, and Tenant complies with this Lease and all other reasonable restrictions and conditions Landlord may impose during the FF&E Installation. All such access shall be during normal business hours. Notwithstanding the foregoing, Tenant shall have no right to enter onto any portion of the Premises or the Project unless and until Tenant shall deliver to Landlord evidence reasonably satisfactory to Landlord demonstrating that the insurance required to be carried by Tenant pursuant to Section 17 is in full force and effect. Any access to the Premises by Tenant before the Commencement Date shall be subject to all of the terms and conditions of this Lease, excluding the obligation to pay Base Rent and Operating Expenses.

Except as otherwise expressly set forth in this Lease: (i) Tenant shall accept the Premises in their condition as of the Commencement Date; (ii) Landlord shall have no obligation for any defects in the Premises; and (iii) Tenant's taking possession of the Premises shall be conclusive evidence that Tenant accepts the Premises and that the Premises were in good condition at the time possession was taken.

For the period of 90 consecutive days after the Commencement Date, Landlord shall, at its sole cost and expense (which shall not constitute an Operating Expense), be responsible for any repairs that are required to be made to the Building's roof or the Building Systems (as defined in Section 13) serving

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the Premises, unless Tenant or any Tenant Party was responsible for the cause of such repair, in which case Tenant shall pay the cost. Additionally, Tenant shall be entitled to receive the benefit of all construction warranties and manufacturer's equipment warranties relating to the Improvements.

Tenant agrees and acknowledges that except as expressly set forth in this Lease, neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of all or any portion of the Premises or the Project, and/or the suitability of the Premises or the Project for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises or the Project are suitable for the Permitted Use. This Lease constitutes the complete agreement of Landlord and Tenant with respect to the subject matter hereof and supersedes any and all prior representations, inducements, promises, agreements, understandings and negotiations that are not contained herein. Landlord in executing this Lease does so in reliance upon Tenant's representations, warranties, acknowledgments and agreements contained herein.

### 3. Rent.

(a) **Base Rent.** The first full calendar month's Base Rent and Tenant's Share of Operating Expenses payable with respect to the first full calendar month after the Commencement Date shall be due and payable concurrently with Tenant's delivery of an executed copy of this Lease to Landlord. Subject to the Abatement Period provided for in the following paragraph, commencing on the Commencement Date, Tenant shall pay to Landlord (or to such other party as Landlord may from time to time specify in writing) in advance, without demand, abatement, deduction or set-off, monthly installments of Base Rent on or before the first day of each calendar month during the Term hereof from and after the Commencement Date, in lawful money of the United States of America, to the physical address designated by Landlord or by federally insured electronic fund transfer ("**EFT**") via wire transfer, Society for Worldwide Interbank Financial Communications (SWIFT) or automated clearing house (ACH) pursuant to the instructions provided by Landlord. Payments of Base Rent for any fractional calendar month shall be prorated. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any Rent (as defined in Section 5) due hereunder except for any abatement as may be expressly provided in this Lease.

Notwithstanding anything to the contrary contained herein, so long as Tenant is not then in default under this Lease beyond any applicable notice and cure period, for the period commencing on the first day of the second full calendar month following the Commencement Date through the last day of the eighth full calendar month following the Commencement Date (the "**Abatement Period**"), Base Rent shall be abated and Tenant shall not be required to pay such Base Rent to Landlord. For the avoidance of doubt, Tenant shall (i) continue paying Base Rent on the day immediately following the expiration of the Abatement Period and (ii) shall continue to pay 100% of Operating Expenses and all other amounts payable under this Lease during the Abatement Period.

(b) **Additional Rent.** In addition to Base Rent, Tenant agrees to pay to Landlord as additional rent ("**Additional Rent**"): (i) commencing on the Commencement Date, Tenant's Share of "Operating Expenses" (as defined in Section 5), and (ii) any and all other amounts Tenant assumes or agrees to pay under the provisions of this Lease, including, without limitation, any and all other sums that may become due by reason of any default of Tenant or failure to comply with the agreements, terms, covenants and conditions of this Lease to be performed by Tenant, after any applicable notice and cure period. Tenant shall pay to Landlord (or to such other party as Landlord may from time to time specify in writing) any and all Additional Rent to the physical address designated by Landlord for the payment of Base Rent or by federally insured EFT via wire, SWIFT or ACH pursuant to the instructions provided by Landlord.

4. **Base Rent Adjustments.** Base Rent shall be increased on each annual anniversary of the Commencement Date (provided, however, that if the Commencement Date occurs on a day other than the first day of a calendar month, then Base Rent shall be increased on each annual anniversary of the first day of the first full calendar month immediately following the Commencement Date) (each an "**Adjustment Date**") by multiplying the Base Rent payable immediately before such Adjustment Date by the Rent Adjustment Percentage and adding the resulting amount to the Base Rent payable immediately before such

Adjustment Date. Base Rent, as so adjusted, shall thereafter be due as provided herein. Base Rent adjustments for any fractional calendar month shall be prorated.

5. **Operating Expense Payments.** Landlord shall deliver to Tenant a written estimate of Operating Expenses for each calendar year during the Term (the "**Annual Estimate**"), which may be revised by Landlord from time to time during such calendar year. Commencing on the Commencement Date, and continuing thereafter on the first day of each month during the Term, Tenant shall pay Landlord an amount equal to 1/12th of Tenant's Share of the Annual Estimate. Payments for any fractional calendar month shall be prorated.

The term "**Operating Expenses**" means all costs and expenses of any kind or description whatsoever incurred or accrued each calendar year by Landlord with respect to the Building (including the Building's Share of all costs and expenses of any kind or description incurred or accrued by Landlord with respect to the Project) including, without limitation or duplication, (i) Taxes (as defined in Section 9), (ii) the cost of upgrades to the Building or Project or enhanced services provided at the Building and/or Project which are intended to encourage social distancing, promote and protect health and physical well-being and/or intended to limit the spread of Infectious Conditions (as defined in Section 26), (iii) the cost of repairs, improvements and replacements, provided that to the extent that such repairs, improvements and/or replacements are reasonably determined by Landlord to be Amortizing Expenditures (as defined below), such costs shall be amortized over the useful life of such Amortizing Expenditures, as reasonably determined by Landlord taking into account all relevant factors including, without limitation, the 24/7 operation of the Building, and (vi) the costs of Landlord's third party property manager (not to exceed 3% of the then-current Base Rent) or, if there is no third party property manager, administration rent in the amount of 3% of Base Rent (provided that during the Abatement Period, Tenant shall nonetheless be required to pay administration rent each month equal to the amount of the administration rent that Tenant would have been required to pay in the absence of there being an Abatement Period)), excluding only:

(a) the original construction costs of the Project and renovation prior to the Commencement Date and costs of correcting defects in such original construction or renovation;

(b) capital expenditures except for repairs, improvements or replacements, to the extent reasonably determined by Landlord to be capital in nature, that: (1) are required in order to comply with Legal Requirements first imposed after the Commencement Date; (2) are intended to reduce Operating Expenses and/or to maintain or improve the utility or efficiency of any Building Systems (as defined in Section 13), (3) maintain or improve the safety or security of the Project, or (4) are required to replace capital items that have reached the end of their useful life or to extend the life of any capital items, including the replacements of parts or components of capital items (collectively, "**Amortizing Expenditures**"); provided, that, notwithstanding the foregoing with respect to those Amortizing Expenditures incurred by Landlord which are solely intended to reduce Operating Expenses, Landlord shall be limited to passing through as part of Operating Expenses each year no more than the annual savings reasonably anticipated;

(c) interest, principal payments of Mortgage (as defined in Section 27) debts of Landlord, financing costs and amortization of funds borrowed by Landlord, whether secured or unsecured, and all payments of base rent (but not taxes or operating expenses) under any ground lease or other underlying lease of all or any portion of the Project;

(d) depreciation of the Project (except for capital improvements, the cost of which are includable in Operating Expenses);

(e) advertising, legal and space planning expenses and leasing commissions and other costs and expenses incurred in procuring and leasing space to tenants for the Project, including any leasing office maintained in the Project, free rent and construction allowances for tenants;

(f) legal and other expenses incurred in the negotiation or enforcement of leases;

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(g) completing, fixturing, improving, renovating, painting, redecorating or other work, which Landlord pays for or performs for other tenants within their premises, and costs of correcting defects in such work;

(h) costs to be reimbursed by other tenants of the Project or Taxes to be paid directly by Tenant or other tenants of the Project, whether or not actually paid;

(i) salaries, wages, benefits and other compensation paid to (i) personnel of Landlord or its agents or contractors above the position of the person, regardless of title, who has day-to-day management responsibility for the Project or (ii) officers and employees of Landlord or its affiliates who are not assigned in whole or in part to the operation, management, maintenance or repair of the Project; provided, however, that with respect to any such person who does not devote substantially all of his or her employed time to the Project, the salaries, wages, benefits and other compensation of such person shall be prorated to reflect time spent on matters related to operating, managing, maintaining or repairing the Project in comparison to the time spent on matters unrelated to operating, managing, maintaining or repairing the Project;

(j) costs incurred for off-site offices or facilities maintained in connection with the management, operation, engineering, Utility and/or security services provided to the Project and other properties owned by Landlord or affiliates of Landlord, in excess of the Project's share of such costs as proportionately allocated among the Project and such other properties owned by Landlord or affiliates of Landlord;

(k) general organizational, administrative and overhead costs relating to maintaining Landlord's existence, either as a corporation, partnership, or other entity, including general corporate, legal and accounting expenses;

(l) costs (including attorneys' fees and costs of settlement, judgments and payments in lieu thereof) incurred in connection with disputes with tenants, other occupants, or prospective tenants, and costs and expenses, including legal fees, incurred in connection with negotiations or disputes with employees, consultants, management agents, leasing agents, purchasers or mortgagees of the Building;

(m) costs incurred by Landlord due to the violation by Landlord, its employees, agents or contractors or any tenant of the terms and conditions of any lease of space in the Project or any Legal Requirement (as defined in Section 7);

(n) penalties, fines or interest incurred as a result of Landlord's inability or failure to make payment of Taxes and/or to file any tax or informational returns when due, or from Landlord's failure to make any payment of Taxes required to be made by Landlord hereunder before delinquency;

(o) overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in or to the Project to the extent the same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis;

(p) costs of Landlord's charitable or political contributions, or of fine art maintained at the Project;

(q) costs in connection with services (including electricity), items or other benefits of a type which are not standard for the Project and which are not available to Tenant without specific charges therefor, but which are provided to another tenant or occupant of the Project, whether or not such other tenant or occupant is specifically charged therefor by Landlord;

(r) costs incurred in the sale or refinancing of the Project;

(s) net income taxes of Landlord or the owner of any interest in the Project (except to the extent such net income taxes are in substitution for any Taxes payable hereunder), franchise, capital stock,

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gift, estate or inheritance taxes or any federal, state or local documentary taxes imposed against the Project or any portion thereof or interest therein;

(t) any reserves (other than reserves for Taxes for the then-current year);

(u) any costs incurred to remove, study, test or remediate, or otherwise related to the presence of Hazardous Materials in or about the Building or the Project for which Tenant is not responsible under this Lease;

(v) costs incurred to repair and/or maintain buildings (including, without limitation, building systems located therein) located in the Project other than the Building, except to the extent such building contains Project Amenities;

(w) any expenses otherwise includable within Operating Expenses to the extent actually reimbursed by persons other than tenants of the Project under leases for space in the Project.

In addition, notwithstanding anything to the contrary contained in this Lease, Operating Expenses incurred or accrued by Landlord with respect to any capital improvements that are reasonably expected by Landlord to reduce overall Operating Expenses (for example, without limitation, by reducing energy usage at the Project) (the "**Energy Savings Costs**") shall be amortized over a period of years equal to the least of (A) the useful life of such capital items, and (B) the quotient of (i) the Energy Savings Costs, divided by (ii) the annual amount of Operating Expenses reasonably expected by Landlord to be saved as a result of such capital improvements.

Within 90 days after the end of each calendar year (or such longer period as may be reasonably required), Landlord shall furnish to Tenant a statement (an "**Annual Statement**") showing in reasonable detail: (a) the total and Tenant's Share of actual Operating Expenses for the previous calendar year, and (b) the total of Tenant's payments in respect of Operating Expenses for such year. If Tenant's Share of actual Operating Expenses for such year exceeds Tenant's payments of Operating Expenses for such year, the excess shall be due and payable by Tenant as Rent within 30 days after delivery of such Annual Statement to Tenant. If Tenant's payments of Operating Expenses for such year exceed Tenant's Share of actual Operating Expenses for such year Landlord shall pay the excess to Tenant within 30 days after delivery of such Annual Statement, except that after the expiration, or earlier termination of the Term or if Tenant is delinquent in its obligation to pay Rent, Landlord shall pay the excess to Tenant after deducting all other amounts due Landlord. Landlord's and Tenant's obligations to pay any overpayments or deficiencies due pursuant to this paragraph shall survive the expiration or earlier termination of this Lease.

The Annual Statement shall be final and binding upon Tenant unless Tenant, within 90 days after Tenant's receipt thereof, shall contest any item therein by giving written notice to Landlord, specifying each item contested and the reason therefor. If, during such 90 day period, Tenant reasonably and in good faith questions or contests the accuracy of Landlord's statement of Tenant's Share of Operating Expenses, Landlord will provide Tenant with access to Landlord's books and records relating to the operation of the Project and such information as Landlord reasonably determines to be responsive to Tenant's questions (the "**Expense Information**"). If after Tenant's review of such Expense Information, Landlord and Tenant cannot agree upon the amount of Tenant's Share of Operating Expenses, then Tenant shall have the right to have an independent regionally or nationally recognized public accounting firm selected by Tenant and approved by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed), working pursuant to a fee arrangement other than a contingent fee (at Tenant's sole cost and expense except as expressly provided below), audit and/or review the Expense Information for the year in question (the "**Independent Review**"). The results of any such Independent Review shall be binding on Landlord and Tenant. If the Independent Review shows that the payments actually made by Tenant with respect to Operating Expenses for the calendar year in question exceeded Tenant's Share of Operating Expenses for such calendar year, Landlord shall at Landlord's option either (i) credit the excess amount to the next succeeding installments of estimated Operating Expenses or (ii) pay the excess to Tenant within 30 days after delivery of such statement, except that after the expiration or earlier termination of this Lease or if Tenant is delinquent in its obligation to pay Rent, Landlord shall pay the excess to Tenant after deducting

all other amounts due Landlord. If the Independent Review shows that Tenant's payments with respect to Operating Expenses for such calendar year were less than Tenant's Share of Operating Expenses for the calendar year, Tenant shall pay the deficiency to Landlord within 30 days after delivery of such statement. If the Independent Review shows that Tenant has overpaid with respect to Operating Expenses by more than 5% then Landlord shall reimburse Tenant for all costs incurred by Tenant for the Independent Review. Operating Expenses for the calendar years in which Tenant's obligation to share therein begins and ends shall be prorated. Notwithstanding anything set forth herein to the contrary, if the Building is not at least 95% occupied on average during any year of the Term, Tenant's Share of Operating Expenses for such year shall be computed as though the Building had been 95% occupied on average during such year.

"**Tenant's Share**" shall be the percentage set forth on the first page of this Lease as Tenant's Share as reasonably adjusted by Landlord for changes in the physical size of the Premises or the Project occurring thereafter. Landlord may equitably increase Tenant's Share for any item of expense or cost reimbursable by Tenant that relates to a repair, replacement, or service that benefits only the Premises or only a portion of the Project that includes the Premises or that varies with occupancy or use. Base Rent, Tenant's Share of Operating Expenses and all other amounts payable by Tenant to Landlord hereunder are collectively referred to herein as "**Rent**."

6. **Security Deposit.** Tenant shall deposit with Landlord, upon delivery of an executed copy of this Lease to Landlord, a security deposit (the "**Security Deposit**") for the performance of all of Tenant's obligations hereunder in the amount set forth in the Basic Lease Provisions, which Security Deposit shall be in the form of cash. The Security Deposit shall be held by Landlord as security for the performance of Tenant's obligations under this Lease. Upon each occurrence of a Default (as defined in Section 20), Landlord may use all or any part of the Security Deposit to pay delinquent payments due under this Lease, future rent damages under California Civil Code Section 1951.2, and the cost of any damage, injury, expense or liability caused by such Default, without prejudice to any other remedy provided herein or provided by law. Landlord's right to use the Security Deposit under this Section 6 includes the right to use the Security Deposit to pay future rent damages following the termination of this Lease pursuant to Section 21(c) below. Upon any use of all or any portion of the Security Deposit, Tenant shall pay Landlord within 5 days of written demand the amount that will restore the Security Deposit to the amount set forth in the Basic Lease Provisions. Tenant hereby waives the provisions of any law, now or hereafter in force, including, without limitation, California Civil Code Section 1950.7, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any officer, employee, agent or invitee of Tenant. Upon bankruptcy or other debtor-creditor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for periods prior to the filing of such proceedings. If Tenant shall fully perform every provision of this Lease to be performed by Tenant, the Security Deposit, or any balance thereof (i.e., after deducting therefrom all amounts to which Landlord is entitled under the provisions of this Lease), shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within 90 days after the expiration or earlier termination of this Lease.

If Landlord transfers its interest in the Project or this Lease, Landlord shall either (a) transfer any Security Deposit then held by Landlord to a person or entity assuming Landlord's obligations under this Section 6, or (b) return to Tenant any Security Deposit then held by Landlord and remaining after the deductions permitted herein. Upon such transfer to such transferee or the return of the Security Deposit to Tenant, Landlord shall have no further obligation with respect to the Security Deposit, and Tenant's right to the return of the Security Deposit shall apply solely against Landlord's transferee. The Security Deposit is not an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Landlord's obligation respecting the Security Deposit is that of a debtor, not a trustee, and no interest shall accrue thereon.

7. **Use.**

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(a) **Generally.** The Premises shall be used solely for the Permitted Use set forth in the Basic Lease Provisions, and in compliance with all laws, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises, and to the use and occupancy thereof, including, without limitation, the Americans With Disabilities Act, 42

U.S.C. § 12101, et seq. (together with the regulations promulgated pursuant thereto, "ADA") (collectively, "**Legal Requirements**") and each, a "**Legal Requirement**"). Tenant shall, upon 5 business days' written notice from Landlord, discontinue any use of the Premises that is declared by any Governmental Authority (as defined in Section 9) having jurisdiction to be a violation of a Legal Requirement. Tenant will not use or permit the Premises to be used for any purpose or in any manner that would void Tenant's or Landlord's insurance, increase the insurance risk, or cause the disallowance of any sprinkler or other credits. Tenant shall not permit any part of the Premises to be used as a "place of public accommodation", as defined in the ADA or any similar legal requirement. Tenant shall reimburse Landlord promptly upon demand for any additional premium charged for any such insurance policy by reason of Tenant's failure to comply with the provisions of this Section or otherwise caused by Tenant's use and/or occupancy of the Premises. Tenant will use the Premises in a careful, safe and proper manner and will not commit or permit waste, overload the floor or structure of the Premises, subject the Premises to use that would damage the Premises or obstruct or interfere with the rights of Landlord or other tenants or occupants of the Project, including conducting or giving notice of any auction, liquidation, or going out of business sale on the Premises, or using or allowing the Premises to be used for any unlawful purpose. Tenant shall cause any equipment or machinery to be installed in the Premises so as to reasonably prevent sounds or vibrations from the Premises from extending into Common Areas, or other space in the Project. Tenant shall not place any machinery or equipment which would overload the floor in or upon the Premises or transport or move such items through the Common Areas of the Project or in the Project elevators without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall not, without the prior written consent of Landlord, use the Premises in any manner that will require ventilation, air exchange, heating, gas, steam, electricity or water beyond the existing capacity of the Project as proportionately allocated to the Premises based upon Tenant's Share as usually furnished for the Permitted Use.

(b) **Compliance.** Landlord shall, at Landlord's sole cost, be responsible for the compliance of the Premises and the Common Area of the Project with Legal Requirements as of the Commencement Date. Commencing on the Commencement Date, Landlord shall, as an Operating Expense (to the extent such Legal Requirement is generally applicable to similar buildings in the area in which the Project is located) or at Tenant's expense (to the extent such Legal Requirement is triggered by reason of Tenant's, as compared to other tenants of the Project, particular use of the Premises or Tenant's Alterations) make any alterations or modifications to the Common Areas or the exterior of the Building that are required by Legal Requirements. Tenant, at its sole expense, shall make any alterations or modifications to the interior of the Premises that are required by Legal Requirements (including, without limitation, compliance of the Premises with the ADA) related to Tenant's particular use or occupancy of the Premises. Notwithstanding any other provision herein to the contrary, Tenant shall be responsible for any and all Claims (as defined in Section 16) arising out of or in connection with Legal Requirements related to Tenant's particular use of the Premises or Tenant's Alterations, and Tenant shall indemnify, defend, hold and save Landlord harmless from and against any and all Claims arising out of or in connection with any failure of the Premises to comply with any Legal Requirement related to Tenant's particular use or occupancy of the Premises or Tenant's Alterations.

(c) **Sustainability.** Tenant acknowledges that Landlord may, but shall not be obligated to, seek to obtain Leadership in Energy and Environmental Design (LEED), WELL Building Standard, or other similar "green" certification with respect to the Project and/or the Premises, and Tenant agrees to reasonably cooperate with Landlord, and to provide such information and/or documentation as Landlord may reasonably request, in connection therewith.

8. **Holding Over.** If, with Landlord's express written consent, Tenant retains possession of the Premises after the termination of the Term, (i) unless otherwise agreed in such written consent, such possession shall be subject to immediate termination by Landlord at any time, (ii) all of the other terms and provisions of this Lease (including, without limitation, the adjustment of Base Rent pursuant to Section 4

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hereof) shall remain in full force and effect (excluding any expansion or renewal option or other similar right or option) during such holdover period, (iii) Tenant shall continue to pay Base Rent in the amount payable upon the date of the expiration or earlier termination of this Lease or such other amount as may be agreed upon by Landlord and Tenant in such written consent, and (iv) all other payments shall continue under the terms of this Lease. If Tenant remains in possession of the Premises after the expiration or earlier termination of the Term without the express written consent of Landlord, (A) Tenant shall become a tenant at sufferance upon the terms of this Lease except that the monthly rental shall be equal to 150% of Base Rent in effect during the last 30 days of the Term and 100% of Operating Expenses and other amounts due under the Lease, and (B) Tenant shall be responsible for all damages suffered by Landlord resulting from or occasioned by Tenant's holding over, including consequential damages. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Section 8 shall not be construed as consent for Tenant to retain possession of the Premises. Acceptance by Landlord of Rent after the expiration of the Term or earlier termination of this Lease shall not result in a renewal or reinstatement of this Lease.

9. **Taxes.** Landlord shall pay, as part of Operating Expenses, all taxes, levies, fees, assessments and governmental charges of any kind, existing as of the Commencement Date or thereafter enacted (collectively referred to as "**Taxes**"), imposed by any federal, state, regional, municipal, local or other governmental authority or agency, including, without limitation, quasi-public agencies (collectively, "**Governmental Authority**") during the Term, including, without limitation, all Taxes: (i) imposed on or measured by or based, in whole or in part, on rent payable to (or gross receipts received by) Landlord under this Lease and/or from the rental by Landlord of the Project or any portion thereof, or (ii) based on the square footage, assessed value or other measure or evaluation of any kind of the Premises or the Project, or (iii) assessed or imposed by or on the operation or maintenance of any portion of the Premises or the Project, including parking, or (iv) assessed or imposed by, or at the direction of, or resulting from Legal Requirements, or interpretations thereof, promulgated by any Governmental Authority, or (v) imposed as a license or other fee, charge, tax, or assessment on Landlord's business or occupation of leasing space in the Project. Landlord may contest by appropriate legal proceedings the amount, validity, or application of any Taxes or liens securing Taxes. Notwithstanding anything to the contrary herein, Landlord shall only charge Tenant for assessments as if those assessments were paid by Landlord over the longest possible term which Landlord is permitted to pay for the applicable assessments without additional charge other than interest, if any, provided under the terms of the underlying assessments. Taxes shall not include any net income taxes imposed on Landlord except to the extent such net income taxes are in substitution for any Taxes payable hereunder. If any such Tax is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Tenant shall pay, prior to delinquency, any and all Taxes levied or assessed against any personal property or trade fixtures placed by Tenant in the Premises, whether levied or assessed against Landlord or Tenant. If any Taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property, or if the assessed valuation of the Project is increased by a value attributable to improvements in or alterations to the Premises, whether owned by Landlord or Tenant and regardless of whether affixed to the real property so as to become a part thereof, higher than the base valuation on which Landlord from time-to-time allocates Taxes to all tenants in the Project, Landlord shall have the right, but not the obligation, to pay such Taxes. Landlord's determination of any excess assessed valuation shall be binding and conclusive, absent manifest error. The amount of any such payment by Landlord shall constitute Additional Rent due from Tenant to Landlord immediately upon demand.

10. **Parking.** Subject to all applicable Legal Requirements, Force Majeure, a Taking (as defined in Section 19 below) and the exercise by Landlord of its rights hereunder, Tenant shall have the right, in common with other tenants of the Project pro rata in accordance with the rentable area of the Premises and the rentable areas of the Project occupied by such other tenants at no additional charge to Tenant during the Base Term, to park in those areas designated for non-reserved parking, subject in each case to Landlord's rules and regulations. Landlord may allocate parking spaces among Tenant and other tenants in the Project pro rata as described above if Landlord determines that such parking facilities are becoming crowded. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties, including other tenants of the Project.

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11. **Utilities, Services.**

(a) **Generally.** Landlord shall provide, subject to the terms of this Section 11, water, electricity, HVAC, light, power, sewer, and other utilities (including gas and fire sprinklers to the extent the Project is plumbed for such services), and with respect to the Common Areas only, refuse and trash collection and janitorial services (collectively, "**Utilities**"). Landlord shall pay, as Operating Expenses or subject to Tenant's reimbursement obligation, for all Utilities used on the Premises, all maintenance charges for Utilities, and any storm sewer charges or other similar charges for Utilities imposed by any Governmental Authority or Utility provider, and any taxes, penalties, surcharges or similar charges thereon. The Premises shall be separately check-metered to measure Tenant's usage of electricity. Tenant shall pay directly to the Utility provider, prior to delinquency, any separately metered Utilities and services (such as telephone and internet service) which may be furnished to Tenant or the Premises during the Term. Tenant shall pay, as part of Operating Expenses, its share of all charges for jointly metered Utilities based upon consumption, as reasonably determined by Landlord. No interruption or failure of Utilities from any cause whatsoever shall result in eviction or constructive eviction of Tenant, termination of this Lease or the abatement of Rent. Tenant agrees to limit use of water and sewer with respect to Common Areas to normal restroom use. Tenant shall be responsible for contracting directly with a vendor reasonably acceptable to Landlord and paying for its own janitorial services for the Premises.

Notwithstanding anything to the contrary set forth herein, if (i) a stoppage of a Utility Service (as defined below) to the Premises shall occur and such stoppage is due solely to the gross negligence or willful misconduct of Landlord and not due in any part to any act or omission on the part of Tenant or any Tenant Party or any matter beyond Landlord's reasonable control (any such stoppage of a Utility Service being hereinafter referred to as a "**Service Interruption**"), and (ii) such Service Interruption continues for more than 5 consecutive business days after Landlord shall have received written notice thereof from Tenant, and (iii) as a result of such Service Interruption, the conduct of Tenant's normal operations in the Premises are materially and adversely affected, then there shall be an abatement of one day's Base Rent for each day during which such Service Interruption continues after such 5 business day period; provided, however, that if any part of the Premises is reasonably useable for Tenant's normal business operations or if Tenant conducts all or any part of its operations in any portion of the Premises notwithstanding such Service Interruption, then the amount of each daily abatement of Base Rent shall only be proportionate to the nature and extent of the interruption of Tenant's normal operations or ability to use the Premises. The rights granted to Tenant under this paragraph shall be Tenant's sole and exclusive remedy resulting from a failure of Landlord to provide services, and Landlord shall not otherwise be liable for any loss or damage suffered or sustained by Tenant resulting from any failure or cessation of services. For purposes hereof, the term "**Utility Service**" shall mean the following services: HVAC service, water, sewer and electricity, but in each case only to the extent that Landlord has an obligation to provide same to Tenant under this Lease. The provisions of this paragraph shall only apply as long as the original Tenant is the tenant occupying the Premises under this Lease and shall not apply to any assignee or sublessee.

(b) **Energy Usage Data.** Tenant agrees to provide Landlord with access to Tenant's water and energy usage data on a monthly basis, either by providing Tenant's applicable utility login credentials to Landlord's designated online portal, or by another delivery method reasonably agreed to by Landlord and Tenant. The costs and expenses incurred by Landlord in connection with receiving and analyzing such water and energy usage data (including, without limitation, as may be required pursuant to applicable Legal Requirements) shall be included as part of Operating Expenses.

12. **Alterations and Tenant's Property.** Any alterations, additions, or improvements made to the Premises by or on behalf of Tenant, including additional locks or bolts of any kind or nature upon any doors or windows in the Premises, but excluding installation, removal or realignment of furniture systems (other than removal of furniture systems owned or paid for by Landlord) not involving any modifications to the structure or connections (other than by ordinary plugs or jacks) to Building Systems (as defined in Section 13) ("**Alterations**") shall be subject to Landlord's prior written consent, which may be given or withheld in Landlord's sole discretion if any such Alteration affects the Building structure or Building Systems and shall not be otherwise unreasonably withheld. Tenant may construct nonstructural, cosmetic Alterations in the Premises without Landlord's prior approval if the aggregate cost of all such work in any

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12 month period does not exceed \$50,000 (a "**Notice-Only Alteration**"), provided Tenant notifies Landlord in writing of such intended Notice-Only Alteration, and such notice shall be accompanied by plans, specifications, work contracts and such other information concerning the nature and cost of the Notice-Only Alteration as may be reasonably requested by Landlord, which notice and accompanying materials shall be delivered to Landlord not less than 10 business days in advance of any proposed construction. If Landlord approves any Alterations, Landlord may impose such conditions on Tenant in connection with the commencement, performance and completion of such Alterations as Landlord may deem appropriate in Landlord's sole and absolute discretion. Any request for approval shall be in writing, delivered not less than 15 business days in advance of any proposed construction, and accompanied by plans, specifications, bid proposals, work contracts and such other information concerning the nature and cost of the alterations as may be reasonably requested by Landlord, including the identities and mailing addresses of all persons performing work or supplying materials. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to ensure that such plans and specifications or construction comply with applicable Legal Requirements. Tenant shall cause, at its sole cost and expense, all Alterations to comply with insurance requirements and with Legal Requirements and shall implement at its sole cost and expense any alteration or modification required by Legal Requirements as a result of any Alterations. Tenant shall pay to Landlord, as Additional Rent, on demand, an amount equal to the reasonable third party out-of-pocket costs incurred by Landlord to review Tenant's plans with respect to each Alteration, not to exceed 3% of all charges incurred by Tenant or its contractors or agents in connection with such Alteration. Before Tenant begins any Alteration, Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall reimburse Landlord for, and indemnify and hold Landlord harmless from, any expense incurred by Landlord by reason of faulty work done by Tenant or its contractors, delays caused by such work, or inadequate cleanup.

For any Alteration exceeding \$100,000.00, at Landlord's request, Tenant shall furnish a lien and completion bond with respect to such Alteration, and for all Alterations, Tenant shall provide (and cause each contractor or subcontractor to provide) certificates of insurance for workers' compensation and other coverage in amounts and from an insurance company satisfactory to Landlord protecting Landlord against liability for personal injury or property damage during construction. Upon completion of any Alterations, Tenant shall deliver to Landlord: (i) sworn statements setting forth the names of all contractors and subcontractors who did the work and final lien waivers from all such contractors and subcontractors; and (x) "as built" plans for any such Alteration.

Except for Removable Installations (as hereinafter defined), all Installations (as hereinafter defined) shall be and shall remain the property of Landlord during the Term and following the expiration or earlier termination of the Term, shall not be removed by Tenant at any time during the Term, and shall remain upon and be surrendered with the Premises as a part thereof. Notwithstanding the foregoing, Landlord may, at the time its approval of any such Installation is requested, notify Tenant that Landlord requires that Tenant remove such Installation upon the expiration or earlier termination of the Term, in which event Tenant shall remove such Installation in accordance with the immediately succeeding sentence. Upon the expiration or earlier termination of the Term, Tenant shall remove (i) all wires, cables or similar equipment which Tenant has installed in the Premises or in the risers or plenums of the Building, (ii) any Installations for which Landlord has given Tenant notice of removal in accordance with the immediately preceding sentence, and (iii) all of Tenant's Property (as hereinafter defined), and Tenant shall restore and repair any damage caused by or occasioned as a result of such removal, including, without limitation, capping off all such connections behind the walls of the Premises and repairing any holes. During any restoration period beyond the expiration or earlier termination of the Term, Tenant shall pay Rent to Landlord as provided herein as if said space were otherwise occupied by Tenant. If Landlord is requested by Tenant or any lender, lessor or other person or entity claiming an interest in any of Tenant's Property to waive any lien Landlord may have against any of Tenant's Property, and Landlord consents to such waiver, then Landlord shall be entitled to reimbursement from Tenant for its actual, reasonable out-of-pocket costs incurred in connection with the preparation and negotiation of each such waiver of lien.

Notwithstanding anything to the contrary contained herein, Tenant shall not be required to remove or restore the Improvements at the expiration or earlier termination of the Term, nor shall Tenant have the

right to remove any of the Improvements at any time during the Term or upon the expiration or earlier termination of the Term.

For purposes of this Lease, (x) "**Removable Installations**" means any items listed on **Exhibit F** attached hereto and any items agreed by Landlord in writing to be included on **Exhibit F** in the future,

(y) "**Tenant's Property**" means Removable Installations and, other than Installations, any personal property or equipment of Tenant that may be removed without material damage to the Premises, and

(z) "**Installations**" means all property of any kind paid for by Landlord, all Alterations, all fixtures, and all partitions, hardware, built-in machinery, built-in casework and cabinets and other similar additions, equipment, property and improvements built into the Premises so as to become an integral part of the Premises, including, without limitation, built-in plumbing, electrical and mechanical equipment and systems, and any power generator and transfer switch.

13. **Landlord's Repairs.** Landlord, as an Operating Expense (except to the extent the cost thereof is excluded from Operating Expenses pursuant to Section 5 hereof), shall maintain (a) all of the structural (including the roof), exterior, parking and other Common Areas of the Project, and (b) all Building systems serving the Premises and Common Areas of the Project including, without limitation, HVAC, electrical, plumbing, fire sprinklers ("**Building Systems**") and (c) the roof, exterior walls and windows, and the structural portions of the Premises, in good repair, reasonable wear and tear and uninsured losses and damages caused by Tenant, or by any of Tenant's assignees, sublessees, licensees, agents, servants, employees, invitees and contractors (or any of Tenant's assignees, sublessees and/or licensees respective agents, servants, employees, invitees and contractors) (collectively, "**Tenant Parties**") excluded. Losses and damages caused by Tenant or any Tenant Party shall be repaired by Landlord, to the extent not covered by insurance, at Tenant's sole cost and expense. Landlord reserves the right to stop Building Systems services when necessary (i) by reason of accident or emergency, or (ii) for planned repairs, alterations or improvements, which are, in the judgment of Landlord, desirable or necessary to be made, until such repairs, alterations or improvements shall have been completed. Landlord shall have no responsibility or liability for failure to supply Building Systems services during any such period of interruption; provided, however, that Landlord shall, except in case of emergency, make a commercially reasonable effort to give Tenant 48 hours advance notice of any planned stoppage of Building Systems services for routine maintenance, repairs, alterations or improvements. Tenant shall promptly give Landlord written notice of any repair required by Landlord pursuant to this paragraph, after which Landlord shall make a commercially reasonable effort to effect such repair. Landlord shall not be liable for any failure to make any repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after Tenant's written notice of the need for such repairs or maintenance. Tenant waives its rights under any state or local law to terminate this Lease, except as otherwise expressly provided in Section 31 below, to make such repairs at Landlord's expense and agrees that the parties' respective rights with respect to such matters shall be solely as set forth herein. Repairs required as the result of fire, earthquake, flood, vandalism, war, or similar cause of damage or destruction shall be controlled by Section 18.

14. **Tenant's Repairs.** Subject to Section 13 hereof, Tenant, at its expense, shall repair, replace and maintain in good condition all portions of the Premises, including, without limitation, entries, doors, ceilings, non-structural components of windows, interior walls and the interior side of demising walls. Additionally, Tenant shall, at its expense, repair, replace and maintain in good condition any supplemental HVAC systems (if any) exclusively serving the Premises, which include, for the avoidance of doubt, repairs, replacements and maintenance of HVAC units serving Tenant's IT and server rooms and any units requiring 24/7 operation (the "**Tenant Maintenance Obligations**"). The Tenant Maintenance Obligations shall include the procurement and maintenance of contracts, in form and substance reasonably satisfactory to Landlord, with copies to Landlord upon Landlord's written request, for and with contractors reasonably acceptable to Landlord specializing and experienced in the repair and maintenance of the respective Tenant Maintenance Obligations. Notwithstanding anything to the contrary contained herein, the scope of work of any such contracts entered into by Tenant pursuant to this paragraph shall, at a minimum, comply with manufacturer's recommended maintenance procedures for the optimal performance of the applicable equipment. Should Tenant fail to make any such repair or replacement or fail to maintain the Premises, Landlord shall give Tenant notice of such failure. If Tenant fails to commence cure of such failure within 30 days of Landlord's notice, and thereafter diligently prosecute such cure to completion, Landlord may



perform such work and shall be reimbursed by Tenant within 30 days after demand therefor; provided, however, that if such failure by Tenant creates or could create an emergency, Landlord may immediately commence cure of such failure and shall thereafter be entitled to recover the costs of such cure from Tenant. Subject to Sections 17 and 18, Tenant shall bear the full uninsured cost of any repair or replacement to any part of the Project that results from damage caused by Tenant or any Tenant Party.

15. **Mechanic's Liens.** Tenant shall discharge, by bond or otherwise, any mechanic's lien filed against the Premises or against the Project for work claimed to have been done for, or materials claimed to have been furnished to, Tenant within 10 days after Tenant receives notice of the filing thereof, at Tenant's sole cost and shall otherwise keep the Premises and the Project free from any liens arising out of work performed, materials furnished or obligations incurred by Tenant. Should Tenant fail to discharge any lien described herein, Landlord shall have the right, but not the obligation, to pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title to the Project and the cost thereof shall be immediately due from Tenant as Additional Rent. If Tenant shall lease or finance the acquisition of office equipment, furnishings, or other personal property of a removable nature utilized by Tenant in the operation of Tenant's business, Tenant warrants that any Uniform Commercial Code Financing Statement filed as a matter of public record by any lessor or creditor of Tenant will upon its face or by exhibit thereto indicate that such Financing Statement is applicable only to removable personal property of Tenant located within the Premises. In no event shall the address of the Project be furnished on the statement without qualifying language as to applicability of the lien only to removable personal property, located in an identified suite held by Tenant.

16. **Indemnification.** Tenant hereby indemnifies and agrees to defend, save and hold Landlord, its officers, directors, employees, managers, agents, sub-agents, constituent entities and lease signators (collectively, "**Landlord Indemnified Parties**") harmless from and against any and all demands, claims, liabilities, losses, costs, expenses, actions, causes of action, damages or judgments, and all reasonable expenses incurred in investigating or resisting the same (including, without limitation, reasonable attorneys' fees, charges and disbursements and costs of suit) (collectively, "**Claims**") for injury or death to persons or damage to property occurring within or about the Premises or the Project arising directly or indirectly out of use or occupancy of the Premises or the Project by Tenant or any Tenant Parties (including, without limitation, any act, omission or neglect by Tenant or any Tenant's Parties in or about the Premises or at the Project) or a breach or default by Tenant in the performance of any of its obligations hereunder, except to the extent caused by the willful misconduct or negligence of Landlord Indemnified Parties. Landlord shall not be liable to Tenant for, and Tenant assumes all risk of damage to, personal property (including, without limitation, loss of records kept within the Premises). Tenant further waives any and all Claims for injury to Tenant's business or loss of income relating to any such damage or destruction of personal property (including, without limitation, any loss of records). Landlord Indemnified Parties shall not be liable for any damages arising from any act, omission or neglect of any tenant in the Project or of any other third party or Tenant Parties.

17. **Insurance.** Landlord shall maintain all risk property and, if applicable, sprinkler damage insurance covering the full replacement cost of the Project. Landlord shall further procure and maintain commercial general liability insurance with a single loss limit of not less than \$2,000,000 for bodily injury and property damage with respect to the Project. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary, including, but not limited to, flood, environmental hazard and earthquake, loss or failure of building equipment, errors and omissions, rental loss during the period of repair or rebuilding, workers' compensation insurance and fidelity bonds for employees employed to perform services and insurance for any improvements installed by Tenant or that are in addition to the standard improvements customarily furnished by Landlord without regard to whether or not such are made a part of the Project. All such insurance shall be included as part of the Operating Expenses. The Project may be included in a blanket policy (in which case the cost of such insurance allocable to the Project will be determined by Landlord based upon the insurer's cost calculations).

Tenant, at its sole cost and expense, shall maintain during the Term: all risk property insurance with business interruption and extra expense coverage, covering the full replacement cost of all property and improvements installed or placed in the Premises by Tenant at Tenant's expense; workers'

compensation insurance with no less than the minimum limits required by law; employer's liability insurance with employers liability limits of \$1,000,000 bodily injury by accident – each accident, \$1,000,000 bodily injury by disease – policy limit, and \$1,000,000 bodily injury by disease – each employee; and commercial general liability insurance, with a minimum limit of not less than \$2,000,000 per occurrence for bodily injury and property damage with respect to the Premises. The commercial general liability insurance maintained by Tenant shall include Carlsbad1-Commerce Holding, LLC, Alexandria Real Estate Equities, Inc., and Landlord, its officers, directors, employees, managers, agents, sub-agents, constituent entities and lease signators (collectively, "**Landlord Insured Parties**"), as additional insureds; insure on an occurrence and not a claims-made basis; be issued by insurance companies which have a rating of not less than policyholder rating of A- and financial category rating of at least Class VII in "Best's Insurance Guide"; not contain a hostile fire exclusion; contain a contractual liability endorsement; and, with the exception of Workers' Compensation, provide primary coverage to Landlord Insured Parties (any policy issued to Landlord Insured Parties providing duplicate or similar coverage shall be deemed excess over Tenant's policies, regardless of limits). Tenant shall provide Landlord with 30 days advance written notice of cancellation of such commercial general liability policy. Certificates of insurance showing the limits of coverage required hereunder and showing the Landlord Insured Parties as an additional insureds, shall be delivered to Landlord by Tenant (i) concurrent with Tenant's delivery to Landlord of a copy of this Lease executed by Tenant, and (ii) prior to each renewal of said insurance. Tenant's policy may be a "blanket policy" with an aggregate per location endorsement which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy. Tenant shall furnish Landlord with renewal certificates on or prior to the expiration of such policies.

In each instance where insurance is to include Landlord as an additional insured, Tenant shall upon written request of Landlord also designate and furnish certificates so evidencing Landlord as additional insured to: (i) any lender of Landlord holding a security interest in the Project or any portion thereof, (ii) the landlord under any lease wherein Landlord is tenant of the real property on which the Project is located, if the interest of Landlord is or shall become that of a tenant under a ground or other underlying lease rather than that of a fee owner, and/or (iii) any management company retained by Landlord to manage the Project.

The property insurance obtained by Landlord and Tenant shall include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured, against Landlord or Tenant, and their respective officers, directors, employees, managers, agents, invitees and contractors ("**Related Parties**"), in connection with any loss or damage thereby insured against. Neither party nor its respective Related Parties shall be liable to the other for loss or damage caused by any risk insured against under property insurance required to be maintained hereunder, and each party waives any claims against the other party, and its respective Related Parties, for such loss or damage. The failure of a party to insure its property shall not void this waiver. Landlord and its respective Related Parties shall not be liable for, and Tenant hereby waives all claims against such parties for, business interruption and losses occasioned thereby sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises or the Project from any cause whatsoever. If the foregoing waivers shall contravene any law with respect to exculpatory agreements, the liability of Landlord or Tenant shall be deemed not released but shall be secondary to the other's insurer.

Landlord may require insurance policy limits to be raised to conform with requirements of Landlord's lender and/or to bring coverage limits to levels then being generally required of new tenants within the Project; provided, however, that the increased amount of coverage is consistent with coverage amounts then being required by institutional owners of similar projects with tenants occupying similar size premises in the geographical area in which the Project is located.

18. **Restoration.** If, at any time during the Term, the Project or the Premises are damaged or destroyed by a fire or other casualty, Landlord shall notify Tenant within 60 days after discovery of such damage as to the amount of time Landlord reasonably estimates it will take to restore the Project or the Premises, as applicable (the "**Restoration Period**"). If the Restoration Period is estimated to exceed 12 months (the "**Maximum Restoration Period**"), Landlord may, in such notice, elect to terminate this Lease as of the date that is 75 days after the date of discovery of such damage or destruction; provided, however, that notwithstanding Landlord's election to restore, Tenant may elect to terminate this Lease by written

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notice to Landlord delivered within 10 business days of receipt of a notice from Landlord estimating a Restoration Period for the Premises longer than the Maximum Restoration Period. Unless either Landlord or Tenant so elects to terminate this Lease, Landlord shall, subject to receipt of sufficient insurance proceeds (with any deductible to be treated as a current Operating Expense, except to the extent the cost thereof is excluded from Operating Expenses pursuant to Section 5 hereof), promptly restore the Premises (excluding the improvements installed by Tenant or by Landlord and paid for by Tenant), subject to delays arising from the collection of insurance proceeds or from Force Majeure events; provided, however, that if repair or restoration of the Premises is not substantially complete as of the end of the Maximum Restoration Period or, if longer, the Restoration Period, Landlord may, in its sole and absolute discretion, elect not to proceed with such repair and restoration, or Tenant may by written notice to Landlord delivered within 5 business days of the expiration of the Maximum Restoration Period or, if longer, the Restoration Period, elect to terminate this Lease, in which event Landlord shall be relieved of its obligation to make such repairs or restoration and this Lease shall terminate as of the date that is 75 days after the date of discovery of such damage or destruction, but Landlord shall retain any Rent paid and the right to any Rent payable by Tenant prior to such election by Landlord or Tenant.

Promptly following the date that Landlord makes the Premises available to Tenant for Tenant's repairs and/or restoration, Tenant shall, at Tenant's expense, promptly perform, subject to delays arising from the collection of insurance proceeds, from Force Majeure events, all repairs or restoration to any improvements installed by Tenant or by Landlord and paid for by Tenant. Notwithstanding the foregoing, either Landlord or Tenant may terminate this Lease upon written notice to the other if the Premises are damaged during the last year of the Term and Landlord reasonably estimates that it will take more than 2 months to repair such damage; provided, however, that such notice is delivered within 10 business days after the date that Landlord provides Tenant with written notice of the estimated Restoration Period. Notwithstanding anything to the contrary contained herein, Landlord shall also have the right to terminate this Lease if insurance proceeds are not available for such restoration. Rent shall be abated from the date of discovery of the damage or destruction until the Premises are repaired and restored, in the proportion that the area of the Premises, if any, that is not usable by Tenant bears to the total area of the Premises, unless Landlord provides Tenant with other space during the period of repair that is suitable for the temporary conduct of Tenant's business. Such abatement shall be the sole remedy of Tenant, and except as provided in this Section 18, Tenant waives any right to terminate this Lease by reason of damage or casualty loss.

The provisions of this Lease, including this Section 18, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, or any other portion of the Project, and any statute or regulation that is now or may hereafter be in effect shall have no application to this Lease or any damage or destruction to all or any part of the Premises or any other portion of the Project, the parties hereto expressly agreeing that this Section 18 sets forth their entire understanding and agreement with respect to such matters.

19. **Condemnation.** If the whole or any material part of the Premises or the Project is taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "**Taking**" or "**Taken**"), and the Taking would in Landlord's reasonable judgment, either prevent or materially interfere with Tenant's use of the Premises or materially interfere with or impair Landlord's ownership or operation of the Project, then upon written notice by Landlord, this Lease shall terminate and Rent shall be apportioned as of such date. If part of the Premises shall be Taken, and this Lease is not terminated as provided above, Landlord shall promptly restore the Premises and the Project as nearly as is commercially reasonable under the circumstances to their condition prior to such partial Taking and the rentable square footage of the Building, the rentable square footage of the Premises, Tenant's Share of Operating Expenses and the Rent payable hereunder during the unexpired Term shall be reduced to such extent as may be fair and reasonable under the circumstances. Upon any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord's award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant's trade fixtures,

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if a separate award for such items is made to Tenant. Tenant hereby waives any and all rights it might otherwise have pursuant to any provision of state law to terminate this Lease upon a partial Taking of the Premises or the Project.

20. **Events of Default.** Each of the following events shall be a default ("**Default**") by Tenant under this Lease:

(a) **Payment Defaults.** Tenant shall fail to pay any installment of Rent or any other payment hereunder when due; provided, however, that Landlord will give Tenant notice and an opportunity to cure any failure to pay Rent within 5 days of any such notice not more than once in any 12 month period and Tenant agrees that such notice shall be in lieu of and not in addition to, or shall be deemed to be, any notice required by law.

(b) **Insurance.** Any insurance required to be maintained by Tenant pursuant to this Lease shall be canceled or terminated or shall expire or shall be reduced or materially changed, or Landlord shall receive a notice of nonrenewal of any such insurance and Tenant shall fail to obtain replacement insurance at least 5 days before the expiration of the current coverage.

(c) **Abandonment.** Tenant shall abandon the Premises.

(d) **Improper Transfer.** Tenant shall assign, sublease or otherwise transfer or attempt to transfer all or any portion of Tenant's interest in this Lease or the Premises except as expressly permitted herein, or Tenant's interest in this Lease shall be attached, executed upon, or otherwise judicially seized and such action is not released within 90 days of the action.

(e) **Liens.** Tenant shall fail to discharge or otherwise obtain the release of any lien placed upon the Premises in violation of this Lease within 10 days after Tenant receives written notice that any such lien is filed against the Premises.

(f) **Insolvency Events.** Tenant or any guarantor or surety of Tenant's obligations hereunder shall: (A) make a general assignment for the benefit of creditors; (B) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "**Proceeding for Relief**"); (C) become the subject of any Proceeding for Relief that is not dismissed within 90 days of its filing or entry; or (D) die or suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity).

(g) **Estoppel Certificate or Subordination Agreement.** Tenant fails to execute any document required from Tenant under Sections 23 or 27 within 5 days after a second notice requesting such document (which second notice may in no event be delivered prior to the expiration of the time period provided in the applicable initial notice to Tenant requesting such documentation).

(h) **Financial Information.** Tenant fails to provide any financial information required to be delivered by Tenant to Landlord pursuant to Section 42(c) following written request from Landlord, within 5 days after a second notice requesting such financial information (which second notice may in no event be delivered prior to the expiration of the time period provided in the applicable initial notice to Tenant requesting such financial information).

(i) **Other Defaults.** Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Section 20, and, except as otherwise expressly provided herein, such failure shall continue for a period of 30 days after written notice thereof from Landlord to Tenant.

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Any notice given under Section 20(i) hereof shall: (i) specify the alleged default, (ii) demand that Tenant cure such default, (iii) be in lieu of, and not in addition to, or shall be deemed to be, any notice required under any provision of applicable law, and (iv) not be deemed a forfeiture or a termination of this Lease unless Landlord elects otherwise in such notice; provided that if the nature of Tenant's default pursuant to Section 20(i) is such that it cannot be cured by the payment of money and reasonably requires more than 30 days to cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said 30 day period and thereafter diligently prosecutes the same to completion; provided, however, that such cure shall be completed no later than 90 days from the date of Landlord's notice.

**21. Landlord's Remedies.**

(a) **Payment By Landlord; Interest.** Upon a Default by Tenant hereunder, Landlord may, without waiving or releasing any obligation of Tenant hereunder, make such payment or perform such act. All sums so paid or incurred by Landlord, together with interest thereon, from the date such sums were paid or incurred, at the annual rate equal to 12% per annum or the highest rate permitted by law (the "**Default Rate**"), whichever is less, shall be payable to Landlord on demand as Additional Rent. Nothing herein shall be construed to create or impose a duty on Landlord to mitigate any damages resulting from Tenant's Default hereunder.

(b) **Late Payment Rent.** Late payment by Tenant to Landlord of Rent and other sums due will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges that may be imposed on Landlord under any Mortgage covering the Premises. Therefore, if any installment of Rent due from Tenant is not received by Landlord within 5 business days after the date such payment is due, Tenant shall pay to Landlord an additional sum equal to 6% of the overdue Rent as a late charge. Notwithstanding the foregoing, before assessing a late charge the first time in any calendar year, Landlord shall provide Tenant written notice of the delinquency and will waive the right if Tenant pays such delinquency within 5 business days thereafter. The parties agree that this late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. In addition to the late charge, Rent not paid when due shall bear interest at the Default Rate from the 5th day after the date due until paid.

(c) **Remedies.** Upon the occurrence of a Default, Landlord, at its option, without further notice or demand to Tenant, shall have in addition to all other rights and remedies provided in this Lease, at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

(i) Terminate this Lease, or at Landlord's option, Tenant's right to possession only, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy that it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor;

(ii) Upon any termination of this Lease, whether pursuant to the foregoing Section 21(c)(i) or otherwise, Landlord may recover from Tenant the following:

(A) The worth at the time of award of any unpaid rent that has been earned at the time of such termination; plus

(B) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

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(C) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(D) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, specifically including, but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and

(E) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "**rent**" as used in this Section 21 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Sections 21(c)(ii)(A) and (B), above, the "**worth at the time of award**" shall be computed by allowing interest at the Default Rate. As used in Section 21(c)(ii)(C), above, the "**worth at the time of award**" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

(iii) Landlord may continue this Lease in effect after Tenant's Default and recover rent as it becomes due (Landlord and Tenant hereby agreeing that Tenant has the right to sublet or assign hereunder, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease following a Default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies hereunder, including the right to recover all Rent as it becomes due.

(iv) Whether or not Landlord elects to terminate this Lease following a Default by Tenant, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. Upon Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

(v) Independent of the exercise of any other remedy of Landlord hereunder or under applicable law, Landlord may conduct an environmental test of the Premises as generally described in Section 30(d) hereof, at Tenant's expense.

(d) **Effect of Exercise.** Exercise by Landlord of any remedies hereunder or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, it being understood that such surrender and/or termination can be effected only by the express written agreement of Landlord and Tenant. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same and shall not be deemed a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of Rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant waives the service of notice of Landlord's intention to re-enter, re-take or otherwise obtain possession of the Premises as provided in any statute, or to institute legal proceedings to that end, and also waives all right of redemption in case Tenant shall be

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dispossessed by a judgment or by warrant of any court or judge. Any reletting of the Premises or any portion thereof shall be on such terms and conditions as Landlord in its sole discretion may determine. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting or otherwise to mitigate any damages arising by reason of Tenant's Default.

22. **Assignment and Subletting.**

(a) **General Prohibition.** Without Landlord's prior written consent subject to and on the conditions described in this Section 22 (including, without limitation, Section 22(b) below), Tenant shall not, directly or indirectly, voluntarily or by operation of law, assign this Lease or sublease the Premises or any part thereof or mortgage, pledge, or hypothecate its leasehold interest or grant any concession or license within the Premises, and any attempt to do any of the foregoing shall be void and of no effect. If Tenant is a corporation, partnership or limited liability company, the shares or other ownership interests thereof that are not actively traded upon a stock exchange or in the over-the-counter market, a transfer or series of transfers whereby 50% or more of the issued and outstanding shares or other ownership interests of such corporation are, or voting control is, transferred (but excepting transfers upon deaths of individual owners) from a person or persons or entity or entities that were owners thereof at time of execution of this Lease to persons or entities who were not owners of shares or other ownership interests of the corporation, partnership or limited liability company at time of execution of this Lease, shall be deemed an assignment of this Lease requiring the consent of Landlord as provided in this Section 22.

(b) **Permitted Transfers.** If Tenant desires, following the Commencement Date, to assign, sublease, hypothecate or otherwise transfer this Lease or sublet the Premises other than pursuant to a Permitted Assignment (as defined below), then at least 15 business days, but not more than 120 days, before the date Tenant desires the assignment or sublease to be effective (the "**Assignment Date**"), Tenant shall give Landlord a notice (the "**Assignment Notice**") containing such information about the proposed assignee or sublessee, including the proposed use of the Premises and any Hazardous Materials proposed to be used, stored handled, treated, generated in or released or disposed of from the Premises, the Assignment Date, any relationship between Tenant and the proposed assignee or sublessee, and all material terms and conditions of the proposed assignment or sublease, including a copy of any proposed assignment or sublease in its final form, and such other information as Landlord may deem reasonably necessary or appropriate to its consideration whether to grant its consent. Landlord may, by giving written notice to Tenant within 15 business days after receipt of the Assignment Notice: (i) grant such consent (provided that Landlord shall further have the right to review and approve or disapprove the proposed form of sublease prior to the effective date of any such subletting), not to be unreasonably withheld, conditioned or delayed, (ii) refuse such consent, in its reasonable discretion; or (iii) in the event of an assignment or sublease that would result in more than 50% of the Premises being subleased for substantially the remainder of the Term, terminate this Lease with respect to the space described in the Assignment Notice as of the Assignment Date (an "**Assignment Termination**"). Among other reasons, it shall be reasonable for Landlord to withhold its consent in any of these instances: (1) the proposed assignee or subtenant is a governmental agency; (2) in Landlord's reasonable judgment, the use of the Premises by the proposed assignee or subtenant would entail any alterations that would lessen the value of the leasehold improvements in the Premises, or would require increased services by Landlord; (3) in Landlord's reasonable judgment, the proposed assignee or subtenant is engaged in areas of business that are controversial; (4) in Landlord's reasonable judgment, the proposed assignee or subtenant lacks the creditworthiness to support the financial obligations it will incur under the proposed assignment or sublease; (5) in Landlord's reasonable judgment, the character, reputation, or business of the proposed assignee or subtenant is inconsistent with the desired tenant-mix or the quality of other tenancies in the Project or is inconsistent with the type and quality of the nature of the Building; (6) Landlord has received from any prior landlord to the proposed assignee or subtenant a negative report concerning such prior landlord's experience with the proposed assignee or subtenant; (7) Landlord has experienced previous defaults by or is in litigation with the proposed assignee or subtenant; (8) the use of the Premises by the proposed assignee or subtenant will violate any applicable Legal Requirement; (9) intentionally deleted; or (10) the proposed assignee or subtenant is an entity with whom Landlord is then-currently negotiating to lease space in the Project. If Landlord delivers notice of its election to exercise an Assignment Termination, Tenant

shall have the right to withdraw such Assignment Notice by written notice to Landlord of such election within 5 business days after Landlord's notice electing to exercise the Assignment Termination. If Tenant withdraws such Assignment Notice, this Lease shall continue in full force and effect. If Tenant does not withdraw such Assignment Notice, this Lease, and the term and estate herein granted, shall terminate as of the Assignment Date with respect to the space described in such Assignment Notice. No failure of Landlord to exercise any such option to terminate this Lease, or to deliver a timely notice in response to the Assignment Notice, shall be deemed to be Landlord's consent to the proposed assignment, sublease or other transfer. Tenant shall pay to Landlord a fee equal to Two Thousand Five Hundred Dollars (\$2,500) in connection with its consideration of any Assignment Notice and/or its preparation or review of any consent documents. Notwithstanding the foregoing, Landlord's consent to an assignment of this Lease or a subletting of any portion of the Premises to any entity controlling, controlled by or under common control with Tenant (a "**Control Permitted Assignment**") shall not be required, provided that Tenant and any assignee or sublessee shall execute a reasonable form of acknowledgment of assignment or sublease, as applicable, acceptable to Landlord on or before the effective date of the Control Permitted Assignment.

In addition, Tenant shall have the right to assign this Lease, upon 30 days prior written notice to Landlord ((x) unless Tenant is prohibited from providing such notice by applicable Legal Requirements in which case Tenant shall notify Landlord promptly thereafter, and (y) if the transaction is subject to confidentiality requirements, Tenant's advance notification shall be subject to Landlord's execution of a non-disclosure agreement reasonably acceptable to Landlord and Tenant), but without obtaining Landlord's prior written consent, to a corporation or other entity which is a successor-in-interest to Tenant, by way of merger, consolidation or corporate reorganization, or by the purchase of all or substantially all of the assets or the ownership interests of Tenant provided that (i) such merger or consolidation, or such acquisition or assumption, as the case may be, is for a good business purpose and not principally for the purpose of transferring this Lease, and (ii) the net worth (as determined in accordance with generally accepted accounting principles ("**GAAP**") of the assignee (or, to the extent Tenant remains the tenant under this Lease following such Corporate Permitted Assignment, Tenant) is not less than the net worth (as determined in accordance with GAAP) of Tenant as of the date of Tenant's most current quarterly or annual financial statements, and (iii) if the then-current Tenant is not the surviving entity, then on or before the effective date of the Corporate Permitted Assignment (unless prohibited, in which case, then promptly following the effective date of the Corporate Permitted Assignment), Tenant and the assignee shall execute a reasonable form of acknowledgment of assignment acceptable to Landlord pursuant to which, among other things, such assignee shall agree to assume all of the terms, covenants and conditions of this Lease, and the assignee shall deliver a certificate of insurance to Landlord satisfying the Tenant's insurance requirements under Section 17 (a "**Corporate Permitted Assignment**"). Control Permitted Assignments and Corporate Permitted Assignments are hereinafter referred to as "**Permitted Assignments**."

(c) **Additional Conditions.** As a condition to any such assignment or subletting, whether or not Landlord's consent is required, Landlord may require that any assignee or subtenant agree, in writing at the time of such assignment or subletting, that if Landlord gives such party notice that Tenant is in default under this Lease, such party shall thereafter make all payments otherwise due Tenant directly to Landlord, which payments will be received by Landlord without any liability except to credit such payment against those due under this Lease, and any such third party shall agree to attorn to Landlord or its successors and assigns should this Lease be terminated for any reason; provided, however, in no event shall Landlord or its successors or assigns be obligated to accept such attornment; and

(d) **No Release of Tenant, Sharing of Excess Rents.** Notwithstanding any assignment or subletting, Tenant and any guarantor or surety of Tenant's obligations under this Lease shall at all times remain fully and primarily responsible and liable for the payment of Rent and for compliance with all of Tenant's other obligations under this Lease. If the rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefor or incident thereto in any form) exceeds the sum of the Base Rent and Operating Expenses payable under this Lease with respect to the applicable portion of the Premises (excluding however, any Rent payable under this Section) and actual and reasonable and customary brokerage fees, legal costs, market inducements, improvement allowances, and any design or construction fees (collectively, the "**Sublease/Assignment Costs**") directly related to and required pursuant to the terms of any such sublease

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or assignment (“**Excess Rents**”), then Tenant shall be bound and obligated to pay Landlord as Additional Rent hereunder 50% of such Excess Rent within 30 days following receipt thereof by Tenant. For the purpose of calculating Excess Rents, the Sublease Assignment Costs shall be amortized on a straight-lined basis over the term of the applicable sublease or assignment. If Tenant shall sublet the Premises or any part thereof, Tenant hereby immediately and irrevocably assigns to Landlord, as security for Tenant’s obligations under this Lease, all rent from any such subletting, and Landlord or a receiver for Tenant appointed on Landlord’s application, may collect such rent and apply it toward Tenant’s obligations under this Lease; except that, until the occurrence of a Default, Tenant shall have the right to collect such rent.

(e) **No Waiver.** The consent by Landlord to an assignment or subletting shall not relieve Tenant or any assignees of this Lease or any sublessees of the Premises from obtaining the consent of Landlord to any further assignment or subletting nor shall it release Tenant or any assignee or sublessee of Tenant from full and primary liability under this Lease. The acceptance of Rent hereunder, or the acceptance of performance of any other term, covenant, or condition thereof, from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Lease or a consent to any subletting, assignment or other transfer of the Premises.

(f) **Prior Conduct of Proposed Transferee.** Notwithstanding any other provision of this Section 22, if (i) the proposed assignee or sublessee of Tenant has been required by any prior landlord, lender or Governmental Authority to take remedial action in connection with Hazardous Materials contaminating a property, where the contamination resulted from such party’s action or use of the property in question, (ii) the proposed assignee or sublessee is subject to an enforcement order issued by any Governmental Authority in connection with the use, storage, handling, treatment, generation, release or disposal of Hazardous Materials (including, without limitation, any order related to the failure to make a required reporting to any Governmental Authority), or (iii) because of the existence of a pre-existing environmental condition in the vicinity of or underlying the Project, the risk that Landlord would be targeted as a responsible party in connection with the remediation of such pre-existing environmental condition would be materially increased or exacerbated by the proposed use of Hazardous Materials by such proposed assignee or sublessee, Landlord shall have the absolute right to refuse to consent to any assignment or subletting to any such party.

23. **Estoppel Certificate.** Tenant shall, within 10 business days of written notice from Landlord, execute, acknowledge and deliver a statement in writing in any form reasonably requested by a proposed lender or purchaser, (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any, (ii) acknowledging that, to Tenant’s knowledge, there are not any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (iii) setting forth such further information with respect to the status of this Lease or the Premises as may be requested thereon. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part. Tenant’s failure to deliver such statement within such time shall, at the option of Landlord, be conclusive upon Tenant that this Lease is in full force and effect and without modification except as may be represented by Landlord in any certificate prepared by Landlord and delivered to Tenant for execution.

24. **Quiet Enjoyment.** So long as Tenant is not in Default under this Lease, Tenant shall, subject to the terms of this Lease, at all times during the Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord.

25. **Prorations.** All prorations required or permitted to be made hereunder shall be made on the basis of a 360 day year and 30 day months.

26. **Rules and Regulations.** Tenant shall, at all times during the Term and any extension thereof, comply with all reasonable rules and regulations at any time or from time to time established by Landlord covering use of the Premises and the Project. Such rules and regulations may include, without limitation, rules and regulations which are intended to encourage social distancing, promote and protect

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health and physical well-being within the Building and the Project and/or intended to limit the spread of communicable diseases and/or viruses of any kind or nature that are more virulent than the seasonal flu (collectively, "**Infectious Conditions**") The current rules and regulations are attached hereto as **Exhibit E**. If there is any conflict between such rules and regulations and other provisions of this Lease, the terms and provisions of this Lease shall control. Landlord shall not have any liability or obligation for the breach of any rules or regulations by other tenants in the Project and shall not enforce such rules and regulations in a discriminatory manner.

27. **Subordination.** This Lease and Tenant's interest and rights hereunder are hereby made and shall be subject and subordinate at all times to the lien of any Mortgage now existing or hereafter created on or against the Project or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, without the necessity of any further instrument or act on the part of Tenant; provided, however that so long as there is no Default hereunder, Tenant's right to possession of the Premises and rights under this Lease shall not be disturbed by the Holder of any such Mortgage. Tenant agrees, at the election of the Holder of any such Mortgage, to attorn to any such Holder. Tenant agrees upon demand to execute, acknowledge and deliver such instruments, confirming such subordination, and such instruments of attornment as shall be requested by any such Holder, provided any such instruments contain appropriate non-disturbance provisions assuring Tenant's quiet enjoyment of the Premises as set forth in Section 24 hereof. Notwithstanding the foregoing, any such Holder may at any time subordinate its Mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution, delivery or recording and in that event such Holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such Mortgage and had been assigned to such Holder. The term "**Mortgage**" whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the "**Holder**" of a Mortgage shall be deemed to include the beneficiary under a deed of trust.

As of the date of this Lease, there is no existing Mortgage encumbering the Project. Upon written request from Tenant, Landlord agrees to use reasonable efforts to cause the Holder of any future Mortgage to enter into a subordination, non-disturbance and attornment agreement ("**SNDA**") with Tenant with respect to this Lease. The SNDA shall be on the form reasonably proscribed by the Holder and, if Tenant requests such SNDA, Tenant shall pay the Holder's fees and costs in connection with obtaining such SNDA; provided, however, that Landlord shall request that Holder make any changes to the SNDA requested by Tenant. Landlord's failure to cause the Holder to enter into the SNDA with Tenant (or make any of the changes requested by Tenant) despite such efforts shall not be a default by Landlord under this Lease.

28. **Surrender.** Upon the expiration of the Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received, subject to any Alterations or Installations permitted by Landlord or required under the Lease, to remain in the Premises, free of Hazardous Materials brought upon, kept, used, stored, handled, treated, generated in, or released or disposed of from, the Premises by Tenant or any Tenant Parties, broom clean, ordinary wear and tear and casualty loss and condemnation covered by Sections 18 and 19 excepted.

Upon the expiration or earlier termination of the Term, Tenant shall immediately return to Landlord all keys and/or access cards to parking, the Project, restrooms or all or any portion of the Premises furnished to or otherwise procured by Tenant. If any such access card or key is lost, Tenant shall pay to Landlord, at Landlord's election, either the cost of replacing such lost access card or key or the cost of reprogramming the access security system in which such access card was used or changing the lock or locks opened by such lost key. Any Tenant's Property, Alterations and property not so removed by Tenant as permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and/or disposition of such property. All obligations of Tenant hereunder not fully performed as of the termination of the Term, including the obligations of Tenant under Section 30 hereof, shall survive the expiration or earlier termination of the Term, including, without limitation, indemnity

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obligations, payment obligations with respect to Rent and obligations concerning the condition and repair of the Premises.

29. **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW, TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.

30. **Environmental Requirements.**

(a) **Prohibition/Compliance.** Except for Hazardous Material contained in products customarily used by tenants in de minimis quantities for ordinary cleaning and office purposes, Tenant shall not permit or cause any party to bring any Hazardous Material upon the Premises or the Project or use, store, handle, treat, generate, manufacture, transport, release or dispose of any Hazardous Material in, on or from the Premises or the Project without Landlord's prior written consent which may be withheld in Landlord's sole discretion. Tenant, at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Requirements and shall remove or remediate in a manner satisfactory to Landlord any Hazardous Materials released on or from the Project by Tenant or any Tenant Party. Tenant shall complete and certify disclosure statements as requested by Landlord from time to time relating to Tenant's use, storage, handling, treatment, generation, manufacture, transportation, release or disposal of Hazardous Materials on or from the Premises. The term "**Environmental Requirements**" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any Governmental Authority regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the Project, or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "**Hazardous Materials**" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, or regulated by reason of its impact or potential impact on humans, animals and/or the environment under any Environmental Requirements, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). As defined in Environmental Requirements, Tenant is and shall be deemed to be the "**operator**" of Tenant's "**facility**" and the "**owner**" of all Hazardous Materials brought on the Premises by Tenant or any Tenant Party, and the wastes, by-products, or residues generated, resulting, or produced therefrom. Notwithstanding anything to the contrary contained in this Section 30, Tenant shall not be responsible for, and the indemnification and hold harmless obligations set forth in this paragraph shall not apply to (i) contamination in the Premises which Tenant can reasonably prove existed in the Premises prior to the Commencement Date, (ii) the presence of any Hazardous Materials in the Premises which Tenant can reasonably prove migrated from outside the Premises into the Premises, or (iii) contamination caused by Landlord or any Landlord's employees, agents and contractors, except to the extent in any case, the presence of such Hazardous Materials (x) is the result of a breach by Tenant of any of its obligations under this Lease, or (y) was caused, contributed to or exacerbated by Tenant or any Tenant Party.

(b) **Indemnity.** Tenant hereby indemnifies and shall defend and hold Landlord, its officers, directors, employees, agents and contractors harmless from any and all actions (including, without limitation, remedial or enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising out of or resulting therefrom), costs, claims, damages (including, without limitation, punitive damages and damages based upon diminution in value of the Premises or the Project, or the loss of, or restriction on, use of the Premises or any portion of the Project), expenses (including, without limitation, attorneys', consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions), fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief (whether or not based upon personal injury, property damage, or contamination of, or adverse effects upon, the environment, water tables or natural resources), liabilities or losses which arise during or after the Term as a result of Hazardous Materials brought upon, kept, used, stored, handled, treated, generated

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in, or released or disposed of from, the Premises by Tenant or any Tenant Parties. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local Governmental Authority because of Hazardous Materials present in the air, soil or ground water above, on, or under the Premises brought upon, kept, used, stored, handled, treated, generated in, or released or disposed of from, the Premises by Tenant or any Tenant Parties. Without limiting the foregoing, if the presence of any Hazardous Materials on the Premises, the Building, the Project or any adjacent property caused or permitted by Tenant or any Tenant Party results in any contamination of the Premises, the Building, the Project or any adjacent property, Tenant shall promptly take all actions at its sole expense and in accordance with applicable law as are necessary to return the Premises, the Building, the Project or any adjacent property to the condition existing prior to the time of such contamination, provided that Landlord's approval of such action shall first be obtained, which approval shall not unreasonably be withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises, the Building or the Project.

(c) **Landlord's Tests.** Landlord shall have access to, and a right to perform inspections and tests of, the Premises to determine Tenant's compliance with Environmental Requirements, its obligations under this Section 30, or the environmental condition of the Premises or the Project. In connection with such testing, upon the request of Landlord, Tenant shall deliver to Landlord or its consultant such non-proprietary information concerning the use of Hazardous Materials in or about the Premises by Tenant or any Tenant Party. Access shall be granted to Landlord upon Landlord's prior notice to Tenant and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Requirement with respect to Tenant's use, storage, handling, treatment, generation, manufacture, transportation, release or disposal of Hazardous Materials on or from the Premises, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests. Tenant shall, at its sole cost and expense, promptly and satisfactorily remediate any environmental conditions resulting from Hazardous Materials brought upon, kept, used, stored, handled, treated, generated in, or released or disposed of on or from the Premises by Tenant or any Tenant Parties identified by such testing in accordance with all Environmental Requirements. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord may have against Tenant.

(d) **Tenant's Obligations.** Tenant's obligations under this Section 30 shall survive the expiration or earlier termination of this Lease. During any period of time after the expiration or earlier termination of this Lease required by Tenant or Landlord to complete the removal from the Premises of any Hazardous Materials brought upon, kept, used, stored handled, treated, generated in, or released or disposed of from, the Premises by Tenant or any Tenant Parties, Tenant shall continue to pay the full Rent in accordance with this Lease for any portion of the Premises not relet by Landlord in Landlord's sole discretion, which Rent shall be prorated daily.

31. **Tenant's Remedies/Limitation of Liability.** Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within 30 days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of 30 days, then after such period of time as is reasonably necessary). Upon any default by Landlord, Tenant shall give notice by registered or certified mail to any Holder of a Mortgage covering the Premises and to any landlord of any lease of property in or on which the Premises are located and Tenant shall offer such Holder and/or landlord a reasonable opportunity to cure the default, including time to obtain possession of the Project by power of sale or a judicial action if such should prove necessary to effect a cure; provided Landlord shall have furnished to Tenant in writing the names and addresses of all such persons who are to receive such notices. All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder.

All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The term "**Landlord**" in this Lease shall mean only the

owner for the time being of the Premises. Upon the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Term upon each new owner for the duration of such owner's ownership.

32. **Inspection and Access.** Landlord and its agents, representatives, and contractors may enter the Premises at any reasonable time to inspect the Premises and to make such repairs as may be required or permitted pursuant to this Lease and for any other business purpose. Landlord and Landlord's representatives may enter the Premises during business hours on not less than 48 hours advance written notice (except in the case of emergencies in which case no such notice shall be required and such entry may be at any time) for the purpose of effecting any such repairs, inspecting the Premises, showing the Premises to prospective purchasers and, during the last 15 months of the Term, to prospective tenants or for any other business purpose. Landlord shall use reasonable efforts to minimize interference with Tenant's operations in the Premises during any entry into the Premises by Landlord pursuant to this Section 32. Landlord may erect a suitable sign on the Premises stating the Premises are available to let or that the Project is available for sale. Landlord may grant easements, make public dedications, designate Common Areas and create restrictions on or about the Premises, provided that no such easement, dedication, designation or restriction materially, adversely affects Tenant's use or occupancy of the Premises for the Permitted Use. Subject to the immediately preceding sentence, at Landlord's request, Tenant shall execute such commercially reasonable instruments as may be necessary for such easements, dedications or restrictions. Tenant shall at all times, except in the case of emergencies, have the right to escort Landlord or its agents, representatives, contractors or guests while the same are in the Premises, provided such escort does not materially and adversely affect Landlord's access rights hereunder. Landlord shall use reasonable efforts to comply with Tenant's reasonable security, confidentiality and safety requirements with respect to entering the Premises; provided, however, that Tenant has notified Landlord of such security, confidentiality and safety requirements reasonably prior to Landlord's entry into the Premises and provided further that in no event shall Tenant bar or prohibit access by Landlord or its employees, agents and contractors for the performance of the obligations of Landlord or the exercise of the rights of Landlord under this Lease.

33. **Security.** Tenant acknowledges and agrees that security devices and services, if any, while intended to deter crime may not in given instances prevent theft or other criminal acts and that Landlord is not providing any security services with respect to the Premises. Tenant agrees that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises. Tenant shall be solely responsible for the personal safety of Tenant's officers, employees, agents, contractors, guests and invitees while any such person is in, on or about the Premises and/or the Project. Tenant shall at Tenant's cost obtain insurance coverage to the extent Tenant desires protection against such criminal acts.

Subject to the terms of this Lease, including, without limitation, Tenant's compliance with Section 12, Tenant, at Tenant's sole cost and expense, shall have the right to install and maintain a Building access control system for the Premises or security system serving the Premises ("**Tenant's Security System**"), subject to the following conditions: (i) Tenant's plans and specifications for the proposed location of Tenant's Security System and Tenant's protocol for the operation of Tenant's Security System shall be subject to Landlord's prior written approval, which approval will not be unreasonably withheld, conditioned or delayed; provided, however, that Tenant shall coordinate the installation and operation of Tenant's Security System with Landlord to assure that Tenant's Security System shall be compatible with the Building's systems and equipment and Tenant does not violate the reasonable privacy rights of any other occupants of the Project; (ii) Landlord shall be provided codes and/or access cards, as applicable, and means of immediate access to fully exercise all of its entry rights under the Lease with respect to the Premises; and (iii) Tenant shall be solely responsible, at Tenant's sole cost and expense, for the monitoring, operation and removal of Tenant's Security System. Upon the expiration or earlier termination of this Lease, unless otherwise approved by Landlord, Tenant shall remove Tenant's Security System. All costs and expenses associated with the removal of Tenant's Security System and the repair of any damage to the

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Premises and the Building resulting from the installation and/or removal of same shall be borne solely by Tenant.

34. **Force Majeure.** Except for the payment of Rent, neither Landlord nor Tenant shall be held responsible or liable for delays in the performance of its obligations hereunder when caused by, related to, or arising out of acts of God, sinkholes or subsidence, strikes, lockouts, or other labor disputes, embargoes, quarantines, weather, national, regional, or local disasters, calamities, or catastrophes, inability to obtain labor or materials (or reasonable substitutes therefor) at reasonable costs or failure of, or inability to obtain, utilities necessary for performance, governmental restrictions, orders, limitations, regulations, or controls, national emergencies, local, regional or national epidemic or pandemic, delay in issuance or revocation of permits, enemy or hostile governmental action, terrorism, insurrection, riots, civil disturbance or commotion, cyberattacks, ransomware attacks and similar events, fire or other casualty, and other causes or events beyond their reasonable control ("**Force Majeure**").

35. **Brokers.** Landlord and Tenant each represents and warrants that it has not dealt with any broker, agent or other person (collectively, "**Broker**") in connection with this transaction and that no Broker brought about this transaction, other than CBRE and JLL. Landlord and Tenant each hereby agree to indemnify and hold the other harmless from and against any claims by any Broker, other than CBRE and JLL, claiming a commission or other form of compensation by virtue of having dealt with Tenant or Landlord, as applicable, with regard to this leasing transaction. Landlord shall be responsible for all commissions due to CBRE and JLL arising out of the execution of this Lease in accordance with the terms of a separate written agreement between CBRE and JLL, on the one hand, and Landlord, on the other hand.

36. **Limitation on Landlord's Liability.** NOTWITHSTANDING ANYTHING SET FORTH HEREIN OR IN ANY OTHER AGREEMENT BETWEEN LANDLORD AND TENANT TO THE CONTRARY:

(A) LANDLORD SHALL NOT BE LIABLE TO TENANT OR ANY OTHER PERSON FOR (AND TENANT AND EACH SUCH OTHER PERSON ASSUME ALL RISK OF) LOSS, DAMAGE OR INJURY, WHETHER ACTUAL OR CONSEQUENTIAL TO: TENANT'S PERSONAL PROPERTY OF EVERY KIND AND DESCRIPTION, INCLUDING, WITHOUT LIMITATION TRADE FIXTURES, EQUIPMENT, INVENTORY, AND/OR BUSINESS, ACCOUNTING AND OTHER RECORDS OF EVERY KIND AND DESCRIPTION KEPT AT THE PREMISES AND ANY AND ALL INCOME DERIVED OR DERIVABLE THEREFROM; (B) THERE SHALL BE NO PERSONAL RECOURSE TO LANDLORD FOR ANY ACT OR OCCURRENCE IN, ON OR ABOUT THE PREMISES OR ARISING IN ANY WAY UNDER THIS LEASE OR ANY OTHER AGREEMENT BETWEEN LANDLORD AND TENANT WITH RESPECT TO THE SUBJECT MATTER HEREOF AND ANY LIABILITY OF LANDLORD HEREUNDER SHALL BE STRICTLY LIMITED SOLELY TO LANDLORD'S INTEREST IN THE PROJECT OR ANY PROCEEDS FROM SALE OR CONDEMNATION THEREOF AND ANY INSURANCE PROCEEDS PAYABLE IN RESPECT OF LANDLORD'S INTEREST IN THE PROJECT OR IN CONNECTION WITH ANY SUCH LOSS; AND (C) IN NO EVENT SHALL ANY PERSONAL LIABILITY BE ASSERTED AGAINST LANDLORD IN CONNECTION WITH THIS LEASE NOR SHALL ANY RECOURSE BE HAD TO ANY OTHER PROPERTY OR ASSETS OF LANDLORD OR ANY OF LANDLORD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS. UNDER NO CIRCUMSTANCES SHALL LANDLORD OR ANY OF LANDLORD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS BE LIABLE FOR INJURY TO TENANT'S BUSINESS OR FOR ANY LOSS OF INCOME OR PROFIT THEREFROM.

Tenant acknowledges and agrees that measures and/or services implemented at the Project, if any, intended to encourage social distancing, promote and protect health and physical well-being and/or intended to limit the spread of Infectious Conditions, may not prevent the spread of such Infectious Conditions. Neither Landlord nor any Landlord Indemnified Parties shall have any liability and Tenant waives any claims against Landlord and the Landlord Indemnified Parties with respect to any loss, damage or injury in connection with (x) the implementation, or failure of Landlord or any Landlord Indemnified Parties to implement, any measures and/or services at the Project intended to encourage social distancing, promote and protect health and physical well-being and/or intended to limit the spread of Infectious Conditions, or (y) the failure of any measures and/or services implemented at the Project, if any, to limit the spread of any Infectious Conditions.

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37. **Severability.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in effect to such illegal, invalid or unenforceable clause or provision as shall be legal, valid and enforceable.

38. **Signs; Exterior Appearance.** Tenant shall not, without the prior written consent of Landlord, which may be granted or withheld in Landlord's sole discretion: (i) attach any awnings, exterior lights, decorations, balloons, flags, pennants, banners, painting or other projection to any outside wall of the Project, (ii) use any curtains, blinds, shades or screens other than Landlord's standard window coverings, (iii) coat or otherwise sunscreen the interior or exterior of any windows, (iv) place any bottles, parcels, or other articles on the window sills, (v) place any equipment, furniture or other items of personal property on any exterior balcony, or (vi) paint, affix or exhibit on any part of the Premises or the Project any signs, notices, window or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises. Suite entry signage shall be inscribed, painted or affixed for Tenant by Landlord at the sole cost and expense of Tenant, and shall be of a size, color and type acceptable to Landlord. Nothing may be placed on the exterior of corridor walls or corridor doors other than Landlord's standard lettering. Tenant shall be responsible, at Tenant's sole cost and expense, for the maintenance of Tenant's signage, for the removal of Tenant's signage at the expiration or earlier termination of this Lease and for the repair all damage resulting from such removal.

39. **Asbestos.**

(a) **Notification of Asbestos.** Landlord hereby notifies Tenant of the possible presence of asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs") within or about the Premises as set forth in **Exhibit G**.

(b) **Tenant Acknowledgement.** Tenant hereby acknowledges receipt of the notification in paragraph (a) of this Section 39 and understands that the purpose of such notification is to make Tenant and any agents, employees, and contractors of Tenant, aware of the possible presence of ACMs and/or PACMs within or about the Building in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs.

Tenant's Initials

(c) **Acknowledgement from Contractors/Employees.** Tenant shall give Landlord at least 14 days' prior written notice before conducting, authorizing or permitting any of the activities listed below within or about the Premises, and before soliciting bids from any person to perform such services. Such notice shall identify or describe the proposed scope, location, date and time of such activities and the name, address and telephone number of each person who may be conducting such activities. Thereafter, Tenant shall grant Landlord reasonable access to the Premises to determine whether any ACMs or PACMs will be disturbed in connection with such activities. Tenant shall not solicit bids from any person for the performance of such activities without Landlord's prior written approval. Upon Landlord's request, Tenant shall deliver to Landlord a copy of a signed acknowledgement from any contractor, agent, or employee of Tenant acknowledging receipt of information describing the presence of ACMs and/or PACMs within or about the Premises in the locations identified in **Exhibit G** prior to the commencement of such activities. Nothing in this Section 39 shall be deemed to expand Tenant's rights under this Lease or otherwise to conduct, authorize or permit any such activities.

(i) Removal of thermal system insulation ("TSI") and surfacing ACMs and PACMs (i.e., sprayed-on or troweled-on material, e.g., textured ceiling paint or fireproofing material);

(ii) Removal of ACMs or PACMs that are not TSI or surfacing ACMs or PACMs; or

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- (iii) Repair and maintenance of operations that are likely to disturb ACMs or PACMs.

40. **Tenant's Early Termination Right.** Tenant shall have the on-going right, subject to the provisions of this Section 40, to terminate this Lease ("**Termination Right**") effective on any date selected by Tenant occurring on or after the expiration of the 36<sup>th</sup> month after the Commencement Date ("**Early Termination Date**") so long as Tenant delivers to Landlord (a) a written notice ("**Termination Notice**") of its election to exercise such Termination Right no less than 12 months in advance of the Early Termination Date specified in such Termination Notice, and (b) concurrent with Tenant's delivery to Landlord of a Termination Notice, an early termination payment equal to the sum of the unamortized balance of the following costs as of the Early Termination Date (assuming straight line amortization at an interest rate of 8% over the Term of the Lease): (1) the cost of the Landlord Work, (2) the broker commissions paid by Landlord pursuant to this Lease, and (3) the Base Rent abated pursuant to Section 3(a) of this Lease (collectively, the "**Early Termination Payment**"). Upon Tenant's written request to Landlord not more than once per calendar year during the Term, Landlord shall notify Tenant of such costs identified in clauses (1) through (3) of the preceding sentence. If Tenant timely and properly exercises the Termination Right and delivers the Early Termination Payment, Tenant shall vacate the Premises and deliver possession thereof to Landlord in the condition required by the terms of this Lease on or before the Early Termination Date and Tenant shall have no further obligations under this Lease after the Early Termination Date except for those accruing prior to the Early Termination Date and those which, pursuant to the terms of this Lease, survive the expiration or early termination of this Lease. If Tenant does not exercise the Termination Right or deliver the Early Termination Payment, in each case as required pursuant to the terms and conditions of this Section 40, then Tenant shall be deemed to have waived its Termination Right and the provisions of this Section 40 shall have no further force or effect. Notwithstanding anything to the contrary contained herein, the Termination Right shall not be in effect and may not be exercised by Tenant during any period of time that Tenant is in Default under any provision of the Lease.

41. **Landlord's Early Termination Right.** Notwithstanding anything contained in this Lease to the contrary, Landlord shall have the on-going right, subject to the provisions of this Section 41, to terminate this Lease ("**Landlord Termination Right**") effective on any date selected by Landlord occurring on or after the expiration of the 36<sup>th</sup> month after the Commencement Date ("**Landlord Early Termination Date**") so long as (a) Landlord delivers to Tenant a written notice ("**Landlord Termination Notice**") of its election to exercise its Landlord Termination Right no less than 12 months in advance of the Landlord Early Termination Date specified in such Landlord Termination Notice. If Landlord exercises the Landlord Termination Right, Landlord shall pay a relocation payment to Tenant in an amount equal to \$7.00 per rentable square feet of the Premises, which amount shall be used towards Tenant's relocation costs (the "**Relocation Payment**"). The Relocation Payment shall be payable to Tenant within 30 days after the date Tenant vacates the Premises. If Landlord timely and properly exercises the Landlord Termination Right by delivery of a Landlord Termination Notice, then Tenant shall vacate the Premises and deliver possession thereof to Landlord in the condition required by the terms of this Lease on or before the Landlord Early Termination Date, and Tenant shall have no further obligations under this Lease after the Landlord Early Termination Date except for those accruing prior to the Landlord Early Termination Date and those which, pursuant to the terms of this Lease, survive the expiration or early termination of this Lease. For the avoidance of doubt, the failure of Tenant to surrender the Premises by the Landlord Early Termination Date shall constitute a hold over without consent subject to Section 8 of the Lease.

42. **Miscellaneous.**

(a) **Notices.** All notices or other communications between the parties shall be in writing and shall be delivered by (i) reputable overnight guaranty courier, or (ii) hand delivery with signature confirming receipt. Notices delivered pursuant to the delivery methods provided in sub-sections (i) or (ii) shall be deemed duly given when actually received by the addressee or when delivery thereof is refused by the addressee. All notices shall be delivered to the parties at their addresses set forth in the Basic Lease Provisions. Landlord and Tenant may from time to time by written notice to the other designate another address for receipt of future notices.

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(b) **Joint and Several Liability.** If and when included within the term “**Tenant**,” as used in this instrument, there is more than one person or entity, each shall be jointly and severally liable for the obligations of Tenant.

(c) **Financial Information.** Tenant shall furnish to Landlord true and complete copies of Tenant’s most recent audited annual and/or quarterly financial statements, within thirty (30) days of Landlord’s written request from time to time, all of which shall be treated by Landlord as confidential information belonging to Tenant. In no event shall Tenant be required to provide any of the foregoing more than one time in any calendar year. Notwithstanding anything to the contrary contained in this Lease, Landlord’s written request for financial information pursuant to this Section 42(c) may delivered to Tenant via email. So long as Tenant is a “public company” and its financial information is publicly available, then this Section 42(c) and the delivery requirements herein shall not apply.

(d) **Recordation.** Neither this Lease nor a memorandum of lease shall be filed by or on behalf of Tenant in any public record. Landlord may prepare and file, and upon request by Landlord Tenant will execute, a memorandum of lease. Nothing contained in this Lease is intended to prohibit Tenant from filing this Lease with the Securities and Exchange Commission (“**SEC**”) to the extent that Tenant is required to do so pursuant to applicable SEC requirements.

(e) **Interpretation.** The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

(f) **Not Binding Until Executed.** The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution of this Lease by both parties.

(g) **Limitations on Interest.** It is expressly the intent of Landlord and Tenant at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Lease. If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Lease, or contracted for, charged, taken, reserved, or received with respect to this Lease, then it is Landlord’s and Tenant’s express intent that all excess amounts theretofore collected by Landlord be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to Tenant), and the provisions of this Lease immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(h) **Choice of Law.** Construction and interpretation of this Lease shall be governed by the internal laws of the state in which the Premises are located, excluding any principles of conflicts of laws.

(i) **Time.** Time is of the essence as to the performance of Tenant’s obligations under this Lease.

(j) **OFAC.** Tenant is currently (a) in compliance with and shall at all times during the Term of this Lease remain in compliance with the regulations of the Office of Foreign Assets Control (“**OFAC**”) of the U.S. Department of Treasury and any statute, executive order, or regulation relating thereto (collectively, the “**OFAC Rules**”), (b) not listed on, and shall not during the term of this Lease be listed on, the Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List, or the Sectoral Sanctions Identification List, which are all maintained by OFAC and/or on any other similar list maintained by OFAC or other governmental authority pursuant to any authorizing statute, executive order, or regulation, and (c)

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not a person or entity with whom a U.S. person is prohibited from conducting business under the OFAC Rules.

(k) **Incorporation by Reference.** All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this Lease, such exhibits or addenda shall control.

(l) **Entire Agreement.** This Lease, including the exhibits attached hereto, constitutes the entire agreement between Landlord and Tenant pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, letters of intent, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations or other agreements, express or implied, made to either party by the other party in connection with the subject matter hereof except as specifically set forth herein.

(m) **No Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of Base Rent or any Additional Rent will be other than on account of the earliest stipulated Base Rent and Additional Rent, nor will any endorsement or statement on any check or letter accompanying a check for payment of any Base Rent or Additional Rent be an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue any other remedy provided in this Lease.

(n) **Redevelopment of Project.** Tenant acknowledges that Landlord, in its sole discretion, may from time to time, subject to the 4<sup>th</sup> sentence of Section 1 of this Lease, expand, renovate and/or reconfigure the Project as the same may exist from time to time and, in connection therewith or in addition thereto, as the case may be, from time to time without limitation: (a) change the shape, size, location, number and/or extent of any improvements, buildings, structures, lobbies, hallways, entrances, exits, parking and/or parking areas relative to any portion of the Project; (b) modify, eliminate and/or add any buildings, improvements, and parking structure(s) either above or below grade, to the Project, the Common Areas and/or any other portion of the Project and/or make any other changes thereto affecting the same; and (c) make any other changes, additions and/or deletions in any way affecting the Project and/or any portion thereof as Landlord may elect from time to time, including without limitation, additions to and/or deletions from the land comprising the Project, the Common Areas and/or any other portion of the Project. Tenant acknowledges and agrees that construction noise, vibrations and dust associated with normal construction activities in connection with any redevelopment of the Project are to be expected during the course of such construction. Notwithstanding anything to the contrary contained in this Lease, Tenant shall have no right to seek damages (including abatement of Rent) or to cancel or terminate this Lease because of any proposed changes, expansion, renovation or reconfiguration of the Project nor shall Tenant have the right to restrict, inhibit or prohibit any such changes, expansion, renovation or reconfiguration; provided, however, Landlord shall not change the size, dimensions, location or Tenant's Permitted Use of the Premises or improvements in the Premises, or, other than on a short-term basis, materially adversely affect Tenant's parking rights under Section 10. When exercising Landlord's rights under this Section 42(n), Landlord shall endeavor to provide at least 15 business days' prior notice of any redevelopment work.

(o) **EV Charging Stations.** Landlord shall not unreasonably withhold its consent to Tenant's written request to install, at Tenant's sole cost and expense, up to 4 electric vehicle car charging stations to be installed in parking stalls located directly in front of the Building mutually agreed upon by Landlord and Tenant ("**EV Stations**") in the parking area serving the Project for Tenant's exclusive use; provided, however, that Tenant complies with all reasonable requirements, standards, rules and regulations which may be imposed by Landlord, at the time Landlord's consent is granted, in connection with Tenant's installation, maintenance, repair and operation of such EV Stations, which may include, without limitation, the charge to Tenant of a reasonable monthly rental amount for the parking spaces used by Tenant for such EV Stations, Landlord's designation of the location of Tenant's EV Stations, and Tenant's payment of all costs whether incurred by Landlord or Tenant in connection with the installation, maintenance, repair and operation of each Tenant's EV Station(s). Nothing contained in this paragraph is intended to increase the number of parking spaces which Tenant is otherwise entitled to use at the Project under Section 10 of this Lease nor impose any additional obligations on Landlord with respect to Tenant's parking rights at the

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Project. Tenant shall have the right to use, on a non-exclusive basis, all non-reserved EV Stations made available by Landlord to the occupants of the Project.

(p) **California Accessibility Disclosure.** For purposes of Section 1938(a) of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Project has not undergone inspection by a Certified Access Specialist (CASp). In addition, the following notice is hereby provided pursuant to Section 1938(e) of the California Civil Code: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." In furtherance of and in connection with such notice: (i) Tenant, having read such notice and understanding Tenant's right to request and obtain a CASp inspection, hereby elects not to obtain such CASp inspection and forever waives its rights to obtain a CASp inspection with respect to the Premises, Building and/or Project to the extent permitted by Legal Requirements; and (ii) if the waiver set forth in clause (i) hereinabove is not enforceable pursuant to Legal Requirements, then Landlord and Tenant hereby agree as follows (which constitutes the mutual agreement of the parties as to the matters described in the last sentence of the foregoing notice): (A) Tenant shall have the one-time right to request for and obtain a CASp inspection, which request must be made, if at all, in a written notice delivered by Tenant to Landlord; (B) any CASp inspection timely requested by Tenant shall be conducted (1) at a time mutually agreed to by Landlord and Tenant, (2) in a professional manner by a CASp designated by Landlord and without any testing that would damage the Premises, Building or Project in any way, and (3) at Tenant's sole cost and expense, including, without limitation, Tenant's payment of the fee for such CASp inspection, the fee for any reports prepared by the CASp in connection with such CASp inspection (collectively, the "**CASp Reports**") and all other costs and expenses in connection therewith; (C) the CASp Reports shall be delivered by the CASp simultaneously to Landlord and Tenant; (D) Tenant, at its sole cost and expense, shall be responsible for making any improvements, alterations, modifications and/or repairs to or within the Premises to correct violations of construction-related accessibility standards including, without limitation, any violations disclosed by such CASp inspection; and (E) if such CASp inspection identifies any improvements, alterations, modifications and/or repairs necessary to correct violations of construction-related accessibility standards relating to those items of the Building and Project located outside the Premises that are Landlord's obligation to repair as set forth in this Lease, then Landlord shall perform such improvements, alterations, modifications and/or repairs as and to the extent required by Legal Requirements to correct such violations, and Tenant shall reimburse Landlord for the cost of such improvements, alterations, modifications and/or repairs within 10 business days after Tenant's receipt of an invoice therefor from Landlord. In the event that Tenant does not elect to obtain a CASp inspection, the terms and provisions of this Section 41(p) regarding the allocation of costs for Alterations and improvements shall not be applicable.

(q) **Counterparts.** This Lease may be executed in 2 or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature process complying with the U.S. federal E-SIGN Act of 2000) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. Electronic signatures shall be deemed original signatures for purposes of this Lease and all matters related thereto, with such electronic signatures having the same legal effect as original signatures.

(r) **Approvals.** Whenever the Lease requires an approval, consent, designation, determination, selection or judgment by either Landlord or Tenant, except as otherwise expressly set forth in the Lease, such approval, consent, designation, determination, selection or judgment and any conditions imposed thereby shall be reasonable and shall not be unreasonably withheld or delayed.

[ Signatures on next page ]

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IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

**TENANT:**

**GOPRO, INC.,**  
a Delaware corporation

By:  
Its: CFO

I hereby certify that the signature, name, and title above are my signature, name and title

**LANDLORD:**

**CARLSBAD1-COMMERCE, LLC,**  
a Delaware limited liability company

By: Alexandria Real Estate Equities, L.P., a Delaware limited partnership, managing member

By: ARE-QRS Corp.,  
a Maryland corporation, general partner

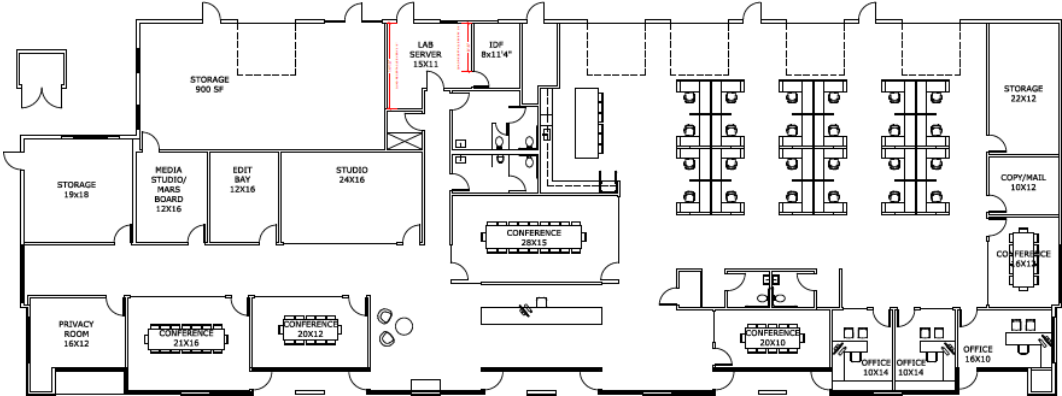
By: Gary Dean

Its: Executive Vice President – Real Estate Leg

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**EXHIBIT A TO LEASE DESCRIPTION OF**

**PREMISES**



**EXHIBIT B TO LEASE DESCRIPTION OF**  
**PROJECT**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CARLSBAD, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

PARCELS 19 AND 20 OF PARCEL MAP NO. 11457, IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 2, 1981 AS FILE/PAGE NO. 81-209919 OF OFFICIAL RECORDS.

PARCEL B:

PARCELS 10, 11, 12 AND 13 OF PARCEL MAP NO. 11133, IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, ON MARCH 25, 1981 AS FILE/PAGE NO. 81-090596 OF OFFICIAL RECORDS.

APN(s): 210-090-32-00  
210-090-33-00  
210-090-34-00  
210-090-35-00  
210-090-41-00  
210-090-42-00

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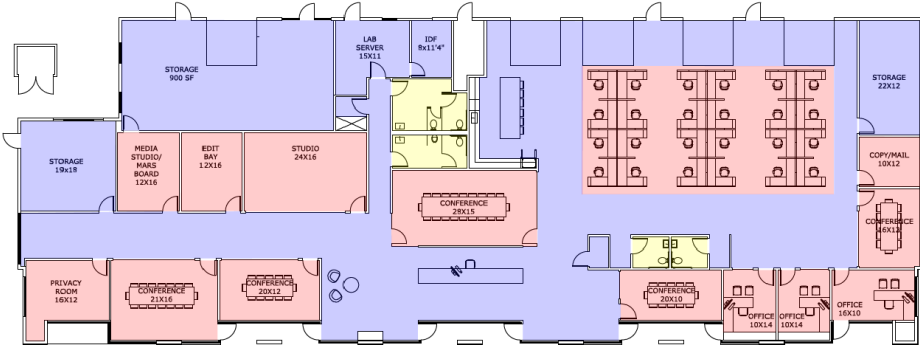


REFLECTED CEILING PLAN



FLOORING

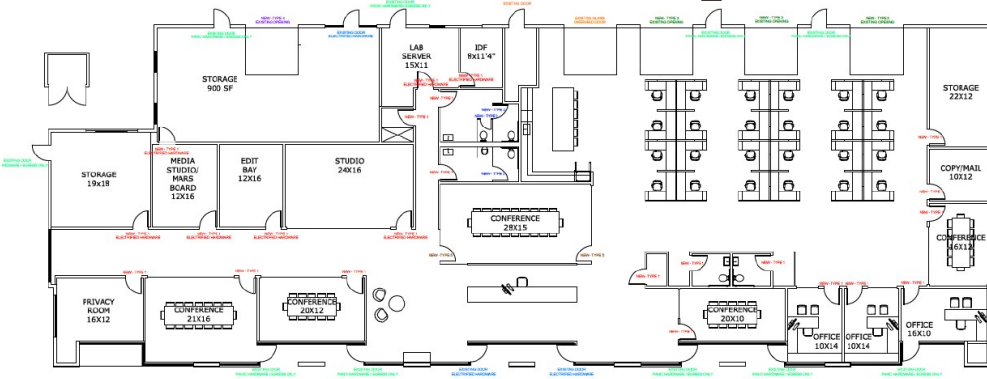
- CARPET TILE
- GRIND & SEAL CONCRETE
- CERAMIC TILE





DOOR SCHEDULE

- TYPE 1: BUILDING STANDARD SOLID CORE DOOR - (25) TOTAL
- TYPE 2: SOLID PLASTIC RESTROOM STALL DOOR - (3) TOTAL
- TYPE 3: GLASS OVERHEAD DOOR - (3) TOTAL
- TYPE 4: METAL OVERHEAD DOOR - (1) TOTAL
- TYPE 5: GLASS PIVOT DOOR - (2) TOTAL



- EXISTING SUITE ENTRY DOOR - PANIC HARDWARE / EGRESS ONLY - (10) TOTAL
- EXISTING SUITE ENTRY DOOR - ELECTRIFIED HARDWARE - (3) TOTAL
- NEW TYPE 1 INTERIOR DOOR - ELECTRIFIED HARDWARE - (7) TOTAL

GoPro @ Commerce

5225 Avenida Encinas

scale: 1" = 12' - 0"  
11.18.2022

L7

### Exhibit C – Scope of Work

- Flooring
    - Reception Area / Open Office Area (Partial) / Break Area / Storage Rooms / Lab Server / IDF: Grind & Seal Concrete
      - Sherwin Williams – H&C Clarishield Concrete Sealer
    - Restrooms: Ceramic Tile
      - Arizona Tile – Basalatina 12” x 24” – Nero Matte
    - Private Offices / Conference Rooms / Media Room / Edit Bay / Studio / Privacy Room / Copy Mail Room: Carpet Tile
      - Interface – AE310 - Smoke
    - Wall Base Throughout
      - Johnsonite – 4” Coved Rubber Base
  - Ceilings
    - Private Offices / Conference Rooms / Media Room / Edit Bay / Studio / Privacy Room / Copy Mail Room / Closets / Open office Area (Partial): Grid Ceiling
    - Reception Area / Open Office Area (Partial) / Break Area / Storage Rooms / Lab Server / IDF: Open Ceiling Concept
    - Restrooms: Gypsum Board Ceiling
  - Doors, Frames, and Hardware
    - (25) building standard solid core doors
    - (3) solid plastic restroom stall doors
    - (3) glass overhead doors
    - (1) metal overhead door
    - (10) existing suite entry doors to receive panic exit hardware that prevents the door from being opened from the exterior
    - (3) existing suite entry doors to receive electrified hardware + electrical provisions (single gang back box, conduit, and pull-string) for future access control / card reader
    - (7) new interior building standard solid core doors to receive electrified hardware + electrical provisions (single gang back box, conduit, and pull-string) for future access control / card reader
  - Break Area
    - Plastic laminate cabinets
      - Formica – 7197-58 Dover White
    - Countertop
      - Corian (Zodiaq) – Stratus White
    - Backsplash
      - TBD
    - Hardware
      - Mockett – DP3 Tab Pull 4” or equivalent
    - Sink
      - Kohler – Vault Undermount – K-3996-4 or equivalent
    - Faucet
-

- Delta – Trinsic Single Handle – 9159 or equivalent
  - Dishwasher
    - Asko – 30 Series – DBL633LS or equivalent
  - Garbage Disposal
    - Badger or equivalent
  - Insta-hot
    - Chronomite – Instant Flow SR or equivalent
  - Light Fixtures
    - Grid Ceiling Areas: Flat LED Light Panels
      - RAB Lighting – EZPAN2X40N or equivalent
    - Open Ceiling Areas: Ceiling Suspended Linear Pendants
      - Pinnacle Lighting – EDGE Evolution EX3 or equivalent
    - Gypsum Board Ceiling Areas: Square Ceiling Recessed LED Downlight
      - TBD
  - Electrical
    - Industry standard quantity of electrical power/data wall locations for standard office space use
    - (12) electrical floor feeds/boxes (quads)
    - Provisions for (8) wall mounted television locations (wall backing / power & data @ 60” AFF)
    - Provisions for Uninterruptable Power Supply (UPS) to be located in IDF Room
      - Power to be delivered by 220V, 30 AMP circuits
    - Provisions for (2) independent/dedicated circuits serving (2) power outlet banks on (2) walls within the Lab Server; Quad receptacle every 3’-0”
  - HVAC
    - (2) 1-ton mini-split units and rooftop condensers
      - (1) IDF
      - (1) Lab Server
    - Industry standard HVAC distribution throughout the rest of the space
-

**EXHIBIT D TO LEASE ACKNOWLEDGMENT OF**

**COMMENCEMENT DATE**

This **ACKNOWLEDGMENT OF COMMENCEMENT DATE** is made this day of \_\_\_\_, , between **CARLSBAD1-COMMERCE, LLC**, a Delaware limited liability company ("**Landlord**"), and **GOPRO, INC.**, a Delaware corporation ("**Tenant**"), and is attached to and made a part of the Lease dated \_\_, \_\_ (the "**Lease**"), by and between Landlord and Tenant. Any initially capitalized terms used but not defined herein shall have the meanings given them in the Lease.

Landlord and Tenant hereby acknowledge and agree, for all purposes of the Lease, that the Commencement Date of the Base Term of the Lease is \_\_, , the Abatement Period is \_\_, , through \_\_\_\_, , and the termination date of the Base Term of the Lease shall be midnight on \_\_, . In case of a conflict between the terms of the Lease and the terms of this Acknowledgment of Commencement Date, this Acknowledgment of Commencement Date shall control for all purposes.

IN WITNESS WHEREOF, Landlord and Tenant have executed this ACKNOWLEDGMENT OF COMMENCEMENT DATE to be effective on the date first above written.

**TENANT:**

**GOPRO, INC.**,  
a Delaware corporation

By: \_\_ Its: \_\_

I hereby certify that the signature, name, and title above are my signature, name and title

**LANDLORD:**

**CARLSBAD1-COMMERCE, LLC**,  
a Delaware limited liability company

By: Alexandria Real Estate Equities, L.P., a Delaware limited partnership, managing member

By: ARE-QRS Corp.,  
a Maryland corporation, general partner

By: \_\_Its: \_\_

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**EXHIBIT E TO LEASE**

**Rules and Regulations**

1. The sidewalk, entries, and driveways of the Project shall not be obstructed by Tenant, or any Tenant Party, or used by them for any purpose other than ingress and egress to and from the Premises.
  2. Tenant shall not place any objects, including antennas, outdoor furniture, etc., in the parking areas, landscaped areas or other areas outside of its Premises, or on the roof of the Project.
  3. Except for animals assisting the disabled, no animals shall be allowed in the offices, halls, or corridors in the Project.
  4. Tenant shall not disturb the occupants of the Project or adjoining buildings by the use of any radio or musical instrument or by the making of loud or improper noises.
  5. If Tenant desires telegraphic, telephonic or other electric connections in the Premises, Landlord or its agent will direct the electrician as to where and how the wires may be introduced; and, without such direction, no boring or cutting of wires will be permitted. Any such installation or connection shall be made at Tenant's expense.
  6. Tenant shall not install or operate any steam or gas engine or boiler, or other mechanical apparatus in the Premises, except as specifically approved in the Lease. The use of oil, gas or inflammable liquids for heating, lighting or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Project.
  7. Parking any type of recreational vehicles is specifically prohibited on or about the Project. Except for the overnight parking of operative vehicles, no vehicle of any type shall be stored in the parking areas at any time. In the event that a vehicle is disabled, it shall be removed within 48 hours. There shall be no "For Sale" or other advertising signs on or about any parked vehicle. All vehicles shall be parked in the designated parking areas in conformity with all signs and other markings. All parking will be open parking, and no reserved parking, numbering or lettering of individual spaces will be permitted except as specified by Landlord.
  8. Tenant shall maintain the Premises free from rodents, insects and other pests.
  9. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs or who shall in any manner do any act in violation of the Rules and Regulations of the Project.
  10. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness. Landlord shall not be responsible to Tenant for any loss of property on the Premises, however occurring, or for any damage done to the effects of Tenant by the janitors or any other employee or person.
  11. Tenant shall give Landlord prompt notice of any defects in the water, lawn sprinkler, sewage, gas pipes, electrical lights and fixtures, heating apparatus, or any other service equipment affecting the Premises.
  12. Tenant shall not permit storage outside the Premises, including without limitation, outside storage of trucks and other vehicles, or dumping of waste or refuse or permit any harmful materials to be placed in any drainage system or sanitary system in or about the Premises.
  13. All moveable trash receptacles provided by the trash disposal firm for the Premises must be kept in the trash enclosure areas, if any, provided for that purpose.
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14. No auction, public or private, will be permitted on the Premises or the Project.

15. No awnings shall be placed over the windows in the Premises except with the prior written consent of Landlord.

16. The Premises shall not be used for lodging, sleeping or cooking (except for cooking by licensed caterers (e.g., for Tenant's company events) and except that Tenant may use microwave ovens, toasters and coffee makers in the Premises for the benefit of Tenant employees and contractors in areas designated for such items, but only if the use thereof is at all times supervised by the individual using the same) or for any immoral or illegal purposes or for any purpose other than that specified in the Lease. No illegal gaming devices shall be operated in the Premises.

17. Tenant shall ascertain from Landlord the maximum amount of electrical current which can safely be used in the Premises, taking into account the capacity of the electrical wiring in the Project and the Premises and the needs of other tenants, and shall not use more than such safe capacity. Landlord's consent to the installation of electric equipment shall not relieve Tenant from the obligation not to use more electricity than such safe capacity.

18. Tenant assumes full responsibility for protecting the Premises from theft, robbery and pilferage.

19. Tenant shall not install or operate on the Premises any machinery or mechanical devices of a nature not directly related to Tenant's ordinary use of the Premises and shall keep all such machinery free of vibration, noise and air waves which may be transmitted beyond the Premises.

20. Tenant shall cause any vendors and other service providers providing regular service at the Project (including, service providers hired by Tenant to perform services with respect to the Building Systems or to perform janitorial services with respect to the Premises) hired by Tenant to perform services at the Premises or the Project to maintain in effect workers' compensation insurance as required by Legal Requirements and reasonable commercial general liability insurance with coverage amounts reasonably acceptable to Landlord. Tenant shall cause such vendors and service providers to name Landlord and Alexandria Real Estate Equities, Inc. as additional insureds under such policies and shall provide Landlord with certificates of insurance evidencing the required coverages (and showing Landlord and Alexandria Real Estate Equities, Inc. as additional insureds under such policies) prior to the applicable vendor or service provider providing any services to Tenant at the Project.

21. Neither Tenant nor any of the Tenant Parties shall have the right to photograph, videotape, film, digitally record or by any other means record, transmit and/or distribute any images, pictures or videos of all or any portion of the Premises or the Project.

22. Tenant shall regularly review the guidelines published by the Centers for Disease Control (CDC) and any state and/or local Governmental Authorities, and will implement the practices and procedures suggested thereby, as well as industry standard best practices, to prevent the spread of Infectious Conditions, including, without limitation, COVID-19.

23. Landlord shall have the right to (a) require tenants to implement and enforce reasonable screening and tracking protocols intended to identify and track the activity at the Project of employees, agents, contractors and visitors seeking access to or accessing the Premises and or the Project exhibiting flu-like symptoms or symptoms consistent with those associated with any currently known or unknown Infectious Conditions including, without limitation, COVID-19 (collectively, "**Symptoms**"), (b) require tenant employees, agents, contractors and visitors to comply with reasonable screening and tracking protocols implemented by Landlord, Landlord's property manager and/or any operator of Project Amenities, intended to identify and track the activity at the Project of individuals seeking access to or accessing the Premises or the Project (including the Project Amenities) exhibiting Symptoms, (c) require tenants to implement and enforce protocols to prohibit individuals exhibiting Symptoms, from accessing the Premises and/or the

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Project, (d) require tenants to immediately report to Landlord incidences of (i) tenant employees, agents, contractors and visitors accessing the Premises or any portion of the Project while exhibiting Symptoms, and/or (ii) tenant employees, agents, contractors and visitors known to have accessed the Premises or the Project being diagnosed with an Infectious Condition including, without limitation, COVID-19.

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EXHIBIT F TO LEASE TENANT'S PERSONAL  
PROPERTY

None.

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## EXHIBIT G TO LEASE

### NOTIFICATION OF THE PRESENCE OF ASBESTOS CONTAINING MATERIALS

This notification provides certain information about asbestos within or about the Premises at 5205, 5225, 5235, 5245, 5315, 5355, 5365, and 5375 Avenida Encinas, Carlsbad, CA 92008 (“Buildings”) in accordance with California Code of Regulations, title 8, section 1529 and Section 25915 et. seq. of the California Health and Safety Code.

Historically, asbestos was commonly used in building products used in the construction of buildings across the country. Asbestos-containing building products were used because they are fire-resistant and provide good noise and temperature insulation. Because of their prevalence, asbestos-containing materials, or ACMs, are still sometimes found in buildings today.

Given the date of construction of Buildings (approximately 1982), it is possible that ACMs are present in building materials.

Because ACMs may be present within or about the Building, we have hired an independent environmental consulting firm to prepare an operations and maintenance program (“**O&M Program**”). The O&M Program is designed to minimize the potential of any harmful asbestos exposure to any person within or about the Building. The O&M Program includes a description of work methods to be taken in order to maintain any ACMs or PACMs within or about the Building in good condition and to prevent any significant disturbance of such ACMs or PACMs. Appropriate personnel receive regular periodic training on how to properly administer the O&M Program.

The O&M Program describes the risks associated with asbestos exposure and how to prevent such exposure through appropriate work practices. ACMs and PACMs generally are not thought to be a threat to human health unless asbestos fibers are released into the air and inhaled. This does not typically occur unless (1) the ACMs are in a deteriorating condition, or (2) the ACMs have been significantly disturbed (such as through abrasive cleaning, or maintenance or renovation activities). If inhaled, asbestos fibers can accumulate in the lungs and, as exposure increases, the risk of disease (such as asbestosis or cancer) increases. However, measures to minimize exposure, and consequently minimize the accumulation of asbestos fibers, reduce the risks of adverse health effects.

The O&M Program describes a number of activities that should be avoided in order to prevent a release of asbestos fibers. In particular, you should be aware that some of the activities which may present a health risk include moving, drilling, boring, or otherwise disturbing ACMs. Consequently, such activities should not be attempted by any person not qualified to handle ACMs.

The O&M Program is available for review during regular business hours at the Landlord’s office located at 10996 Torreyana Road, Suite 250, San Diego, CA 9212

## CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER REQUIRED UNDER RULE 13(a)-14(a) AND 15(d)-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, Nicholas Woodman, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of GoPro, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter 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.

Date: **August 3, 2023**

/s/ Nicholas Woodman  
\_\_\_\_\_  
Nicholas Woodman  
Chief Executive Officer  
(Principal Executive Officer)

## CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER REQUIRED UNDER RULE 13(a)-14(a) AND 15(d)-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, Brian McGee, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of GoPro, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter 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.

Date: **August 3, 2023**

/s/ Brian McGee

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Brian McGee  
Chief Financial Officer and Chief Operating Officer  
(Principal Financial Officer)

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

I, Nicholas Woodman, Chief Executive Officer of GoPro, Inc., do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge, the Quarterly Report on Form 10-Q of GoPro, Inc. for the quarter ended June 30, 2023 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of GoPro, Inc. for the periods presented herein.

By: /s/ Nicholas Woodman

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Nicholas Woodman  
Chief Executive Officer  
(Principal Executive Officer)

**August 3, 2023**

I, Brian McGee, Chief Financial Officer and Chief Operating Officer of GoPro, Inc., do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge, the Quarterly Report on Form 10-Q of GoPro, Inc. for the quarter ended June 30, 2023 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of GoPro, Inc. for the periods presented herein.

By: /s/ Brian McGee

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Brian McGee  
Chief Financial Officer and Chief Operating Officer  
(Principal Financial Officer)

**August 3, 2023**

A signed original of this written statement required by Section 906 has been provided to GoPro, Inc. and will be retained by GoPro, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.