



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

**Form S-1**  
**REGISTRATION STATEMENT**  
**UNDER**  
**THE SECURITIES ACT OF 1933**

**OCEAN POWER TECHNOLOGIES, INC.**

**New Jersey**  
*(State or Other Jurisdiction of  
Incorporation or Organization)*

*(Exact Name of Registrant as Specified in Its Charter)*  
**3629**  
*(Primary Standard Industrial  
Classification Code No.)*

**22-2535818**  
*(I.R.S. Employer  
Identification No.)*

**1590 Reed Road**  
**Pennington, NJ 08534**  
**(609) 730-0400**  
*(Address, including zip code, and telephone number,  
including area code, of registrant's principal executive offices)*

**Dr. George W. Taylor**  
**Chief Executive Officer**  
**Ocean Power Technologies, Inc.**  
**1590 Reed Road**  
**Pennington, NJ 08534**  
**(609) 730-0400**  
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including area code, of agent for service)*

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**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this Registration Statement is declared effective.

If any of the securities being registered on this form are offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act") please check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

**CALCULATION OF REGISTRATION FEE**

Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee(2)
Common Stock par value \$0.001 per share	\$100,000,000	\$10,700

(1) Estimated solely for the purpose of computing the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended.

(2) Calculated pursuant to Rule 457(o) based on an estimate of the proposed maximum aggregate offering price.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to Section 8(a), may determine.**

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting offers to buy these securities in any state where the offer or sale is not permitted.

**SUBJECT TO COMPLETION NOVEMBER 9, 2006**

**PRELIMINARY PROSPECTUS**

**Shares**



**Common Stock**

This is the initial public offering of our common stock in the United States. We are offering all of the \_\_\_\_\_ shares of common stock offered by this prospectus. We expect the public offering price to be between \$ \_\_\_\_\_ and \$ \_\_\_\_\_ per share.

We will apply to have our common stock approved for listing on The Nasdaq Global Market under the symbol "OPTT."

Our common stock is listed on the AIM market of the London Stock Exchange plc under the symbol "OPT." We will apply to list the shares of common stock being offered by this prospectus on the AIM market. The last reported sale price of our common stock on the AIM market on \_\_\_\_\_, 2006 was £ \_\_\_\_\_ per share, or approximately \$ \_\_\_\_\_ per share based on the noon buying rate for sterling of £1.00 = \$ \_\_\_\_\_ on \_\_\_\_\_, 2006.

**Investing in our common stock involves a high degree of risk. Before buying any shares, you should read the discussion of material risks of investing in our common stock in "Risk Factors" beginning on page 6 of this prospectus.**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

	<u>Per Share</u>	<u>Total</u>
Public offering price	\$ _____	\$ _____
Underwriting discounts and commissions	\$ _____	\$ _____
Proceeds, before expenses, to us	\$ _____	\$ _____

The underwriters may also purchase up to an additional \_\_\_\_\_ shares of our common stock at the public offering price, less the underwriting discounts and commissions, to cover over-allotments, if any, within 30 days from the date of this prospectus. If the underwriters exercise this option in full, the total underwriting discounts and commissions will be \$ \_\_\_\_\_, and our total proceeds, before expenses, will be \$ \_\_\_\_\_.

The underwriters are offering the common stock as set forth under "Underwriting." Delivery of the shares will be made on or about \_\_\_\_\_, 2006.

**UBS Investment Bank**

**Banc of America Securities LLC**

**Bear, Stearns & Co. Inc.**

**First Albany Capital**

\_\_\_\_\_, 2006

You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized anyone to provide you with additional information or information different from that contained in this prospectus. We are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of shares of our common stock.

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PowerBuoy® is a registered trademark of Ocean Power Technologies, Inc. The Ocean Power Technologies logo, CellBuoy™, Talk on Water™ and Making Waves in Power™ are trademarks or service marks of Ocean Power Technologies, Inc. All other trademarks appearing in this prospectus are the property of their respective holders.

## PROSPECTUS SUMMARY

*This summary highlights selected information appearing elsewhere in this prospectus. While this summary highlights what we consider to be the most important information about us, you should carefully read this prospectus and the registration statement of which this prospectus is a part in their entirety before investing in our common stock, especially the risks of investing in our common stock, which we discuss under "Risk Factors," and our consolidated financial statements and related notes beginning on page F-1.*

*Unless the context requires otherwise, the words "Ocean Power Technologies," "we," "company," "us" and "our" refer to Ocean Power Technologies, Inc. and its subsidiaries.*

### Our Company

We develop and are commercializing proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. The energy in ocean waves is predictable, and electricity from wave energy can be produced on a consistent basis at numerous sites located near major population centers worldwide. Wave energy is an emerging segment of the renewable energy market. Based on our proprietary technology, considerable ocean experience, existing products and expanding commercial relationships, we believe we are the leading wave energy company.

We currently offer two products as part of our line of PowerBuoy® systems: a utility PowerBuoy system and an autonomous PowerBuoy system. Our PowerBuoy system is based on modular, ocean-going buoys, which we have been ocean testing for nearly a decade. The rising and falling of the waves moves the buoy-like structure creating mechanical energy that our proprietary technologies convert into electricity. We have tested and developed wave power generation and control technology using proven equipment and processes in novel applications. Our two products are designed for the following applications:

- Our utility PowerBuoy system is capable of supplying electricity to a local or regional electric power grid. Our wave power stations will be comprised of a single PowerBuoy system or an integrated array of PowerBuoy systems, plus the remaining components required to deliver electricity to a power grid. We intend to sell our utility PowerBuoy system to utilities and other electrical power producers seeking to add electricity generated by wave energy to their existing electricity supply.
- Our autonomous PowerBuoy system is designed to generate power for use independently of the power grid in remote locations. There are a variety of potential applications for this system, including sonar and radar surveillance, offshore cellular phone service, tsunami warning, oceanographic data collection, offshore platforms and offshore aquaculture.

We are expanding our key commercial opportunities for both the utility and the autonomous PowerBuoy systems. We currently have commercial relationships with the following:

- Iberdrola S.A., or Iberdrola, which is a large electric utility company located in Spain and one of the largest renewable energy producers in the world, Total S.A., or Total, which is one of the world's largest oil and gas companies, and two Spanish governmental agencies for the first phase of the construction of a 1.39 megawatt, or MW, wave power station off the coast of Santoña, Spain;
- Iberdrola and Total to evaluate the development of a wave power station off the coast of France;
- the United States Navy to develop and build a wave power station at the US Marine Corps Base in Oahu, Hawaii that we believe will serve as a prototype wave power station for the installation of wave power stations at other US Navy bases; and
- Lockheed Martin Corporation to market cooperatively with us our autonomous PowerBuoy system for use with Lockheed Martin equipment.

As part of our marketing efforts, we use demonstration wave power stations to establish the feasibility of wave power generation. We have operated a demonstration PowerBuoy system with a maximum rated output of 40 kilowatts, or kW, off the coast of New Jersey since October 2005 under a contract with the New Jersey

Board of Public Utilities. This PowerBuoy system was removed from the ocean for maintenance in October 2006. We plan to develop and operate two additional demonstration wave power stations that, unlike the New Jersey power station, will, if approved and constructed as planned, be connected to the local power grids. In February 2006, we received approval from the South West of England Regional Development Agency to install a 5MW demonstration wave power station off the coast of Cornwall, England. In July 2006, we filed an application with the US Federal Energy Regulatory Commission for a preliminary permit to evaluate the feasibility of a location off the coast of Reedsport, Oregon for the proposed construction and operation of a wave power station with an anticipated capacity of 50MW, of which the first 5MW will be a demonstration wave power station.

Our product development and engineering efforts are focused on our goal of increasing the maximum capacity of our utility PowerBuoy system from the current 40kW to 150kW in 2007, then to 250kW in 2008 and ultimately to 500kW in 2010.

We had revenues of \$1.7 million in fiscal 2006 and recorded a net loss of \$7.1 million, compared to revenues of \$5.4 million and a net loss of \$0.4 million in fiscal 2005. For the three months ended July 31, 2006, we had revenues of \$0.3 million and a net loss of \$1.7 million. As of July 31, 2006, our accumulated deficit was \$30.3 million.

#### **Our Market**

Global demand for electric power is expected to increase from 14.8 trillion kilowatt hours in 2003 to 30.1 trillion kilowatt hours by 2030, according to the Energy Information Administration, or the EIA. To meet this demand, the International Energy Agency, or the IEA, estimates that investments in new generating capacity will exceed \$4 trillion in the period from 2003 to 2030, of which \$1.6 trillion will be for new renewable energy generation equipment.

A variety of factors are contributing to the development of renewable energy systems that capture energy from replenishable natural resources, including ocean waves, flowing water, wind and sunlight, and convert it into electricity. These factors include the rising cost of fossil fuels, dependence on energy from foreign sources, environmental concerns, government incentives and infrastructure constraints.

Wave energy systems such as ours compare favorably with many other renewable energy technologies. Due to the tremendous energy in ocean waves, wave power stations with high capacity — 50MW and above — can be installed in a relatively small area. In addition, the supply of electricity from wave energy can be forecasted days in advance and the annual flow of waves at specific sites can be relatively constant.

#### **Our Competitive Advantages**

We believe that our technology for generating electricity from wave energy and our commercial relationships give us several potential competitive advantages in the renewable energy market, including the following:

- our PowerBuoy system uses an ocean-tested technology to generate electricity;
- our PowerBuoy system is efficient in harnessing wave energy;
- our PowerBuoy system takes advantage of time-tested and well-known technology;
- numerous potential sites for our wave power stations are located near major population centers worldwide;
- we have significant commercial relationships with governmental and commercial entities active in the development of renewable energy;
- our PowerBuoy system has the potential to offer cost competitive renewable energy power generation solutions; and
- our PowerBuoy system is environmentally benign and aesthetically non-intrusive.

### **Our Business Strategy**

Our goal is to strengthen our leadership in developing wave energy technologies and commercializing wave power stations and related services. In order to achieve this goal, we are pursuing the following business strategies:

- concentrate sales and marketing efforts on four geographic markets: coastal North America, the west coast of Europe, the coasts of Australia and the east coast of Japan;
- continue to increase PowerBuoy system output;
- construct demonstration wave power stations to encourage market adoption of our wave power stations;
- leverage customer relationships to enhance the commercial acceptance of our utility PowerBuoy system;
- expand revenue streams from our autonomous PowerBuoy system; and
- maximize revenue opportunities with existing customers.

### **Risks Associated with Our Business**

Our business is subject to numerous risks, as more fully described in the section entitled “Risk Factors” immediately following this prospectus summary. We have a history of operating losses, and we may never achieve or maintain profitability. Wave energy technology may not gain broad commercial acceptance, and demand for our PowerBuoy systems may not develop. The reduction or elimination of subsidies and incentives for renewable energy sources could prevent demand for our PowerBuoy systems from developing. Our product development costs have been increasing and are likely to increase significantly over the next several years. We have invested, and will continue to invest, funds in demonstration wave power stations that generate little or no direct revenue. Our PowerBuoy systems do not have a long operating history and may develop performance problems. We may be unable to increase the power output of our utility PowerBuoy system, and we may not be able to deploy multiple systems in a large-scale wave power station or to deploy larger PowerBuoy systems cost effectively and without damage to the systems. We depend on a small number of customers for substantially all of our revenues, and the US Navy currently accounts for a majority of our revenues. Our relationships with alliance partners may not be successful. We compete with other renewable energy companies. We are also subject to risks associated with international operations.

### **Our Corporate Information**

We were incorporated under the laws of the State of New Jersey in April 1984 and began commercial operations in 1994. We plan to reincorporate in Delaware prior to this offering. Our principal executive offices are located at 1590 Reed Road, Pennington, New Jersey 08534, and our telephone number is (609) 730-0400. Our website address is [www.oceanpowertechnologies.com](http://www.oceanpowertechnologies.com). The information on our website is not a part of this prospectus.

**THE OFFERING**

Common stock we are offering	shares
Over-allotment option	shares
Common stock to be outstanding after this offering	shares ( shares if the over-allotment option is exercised in full)
Use of proceeds after expenses	<p>We estimate that the net proceeds from this offering after expenses will be approximately , assuming an initial public offering price of \$ per share.</p> <p>We intend to use the net proceeds from this offering to construct demonstration wave power stations and to fund minority investments in wave station projects to encourage market adoption of our wave power stations; to fund the continued development of our PowerBuoy system, including increases in system output; to expand our international sales and marketing capabilities; and for working capital and general corporate purposes, including potential acquisitions of complementary businesses, products or technologies. See "Use of Proceeds."</p> <p>For a sensitivity analysis of the effect of changes in the public offering price on our net proceeds, see "Use of Proceeds."</p>
Risk Factors	<p>Investing in our common stock involves a high degree of risk. Before buying any shares, you should read the discussion of material risks of investing in our common stock in "Risk Factors" beginning on page 6 of this prospectus.</p>
Proposed Nasdaq Global Market symbol	OPTT
Listing on AIM market	<p>Our common stock is listed on the AIM market of the London Stock Exchange under the symbol "OPT." We will apply to list the shares of common stock being offered by this prospectus on the AIM market.</p> <p>The number of shares of our common stock outstanding immediately after this offering is based on shares of common stock outstanding as of July 31, 2006.</p> <p>The number of shares of our common stock outstanding immediately after this offering excludes:</p> <ul style="list-style-type: none"><li>• shares of our common stock issuable upon the exercise of stock options outstanding as of July 31, 2006 at a weighted average exercise price of \$ per share; and</li><li>• shares of our common stock available for future grant under our equity compensation plans, including our new 2006 stock incentive plan, as of , 2006.</li></ul> <p>Unless otherwise indicated, all information in this prospectus:</p> <ul style="list-style-type: none"><li>• assumes that the underwriters do not exercise their option to purchase up to additional shares of our common stock to cover over-allotments, if any;</li><li>• gives effect to the -for- reverse stock split of our common stock to be completed prior to this offering;</li><li>• gives effect to our reincorporation in Delaware and the amendment and restatement of our certificate of incorporation and bylaws, which will become effective prior to this offering; and</li><li>• gives effect to the establishment of our 2006 stock incentive plan, which will become effective upon the effectiveness of the registration statement for this offering.</li></ul>

**SUMMARY CONSOLIDATED FINANCIAL DATA**

The following summary consolidated financial data as of and for the fiscal years ended April 30, 2004, 2005 and 2006 have been derived from our audited consolidated financial statements. We refer to the fiscal year ended April 30, 2004 as fiscal 2004, the fiscal year ended April 30, 2005 as fiscal 2005 and the fiscal year ended April 30, 2006 as fiscal 2006. The summary consolidated financial data as of July 31, 2006 and for the three month periods ended July 31, 2005 and 2006 have been derived from our unaudited consolidated financial statements. The unaudited summary consolidated financial statement data includes, in our opinion, all adjustments, consisting only of normal recurring adjustments, that are necessary for a fair presentation of our financial position and results of operations for these periods. Operating results for the three months ended July 31, 2006 are not necessarily indicative of the results that may be expected for the fiscal year ending April 30, 2007. You should read this information together with our consolidated financial statements and the related notes appearing at the end of this prospectus and the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section of this prospectus.

The as adjusted balance sheet information gives effect to the sale by us of \_\_\_\_\_ shares of common stock in this offering at an assumed initial public offering price of \$ \_\_\_\_\_ per share, after deducting underwriting discounts and commissions and estimated offering expenses payable by us. For a sensitivity analysis of the effect of changes in the public offering price on our capitalization, see "Capitalization."

	Fiscal Year Ended April 30,			Three Months Ended July 31,	
	2004	2005	2006	2005	2006
(Unaudited)					
<b>Consolidated Statement of Operations Data:</b>					
Revenues	\$ 4,713,202	\$ 5,365,235	\$ 1,747,715	\$ 492,820	\$ 305,186
Cost of revenues	4,319,850	5,170,521	2,059,318	616,435	225,965
Gross profit (loss)	393,352	194,714	(311,603)	(123,615)	79,221
Operating expenses:					
Product development costs	255,958	904,618	4,224,997	587,935	1,052,126
Selling, general and administrative costs	1,745,955	2,553,911	3,190,687	689,870	1,388,045
Total operating expenses	2,001,913	3,458,529	7,415,684	1,277,805	2,440,171
Operating loss	(1,608,561)	(3,263,815)	(7,727,287)	(1,401,420)	(2,360,950)
Interest income	555,717	1,297,156	1,408,361	355,590	362,367
Other income (expense)(1)	(3,500,096)	1,545	74,294	—	—
Foreign exchange gain (loss)	1,585,345	1,507,145	(978,242)	(1,600,090)	337,629
Loss before income taxes	(2,967,595)	(457,969)	(7,222,874)	(2,645,920)	(1,660,954)
Income tax benefit	118,119	29,335	143,963	—	—
Net loss	\$ (2,849,476)	\$ (428,634)	\$ (7,078,911)	\$ (2,645,920)	\$ (1,660,954)
Basic and diluted loss per share	\$	\$	\$	\$	\$
Basic and diluted weighted average common shares outstanding					

- (1) The \$3.5 million expense in fiscal 2004 resulted from a one time charge incurred at the time of our stock offering on the AIM market in October 2003 relating to a 1999 agreement between us and Tyco Electronics Corp.

	As of July 31, 2006	
	Actual	As Adjusted
(Unaudited)		
<b>Consolidated Balance Sheet Data:</b>		
Cash, cash equivalents and certificates of deposit	\$ 31,135,988	\$
Working capital	29,692,756	
Total assets	32,655,409	
Long-term debt	233,959	
Deferred credits	600,000	
Accumulated deficit	(30,293,107)	
Total stockholders' equity	29,855,983	

## RISK FACTORS

*Investing in our common stock involves a high degree of risk. You should carefully consider the risks described below with all of the other information included in this prospectus before deciding to invest in our common stock. If any of the following risks actually occur, they may materially harm our business and our financial condition and results of operations. In this event, the market price of our common stock could decline and you could lose part or all of your investment.*

### Risks Relating to Our Business

***We have a history of operating losses and may never achieve or maintain profitability.***

We have incurred net losses since we began operations in 1994, including net losses of \$2.8 million in fiscal 2004, \$0.4 million in fiscal 2005 and \$7.1 million in fiscal 2006. As of July 31, 2006, we had an accumulated deficit of approximately \$30.3 million. These losses have resulted primarily from costs incurred in our research and development programs and from our selling, general and administrative costs. We expect to increase our operating expenses significantly as we continue to expand our infrastructure, research and development programs and commercialization activities. As a result, we will need to generate significant revenues to cover these costs and achieve profitability. We do not know whether or when we will become profitable because of the significant uncertainties with respect to our ability to successfully commercialize our PowerBuoy® systems in the emerging renewable energy market. Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. If we are unable to achieve and then maintain profitability, the market value of our common stock may decline.

***Wave energy technology may not gain broad commercial acceptance.***

Wave energy technology is at an early stage of development, and the extent to which wave energy power generation will be commercially viable is uncertain. Many factors may affect the commercial acceptance of wave energy technology, including the following:

- performance, reliability and cost-effectiveness of wave energy technology compared to conventional and other renewable energy sources and products;
- developments relating to other renewable energy generation technologies;
- fluctuations in economic and market conditions that affect the cost or viability of conventional and renewable energy sources, such as increases or decreases in the prices of oil and other fossil fuels;
- overall growth in the renewable energy equipment market;
- availability and terms of government subsidies and incentives to support the development of renewable energy sources, including wave energy;
- fluctuations in capital expenditures by utilities and independent power producers, which tend to decrease when the economy slows and interest rates increase; and
- the development of new and profitable applications requiring the type of remote electric power provided by our autonomous wave energy systems.

If wave energy technology does not gain broad commercial acceptance, our business will be materially harmed and we may need to curtail or cease operations.

***If sufficient demand for our PowerBuoy systems does not develop or takes longer to develop than we anticipate, our revenues may decline, and we may be unable to achieve and then sustain profitability.***

Even if wave energy technology achieves broad commercial acceptance, our PowerBuoy systems may not prove to be a commercially viable technology for generating electricity from ocean waves. We have invested a significant portion of our time and financial resources since our inception in the development of our PowerBuoy systems. To date, we have not yet manufactured and deployed any PowerBuoy systems for commercial use. As we begin to manufacture, market, sell and deploy our PowerBuoy systems in greater quantities, unforeseen hurdles may be encountered that would limit the commercial viability of our PowerBuoy systems, including unanticipated manufacturing, deployment, operating, maintenance and other costs. Our

target customers and we may also encounter technical obstacles to deploying, operating and maintaining PowerBuoy systems in quantities necessary to generate competitively-priced electricity.

If demand for our PowerBuoy systems fails to develop sufficiently, we may be unable to grow our business or generate sufficient revenues to achieve and then sustain profitability. In addition, demand for PowerBuoy systems in our presently targeted markets, including coastal North America, the west coast of Europe, the coasts of Australia and the east coast of Japan, may not develop or may develop to a lesser extent than we anticipate.

If we are not successful in commercializing our PowerBuoy system, or are significantly delayed in doing so, our business, financial condition and results of operations could be adversely affected.

***The reduction or elimination of government subsidies and economic incentives for renewable energy sources could prevent demand for our PowerBuoy systems from developing, which in turn would adversely affect our business, financial condition and results of operations.***

Federal, state and local governmental bodies in many countries, most notably France, Spain, the United Kingdom, Australia, Japan and the United States, have provided subsidies in the form of tariff subsidies, rebates, tax credits and other incentives to utilities, power generators and distributors using renewable energy. However, these incentives and subsidies generally decline over time, and many incentive and subsidy programs have specific expiration dates. Moreover, because the market for electricity generated from wave energy is at an early stage of development, some of the programs may not include wave energy as a renewable energy source eligible for the incentives and subsidies.

Currently, the cost of electricity generated from wave energy, without the benefit of subsidies or other economic incentives, substantially exceeds the price of electricity in most significant markets in the world. As a result, the near-term growth of the market for our utility PowerBuoy systems, which are designed to feed electricity into a local or regional power grid, depends significantly on the availability and size of government incentives and subsidies for wave energy. As renewable energy becomes more of a competitive threat to conventional energy providers, companies active in the conventional energy business may increase their lobbying efforts in order to encourage governments to stop providing subsidies for renewable energy, including wave energy. We cannot predict the level of any such efforts, or how governments may react to such efforts. The reduction, elimination or expiration of government incentives and subsidies, or the exclusion of wave energy technology from those incentives and subsidies, may result in the diminished competitiveness of wave energy relative to conventional and non-wave energy renewable sources of energy. Such diminished competitiveness could materially and adversely affect the growth of the wave energy industry, which could in turn adversely affect our business, financial condition and results of operations.

In 2000, we entered into an agreement with Woodside Sustainable Energy Solutions Pty. Ltd., or Woodside, under which we received \$0.6 million in exchange for granting Woodside an option to purchase, at a 30% discount from the then-prevailing market rate, up to 500,000 metric tons of carbon emission credits we generate during the years 2008 through 2012. However, if by December 31, 2012 we do not become entitled under applicable laws to the full amount of emission credits covered by the option, we are obligated to return the option fee of \$0.6 million, less the aggregate discount on any emission credits sold to Woodside prior to such date. If we receive emission credits under applicable laws and fail to sell to Woodside the credits up to the full amount of emission credits covered by the option, Woodside is entitled to liquidated damages equal to 30% of the aggregate market value of the shortfall in emission credits (subject to a limit on the market price of emission credits).

***Our product development costs have been steadily increasing and are likely to increase significantly over the next several years.***

Our product development costs primarily relate to our efforts to increase the maximum rated output of our current 40kW utility PowerBuoy system in successive stages to 500kW in 2010. Our product development costs were \$1.1 million in the three months ended July 31, 2006 as compared to \$0.6 million in the same period in 2005, and were \$4.2 million in fiscal 2006 as compared to \$0.9 million in fiscal 2005 and \$0.3 million in fiscal 2004. We anticipate that our product development costs related to the planned increase in the output of our utility PowerBuoy system will increase significantly over the next several years.

***We have invested, and will continue to invest, funds to construct demonstration wave power stations that generate little or no direct revenue.***

We have constructed and plan to construct in the future demonstration wave power stations to establish the feasibility of wave energy technology and to encourage the market adoption of our wave power stations. Demonstration wave power stations allow potential customers to see first-hand the viability of wave energy technology as a source of electricity. Although we incur significant costs in constructing and maintaining these demonstration wave power stations, demonstration wave power stations generate little or no direct revenue to us.

***Our PowerBuoy systems do not have a sufficient operating history to confirm how they will perform over their estimated 30-year useful life.***

We began developing and testing wave energy technology nearly 10 years ago. However, to date we have only manufactured eight PowerBuoy systems for use in testing and development. The longest continuous in-ocean deployment of our PowerBuoy system has been for 12 months. As a result, our PowerBuoy systems do not have a sufficient operating history to confirm how they will perform over their estimated 30-year useful life. Although we have extensively tested our technology in the ocean, our technology has not been deployed commercially and we have not yet demonstrated that our engineering and test results can be duplicated in commercial production. We have conducted and plan to continue to conduct practical testing of our PowerBuoy system. If our PowerBuoy system ultimately proves ineffective or unfeasible, we may not be able to engage in commercial production of our products or we may become liable to our customers for quantities we are obligated but are unable to produce. If our PowerBuoy systems perform below expectations, we could lose customers and face substantial repair and replacement expense which could in turn adversely affect our business, financial condition and results of operations.

***Our future success depends on our ability to increase the maximum power output of our utility PowerBuoy system, which is subject to risks and uncertainties.***

One of our goals is to increase the maximum rated output of our utility PowerBuoy system, which is currently 40kW, to 150kW in 2007, then to 250kW in 2008 and ultimately to 500kW in 2010. Our success in meeting this objective depends on our ability to significantly increase the power output of our PowerBuoy system in a cost-effective and timely manner and our ability to overcome the engineering and deployment hurdles that we face, including developing design and construction techniques that will enable the larger PowerBuoy systems to be deployed cost effectively and without damage, and developing adjustments to the mooring system to account for the larger sized PowerBuoy systems. We have experienced delays in the development and deployment of our PowerBuoy system in the past, and could experience similar delays or other difficulties in the future. If we cannot increase the power output of the PowerBuoy system, or if it takes us longer to do so than we anticipate, we may be unable to expand our business, maintain our competitive position, satisfy our contractual obligations or become profitable. In addition, if the cost associated with these development efforts exceeds our projections, our results of operations will be adversely affected.

Unless we reach full commercial scale, which we estimate to be manufacturing levels of at least 300 units of 500kW PowerBuoy systems per year, we may not be able to offer an electricity solution that competes on a non-subsidized basis with today's price of wholesale electricity in key markets in the United States, Europe, Japan and Australia. If we do not reach full commercial scale, the commercial prospects for our utility PowerBuoy system would be adversely affected.

***We have not yet deployed and may not be able to deploy a wave power station consisting of an array of two or more PowerBuoy systems.***

We conducted our first ocean deployment of a PowerBuoy system in 1997 and have had several deployments of our systems for testing and operation since then, the longest of which has lasted for 12 months. However, each of these deployments has been of a single PowerBuoy system, and we have not yet deployed a wave power station consisting of an array of two or more PowerBuoy systems. Our success in developing and deploying a wave power station consisting of an array of two or more PowerBuoy systems is contingent upon,

among other things, receipt of required governmental permits, obtaining adequate financing, successful array design implementation and finally, successful deployment and connection of the PowerBuoy systems.

We may be unsuccessful in accomplishing any of these tasks or doing so on a timely basis. Although we may attempt to minimize the financial risks attributable to the development of a project, the development and deployment of an array of PowerBuoy systems may require us to incur significant expenses for preliminary engineering, permitting and legal and other expenses before we can determine whether a project is feasible, economically attractive or capable of being financed.

***We may be unable to deploy larger PowerBuoy systems cost effectively and without damage to the systems.***

We will need to build larger buoys in order to increase the output of our current PowerBuoy systems. The larger buoys will be more difficult than our current buoys to deploy cost effectively and without damage. Our current deployment methodologies, including transportation to the installation site and the mooring of the PowerBuoy systems, will need to be revised for PowerBuoy systems with greater output. If we cannot develop cost effective methodologies for deployment of the larger PowerBuoy systems, or if it takes us longer to do so than we anticipate, we may not be able to deploy such systems in the time we anticipate or at all. Therefore, even if we succeed in increasing the output of our PowerBuoy systems above 40kW, if we are unable to deploy these larger PowerBuoy systems or encounter problems in doing so, we may be unable to expand our business, maintain our competitive position, satisfy our contractual obligations or become profitable.

***We may be unable to successfully negotiate and enter into operations and maintenance contracts with our customers.***

An important element of our business strategy is to maximize our revenue opportunities with our existing and future customers by seeking to enter into operations and maintenance contracts with them under which we would be paid fees for operating and maintaining wave power stations that they have purchased from us. Even if customers purchase our PowerBuoy systems, they may not enter into operations and maintenance contracts with us. Even if we successfully negotiate and enter into such operations and maintenance contracts, our customers may terminate them prematurely or they may not be profitable for a variety of reasons, including the presence of unforeseen hurdles or costs. In addition, our inability to perform adequately under such operations and maintenance contracts could impair our efforts to successfully market the PowerBuoy systems. Any one of these outcomes could have a material adverse effect on our business, financial condition and results of operations.

***We may be unable to manage the expansion of our operations effectively.***

We intend to expand our business significantly. However, to date the scope of our operations has been limited, and we do not have experience operating on the scale that we believe will be necessary to achieve profitable operations. Our current personnel, facilities, systems and internal procedures and controls are not adequate to support our future growth. We plan to add sales, marketing and engineering offices in additional locations, including Australia, Japan, continental Europe and the west coast of the United States. By the end of fiscal 2010, we currently estimate that we will need to add approximately 90,000 square feet of leased space for sales, marketing, engineering, assembly and testing in order to meet our current manufacturing targets.

To manage the expansion of our operations, we will be required to improve our operational and financial systems, procedures and controls, increase our manufacturing capacity and throughput and expand, train and manage our employee base, which must increase significantly if we are to be able to fulfill our current manufacturing and growth plans. Our management will also be required to maintain and expand our relationships with customers, suppliers and other third parties, as well as attract new customers and suppliers. If we do not meet these challenges, we may be unable to take advantage of market opportunities, execute our business strategies or respond to competitive pressures.

***Problems with the quality or performance of our PowerBuoy systems could adversely affect our business, financial condition and results of operations.***

Our agreements with customers will generally include guarantees with respect to the quality and performance of our PowerBuoy systems. For example, our agreement to complete the first phase of the construction of a 1.39MW wave power station off the coast of Santoña, Spain contains guarantees associated with this first phase regarding the quality, replacement and repair of the 40kW PowerBuoy system and ocean-based substation and the level of power output of the 40kW PowerBuoy system.

Because of the limited operating history of our PowerBuoy systems, we have been required to make assumptions regarding the durability, reliability and performance of the systems, and we cannot predict whether and to what extent we may be required to perform under the guarantees that we expect to give our customers. Our assumptions could prove to be materially different from the actual performance of our PowerBuoy systems, causing us to incur substantial expense to repair or replace defective systems in the future. We will bear the risk of claims long after we have sold our PowerBuoy systems and recognized revenue. Moreover, any widespread product failures could adversely affect our business, financial condition and results of operations.

***We currently depend on a limited number of customers for substantially all of our revenues. The loss of, or a significant reduction in revenues from, any of these customers could significantly reduce our revenues and harm our operating results.***

In the fiscal quarter ended July 31, 2006, we generated substantially all of our revenues from three customers. The US Navy, our largest customer, accounted for approximately 63% of our revenue during that period, while two other customers accounted for 13% and 12%. In fiscal 2006, revenues from the US Navy accounted for approximately 61% of our total revenues. We expect that revenues from the US Navy will account for a substantial portion of our total revenues in fiscal 2007. In addition, our current contract with the US Navy expires in March 2007, and we will be required to enter into additional contracts with the US Navy, which will require appropriation by the US Congress and the US Navy in order to receive additional funding. Additional funding for our project with the US Navy may not be approved or we may not be able to negotiate future agreements with the US Navy on acceptable terms, if at all.

Generally, we recognize revenue on the percentage-of-completion method based on the ratio of costs incurred to total estimated costs at completion. In certain circumstances, revenue under contracts that have specified milestones or other performance criteria may be recognized only when our customer acknowledges that such criteria have been satisfied. In addition, recognition of revenue (and the related costs) may be deferred for fixed-price contracts until contract completion if we are unable to reasonably estimate the total costs of the project prior to completion.

Because we currently have a small number of customers and contracts, problems with a single contract can adversely affect our business, financial condition and results of operations. For example, our revenues in fiscal 2006 decreased significantly from fiscal 2005 primarily as a result of unanticipated delays in our contract with the US Navy.

Historically, we have relied on a small group of customers for substantially all of our revenue, and such concentration will continue for the foreseeable future. The loss of any of our customers or their default in payment could adversely affect our business, financial condition and results of operations.

***If we are not successful in completing the development of wave power stations in Spain or France, it would materially harm our business, financial condition and results of operations.***

In July 2006, we entered into an agreement for the first phase of the construction of a wave power station off the coast of Santoña, Spain, with our customer, Iberdrola Energias Marinas de Cantabria, S.A., or Iberdrola Cantabria. Iberdrola Cantabria was formed by affiliates of Iberdrola and Total, two Spanish governmental

agencies and us for the purpose of constructing and operating a wave power station off the coast of Spain. Under this agreement, we have agreed to manufacture and deploy no later than December 31, 2009 one 40kW PowerBuoy system and the ocean-based substation and infrastructure required to connect nine additional 150kW PowerBuoy systems that together are contemplated to constitute a 1.39MW wave power station. Under the terms of the agreement, we are required to bear the first €0.5 million of any cost overruns.

In addition, because this agreement does not cover the terms for deployment of all ten PowerBuoy units, we will need to enter into a subsequent contract with Iberdrola Cantabria before we complete construction of the full wave power station. If we are unable to successfully manufacture all ten PowerBuoy units and otherwise meet the terms of the Spain agreement, or if we are not able to successfully negotiate a subsequent contract with Iberdrola Cantabria for the deployment of the nine additional PowerBuoy units, we may lose a material component of our current and anticipated revenue stream. Iberdrola Cantabria has the right to terminate the agreement if we interrupt our services for more than 180 days and do not resume within a 30-day period or if the first phase of construction is not complete by December 31, 2009 for reasons attributable to us, or for a serious and repeated breach of a major obligation that is not cured within a 30-day period after we receive notice of the breach. If Iberdrola Cantabria were to terminate this agreement for any of these reasons, we may not be able to find another company to fund development of the wave power station.

Under our agreement with affiliates of Iberdrola and Total to study and assess the feasibility of a wave power station off the coast of France, either of Iberdrola or Total may withdraw. In addition, in order to proceed with development of the France wave power station, all three parties must conclude that development is feasible. If we proceed, Iberdrola, Total and we will form a new company for the purpose of constructing and operating the wave power station. If either Iberdrola or Total withdraws or does not agree that development of the wave power station is feasible, we may not be able to proceed with development of the wave power station. In addition, if we withdraw from the France project, we will remain obligated to supply and install equipment and provide the new company with assistance and information so that a new company can operate the wave power station.

If either of the Spain or France projects were cancelled or otherwise interrupted, it would adversely affect our business, financial condition and results of operations.

***Our relationships with our alliance partners may not be successful and we may not be successful in establishing additional relationships, which could adversely affect our ability to commercialize our products and services.***

An important element of our business strategy is to enter into development agreements and strategic alliances with regional utility and energy companies committed to providing electricity from renewable energy sources. If we are unable to reach agreements with suitable alliance partners, we may fail to meet our business objectives for the commercialization of our PowerBuoy system. We may face significant competition in seeking appropriate alliance partners. Moreover, these development agreements and strategic alliances are complex to negotiate and time consuming to document. We may not be successful in our efforts to establish additional strategic relationships or other alternative arrangements. The terms of any additional strategic relationships or other arrangements that we establish may not be favorable to us. In addition, these relationships may not be successful, and we may be unable to sell and market our PowerBuoy systems to these companies and their affiliates and customers in the future, or growth opportunities may not materialize, any of which could adversely affect our business, financial condition and results of operations.

***Our targeted markets are highly competitive. We compete with other renewable energy companies and may have to compete with larger companies that enter into the renewable energy business.***

The renewable energy industry, particularly in our targeted markets of coastal North America, the west coast of Europe, the coasts of Australia and the east coast of Japan, is highly competitive and continually evolving as participants strive to distinguish themselves and compete with the larger electric power industry. Competition in the renewable energy industry is likely to continue to increase with the advent of several renewable energy technologies, including tidal and ocean current technologies. If we are not successful in manufacturing systems that generate competitively priced electricity, we will not be able to respond effectively to competitive pressures from other renewable energy technologies.

Moreover, the success of renewable energy generation technologies may cause larger electric utility and other energy companies with substantial financial resources to enter into the renewable energy industry. These companies, due to their greater capital resources and substantial technical expertise, may be better positioned to develop new technologies.

Our inability to respond effectively to such competition could adversely affect our business, financial condition and results of operations.

***We have limited manufacturing experience. If we are unable to increase our manufacturing capacity in a cost-effective manner, our business will be materially harmed.***

We plan to manufacture key components of our PowerBuoy systems, including the advanced control and generation systems. However, we have only manufactured our PowerBuoy systems in limited quantities for use in development and testing and have little commercial manufacturing experience. Our future success depends on our ability to significantly increase both our manufacturing capacity and production throughput in a cost-effective and efficient manner. In order to meet our growth objectives, by the end of fiscal 2010 we will need to increase our engineering and manufacturing staff by over 120 people. There is intense competition for hiring qualified technical and engineering personnel, and we may not be able to hire a sufficient number of qualified engineers to allow us to meet our growth objectives.

We may be unable to develop efficient, low-cost manufacturing capabilities and processes that will enable us to meet the quality, price, engineering, design and production standards or production volumes necessary to successfully commercialize our PowerBuoy systems. If we cannot do so, we may be unable to expand our business, satisfy our contractual obligations or become profitable. Even if we are successful in developing our manufacturing capabilities and processes, we may not be able to do so in time to meet our commercialization schedule or satisfy the requirements of our customers.

***Failure by third parties to supply or manufacture components of our products or to deploy our systems timely or properly could adversely affect our business, financial condition and results of operations.***

We are highly dependent on third parties to supply or manufacture components of our PowerBuoy systems. If, for any reason, our third-party manufacturers or vendors are not willing or able to provide us with components or supplies in a timely fashion, or at all, our ability to manufacture and sell many of our products could be impaired.

We do not have long-term contracts with our third-party manufacturers or vendors. If we do not develop ongoing relationships with vendors located in different regions, we may not be successful at controlling unit costs as our manufacturing volume increases. We may not be able to negotiate new arrangements with these third parties on acceptable terms, if at all.

In addition, we rely on third parties, under our oversight, for the deployment and mooring of our PowerBuoy systems. We have utilized several different deployment methods, including towing the PowerBuoy system to the deployment location, and transporting the PowerBuoy system to the deployment location by barge or ocean workboat. If these third parties do not properly deploy our systems, cannot effectively deploy the PowerBuoy system on a large, commercial scale or otherwise do not perform adequately, or if we fail to recruit and retain third parties to deploy our systems in particular geographic areas, this could adversely affect our business, financial condition and results of operations.

***Business activities conducted by our third-party contractors and us involve the use of hazardous materials, which require compliance with environmental and occupational safety laws regulating the use of such materials. If we violate these laws, we could be subject to significant fines, liabilities or other adverse consequences.***

Our manufacturing operations, in particular some of the activities undertaken by our third-party suppliers and manufacturers, involve the controlled use of hazardous materials. Accordingly, our third-party contractors and we are subject to foreign, federal, state and local laws governing the protection of the environment and human health and safety, including those relating to the use, handling and disposal of these materials. We cannot completely eliminate the risk of accidental contamination or injury from these hazardous materials. In the event of an accident or failure to comply with environmental or health and safety laws and regulations, we

could be held liable for resulting damages, including damages to natural resources, fines and penalties, and any such liability could adversely affect our business, financial condition and results of operations.

Environmental laws and regulations are complex, change frequently and have tended to become stringent over time. While we have budgeted for future capital and operating expenditures to maintain compliance, we cannot assure you that environmental laws and regulations will not change or become more stringent in the future. Therefore, we cannot assure you that our costs of complying with current and future environmental and health and safety laws, and any liabilities arising from past or future releases of, or exposure to, hazardous substances will not adversely affect our business, financial condition or results of operations.

***If we become ineligible for or are otherwise unable to replace any contract with the US federal government that is not extended or is terminated, our business, financial condition and results of operations will be adversely affected.***

We derive a significant portion of our revenue from US federal government contracts, which are subject to special funding restrictions, regulatory requirements and eligibility standards and which the government may terminate at any time or determine not to extend after their scheduled expiration. During fiscal 2006, we derived approximately 61% of our total revenue from contracts with the US Navy.

US federal government contracts are subject to funding restrictions that generally limit the government's funding commitments to one federal fiscal year. There is no guarantee that our federal contracts will continue to be funded even if we perform successfully. If sufficient funds are not made available for subsequent contract periods of a multi-year program, the government's obligations will end, which in turn will adversely affect our business, financial condition and results of operations.

Our contracts with the US Navy contain provisions permitting it to terminate the contract for its convenience, as well as for our default. A decision by a government agency not to exercise option periods or to terminate contracts could result in significant revenue shortfalls.

If the government terminates a contract for convenience, then we may recover only our incurred or committed costs, settlement expenses and profit on work completed prior to the termination. We cannot recover anticipated profit on terminated work. If the government terminates a contract for default, then we may not recover even those amounts, and instead we may be liable for excess costs incurred by the government in procuring undelivered items and services from another source. We cannot predict if the government will terminate or choose not to extend our Federal government contracts. The government has never terminated any of our contracts; however, it may do so at any time.

US federal government contracts are also subject to contractual and regulatory requirements that may increase our costs of doing business and could expose us to substantial contractual damages, civil fines and criminal penalties for noncompliance. These requirements include business ethics, equal employment opportunity, environmental, foreign purchasing, most-favored pricing and accounting provisions, among others. Payments that we receive under US federal government contracts are subject to audit and potential refunds for at least three years after the final contract payment is received.

***The loss of federal funding designed to promote innovative research by small businesses may adversely affect our research and development costs and revenues.***

Most of our federal contracts were awarded through a special US government program designed to promote innovative research by small businesses called Small Business Innovation Research, or SBIR. The SBIR program provides funds to qualified small businesses to further their technological research and development activities and provides incentives to these companies to profit from commercialization of their technology. SBIR funding represents both revenues and outside research and development investment dollars for companies that receive it. The program is open to companies that are majority owned and controlled by individual US citizens or permanent resident aliens, or by a parent entity that meets this standard. Our revenues from the SBIR program were approximately \$0.2 million for the first three months of fiscal 2007 and approximately \$1.1 million for fiscal 2006.

Increased institutional, corporate or foreign ownership as a result of this offering will likely make us ineligible for the SBIR program, which may adversely affect our ability to win future government contracts.

We intend to continue to seek research and development funding from other sources, including funding from existing government customers under non-SBIR programs. Our inability to replace SBIR contracts with funds from other sources could result in reduced revenues and higher internal research and development costs, and therefore adversely affect our operating results.

***We market and sell, and plan to market and sell, our products in numerous international markets. If we are unable to manage our international operations effectively, our business, financial condition and results of operations could be adversely affected.***

We market and sell, and plan to market and sell, our products in a number of foreign countries, including France, Spain, the United Kingdom, Australia and Japan, and we are therefore subject to risks associated with having international operations. International operations accounted for 4% of our revenues in fiscal 2005, 9% of our revenues in fiscal 2006 and 24% of our revenues for the first three months of fiscal 2007. Risks inherent in international operations include, but are not limited to, the following:

- changes in general economic and political conditions in the countries in which we operate;
- unexpected adverse changes in foreign laws or regulatory requirements, including those with respect to renewable energy, environmental protection, permitting, export duties and quotas;
- trade barriers such as export requirements, tariffs, taxes and other restrictions and expenses, which could increase the prices of our PowerBuoy systems and make us less competitive in some countries;
- fluctuations in exchange rates may affect demand for our PowerBuoy systems and may adversely affect our profitability in US dollars to the extent the price of our PowerBuoy systems and cost of raw materials and labor are denominated in a foreign currency;
- difficulty with staffing and managing widespread operations;
- difficulty of, and costs relating to compliance with, the different commercial and legal requirements of the overseas markets in which we offer and sell our PowerBuoy systems;
- inability to obtain, maintain or enforce intellectual property rights; and
- difficulty in enforcing agreements in foreign legal systems.

Our business in foreign markets requires us to respond to rapid changes in market conditions in these countries. Our overall success as a global business depends, in part, on our ability to succeed in differing legal, regulatory, economic, social and political conditions. We may not be able to develop and implement policies and strategies that will be effective in each location where we do business, which in turn could adversely affect our business, financial condition and results of operations.

***We may not be able to raise sufficient capital to grow our business.***

We have in the past needed to raise funds to operate our business, and we may need to raise additional funds to manufacture our PowerBuoy systems in commercial quantities. If we are unable to raise additional funds when needed, our ability to operate and grow our business could be impaired. We do not know whether we will be able to secure additional funding or funding on terms favorable to us. Our ability to obtain additional funding will be subject to a number of factors, including market conditions, our operating performance and investor sentiment. These factors may make the timing, amount, terms and conditions of additional funding unattractive. If we issue additional equity securities, our existing stockholders may experience dilution or be subordinated to any rights, preferences or privileges granted to the new equity holders.

***Our financial results may fluctuate from quarter to quarter, which may make it difficult to predict our future performance.***

Our financial results may fluctuate as a result of a number of factors, many of which are outside of our control. For these reasons, comparing our financial results on a period-to-period basis may not be meaningful, and you should not rely on our past results as an indication of our future performance. Our future quarterly and annual expenses as a percentage of our revenues may be significantly different from those we have recorded in the past or which we expect for the future. Our financial results in some quarters may fall below

expectations. Any of these events could cause our stock price to fall. Each of the risk factors listed in this “Risk Factors” section, including the following factors, may adversely affect our business, financial condition and results of operations:

- delays in permitting or acquiring necessary regulatory consents;
- delays in the timing of contract awards and determinations of work scope;
- delays in funding for or deployment of wave energy projects;
- changes in cost estimates relating to wave energy project completion, which under percentage of completion accounting principles could lead to significant charges to previously recognized revenue or to changes in the timing of our recognition of revenue from those projects;
- delays in meeting specified contractual milestones or other performance criteria under project contracts or in completing project contracts that could delay the recognition of revenue that would otherwise be earned;
- reductions in the availability or level of subsidies and incentives for renewable energy sources;
- decisions made by parties with whom we have commercial relationships not to proceed with anticipated projects;
- increases in the length of our sales cycle; and
- reductions in the efficiency of our manufacturing processes.

***Currency translation and transaction risk may adversely affect our business, financial condition and results of operations.***

Although our reporting currency is the US dollar, we conduct our business and incur costs in the local currency of most countries in which we operate. As a result, we are subject to currency translation risk. In fiscal 2006, approximately 9% of our revenues were generated outside the United States and denominated in Euros and in the first three months of fiscal 2007, 12% of our revenues were generated outside the United States and denominated in Euros and 12% of our revenues were generated outside the United States and denominated in Australian dollars. We expect a large percentage of our revenues to be generated outside the United States and denominated in foreign currencies in the future. Changes in exchange rates between foreign currencies and the US dollar could affect our revenues and cost of revenues, and could result in exchange losses. In addition, we incur currency transaction risk whenever one of our operating subsidiaries enters into either a purchase or a sales transaction using a different currency from our reporting currency. For example, our agreement with Iberdrola Cantabria for the first phase of the construction of a wave power station off the coast of Santoña, Spain is denominated in Euros, and we expect that we will enter into a number of purchase and supply contracts with local Spanish companies also denominated in Euros in connection with the project. We cannot accurately predict the impact of future exchange rate fluctuations on our results of operations. Currently, we do not engage in any exchange rate hedging activities and, as a result, any volatility in currency exchange rates may have an immediate adverse effect on our business, results of operations and financial condition.

***Existing regulations and policies and changes to these or new regulations and policies may present technical, regulatory and economic barriers to the use of wave energy technology, which may significantly reduce demand for our PowerBuoy systems.***

The market for electricity generation equipment is heavily influenced by foreign, federal, state and local government regulations and policies concerning the electric utility industry, as well as policies promulgated by electric utilities. These regulations and policies often relate to electricity pricing and connection to the power grid. In the United States and in a number of other countries, these regulations and policies currently are being modified and may be modified again in the future. Utility company and independent power producer purchases of, or further investment in the research and development of, alternative energy sources, including wave energy technology, could be deterred by these regulations and policies, which could result in a significant reduction in the potential demand for our PowerBuoy systems.

As the renewable energy industry continues to develop and as the generation of power from wave energy in particular achieves commercial acceptance, we anticipate that wave energy technology and our PowerBuoy systems and their deployment will be subject to increased oversight and regulation. We are unable to predict the nature or extent of regulations that may be imposed or adopted. Any new government regulations or utility policies pertaining to wave energy or our PowerBuoy systems may result in significant additional expenses to us and our customers and, as a result, could adversely affect our business, financial condition and results of operations.

***Implementation of our planned projects is dependent upon receipt of all necessary regulatory permits and approvals.***

Offshore development of electric power generating facilities is heavily regulated. Each of our planned projects is subject to multiple permitting and approval requirements. With respect to our projects in Spain and France, we are dependent upon our customers to obtain any necessary permits and approvals, and with respect to our project in Cornwall, England, we are dependent on a regional government agency for such permits and approvals. Due to the unique nature of large scale commercial wave power stations, we would expect our projects to receive close scrutiny by permitting agencies, approval authorities and the public, which could result in substantial delay in the permitting process. Successful challenges by any parties opposed to our planned projects could result in conditions limiting the project size or in the denial of necessary permits and approvals.

If we are unable to obtain necessary permits and approvals in connection with any or all of our projects, those projects would not be implemented and our business, financial condition and results of operations would be adversely affected. Further, we cannot assure you that we have been or will be at all times in complete compliance with all such permits and approvals. If we violate or fail to comply with these permits and approvals, we could be fined or otherwise sanctioned by regulators.

***We face hurricane- and storm-related risks and other risks typical of a marine environment which could adversely affect our business, financial condition and results of operations.***

Our PowerBuoy systems are deployed in the ocean where they are subject to many hazards including severe storms and hurricanes, which could damage them and result in service interruptions. Although we carry insurance for our PowerBuoy systems, we cannot predict whether we will be able to recover the additional costs that we may incur due to the damage caused to our PowerBuoy systems, or whether we will continue to be able to obtain insurance for hurricane- and storm-related damages or, if obtainable and carried, whether this insurance will be adequate to cover our liabilities. Any future hurricane- or storm-related costs could adversely affect our business, financial condition and results of operations.

***We may be unable to attract and retain management and other personnel we need to succeed.***

Our success depends on the skills, experience and efforts of our senior management and other key development, manufacturing, and sales and marketing employees. We cannot be certain that we will be able to attract, retain and motivate such employees. The loss of the services of one or more of these employees could have a material adverse effect on our business. There is a risk that we will not be able to retain or replace these key employees. We have entered into employment agreements with Dr. George Taylor, our chief executive officer, Charles Dunleavy, our senior vice president and chief financial officer, Mark Draper, the chief executive officer of our UK subsidiary, and John Baylouny, our senior vice president, engineering; however, the agreements permit the employees to terminate their employment with little notice.

In addition, our anticipated growth will require us to hire a significant number of qualified technical, commercial and administrative personnel. In order to meet our short-term goals, by the end of fiscal 2007, we plan to add approximately 20 employees, including a vice president of business development. The remainder will primarily be engineers with varying areas of expertise. By the end of fiscal 2010, we will need to increase our staff by nearly six times in order to meet our current manufacturing targets. The majority of our new hires will be engineers, project managers and manufacturing personnel. There is intense competition from other companies and research and academic institutions for qualified personnel in the areas of our activities. If we cannot continue to attract and retain, on acceptable terms, the qualified personnel necessary for the continued development of our business, we may not be able to sustain our operations or grow at a competitive pace.

*Any acquisitions that we make or joint venture agreements that we enter into, or any failure to identify appropriate acquisition or joint venture candidates, could adversely affect our business, financial condition and results of operations.*

From time to time, we evaluate potential strategic acquisitions of complementary businesses, products or technologies, as well as consider joint ventures and other collaborative projects. We may not be able to identify appropriate acquisition candidates or strategic partners, or successfully negotiate, finance or integrate any businesses, products or technologies that we acquire. We do not have any experience with acquiring companies or products. Any acquisition we pursue could diminish the proceeds from this offering available to us for other uses or be dilutive to our stockholders, and could divert management's time and resources from our core operations.

Strategic acquisitions, investments and alliances with third parties could subject us to a number of risks, including risks associated with sharing proprietary information and loss of control of operations that are material to our business. In addition, strategic acquisitions, investments and alliances may be expensive to implement. For example, under the France project, our entitlement to retain our current percentage interest is subject to our ability to make a proportionate capital investment, which we may be unable to finance. Moreover, strategic acquisitions, investments and alliances subject us to the risk of non-performance by a counterparty, which may in turn lead to monetary losses that materially and adversely affect our business, financial condition and results of operations.

*Section 404 of the Sarbanes-Oxley Act of 2002 will require us to document and test our internal control over financial reporting for fiscal 2008 and beyond and will require an independent registered public accounting firm to report on our assessment as to the effectiveness of these controls. Any delays or difficulty in satisfying these requirements could adversely affect our future results of operations and our stock price.*

Section 404 of the Sarbanes-Oxley Act of 2002 will require us to document and test the effectiveness of our internal control over financial reporting in accordance with an established internal control framework and to report on our conclusion as to the effectiveness of our internal controls. It will also require an independent registered public accounting firm to test our internal control over financial reporting and report on the effectiveness of such controls for our fiscal year ending April 30, 2008 and subsequent years. An independent registered public accounting firm will also be required to test, evaluate and report on the completeness of our assessment. In addition, upon completion of this offering, we will be required under the Securities Exchange Act of 1934 to maintain disclosure controls and procedures and internal control over financial reporting. Moreover, it may cost us more than we expect to comply with these control- and procedure-related requirements.

We may in the future discover areas of our internal controls that need improvement, particularly with respect to businesses that we may acquire. We cannot be certain that any remedial measures we take will ensure that we implement and maintain adequate internal controls over our financial processes and reporting in the future. Any failure to implement required new or improved controls, or difficulties encountered in their implementation, could harm our operating results or cause us to fail to meet our reporting obligations. If we are unable to conclude that we have effective internal control over financial reporting, or if our independent registered public accounting firm is unable to provide us with an unqualified opinion regarding the effectiveness of our internal control over financial reporting as of April 30, 2008 and in future periods as required by Section 404, investors could lose confidence in the reliability of our consolidated financial statements, which could result in a decrease in the value of our common stock. Failure to comply with Section 404 could potentially subject us to sanctions or investigations by the SEC, The Nasdaq Stock Market or other regulatory authorities.

## Risks Related to Intellectual Property

***If we are unable to obtain or maintain intellectual property rights relating to our technology and products, the commercial value of our technology and products may be adversely affected, which could in turn adversely affect our business, financial condition and results of operations.***

Our success and ability to compete depends in part upon our ability to obtain protection in the United States and other countries for our products by establishing and maintaining intellectual property rights relating to or incorporated into our technology and products. We own a variety of patents and patent applications in the United States and corresponding patents and patent applications in several foreign jurisdictions. However, we have not obtained patent protection in each market in which we plan to compete. In addition, we do not know how successful we would be should we choose to assert our patents against suspected infringers. Our pending and future patent applications may not issue as patents or, if issued, may not issue in a form that will be advantageous to us. Even if issued, patents may be challenged, narrowed, invalidated or circumvented, which could limit our ability to stop competitors from marketing similar products or limit the length of term of patent protection we may have for our products. Changes in either patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property or narrow the scope of our patent protection, which could in turn adversely affect our business, financial condition and results of operations.

***Our contracts with the government could negatively affect our intellectual property rights.***

Our agreements with the US Navy help fund research and development of our PowerBuoy system. When new technologies are developed with US federal government funding, the government obtains certain rights in any resulting patents, technical data and software, generally including, at a minimum, a nonexclusive license authorizing the government to use the invention, technical data or software for non-commercial purposes. These rights may permit the government to disclose our confidential information to third parties and to exercise "march-in" rights. March-in rights refer to the right of the US government to require us to grant a license to the technology to a responsible applicant or, if we refuse, the government may grant the license itself. US government-funded inventions must be reported to the government. US government funding must be disclosed in any resulting patent applications, and our rights in such inventions will normally be subject to government license rights, periodic post-contract utilization reporting, foreign manufacturing restrictions and march-in rights.

The government can exercise its march-in rights if it determines that action is necessary because we fail to achieve practical application of the technology or because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations or to give preference to US industry. Our government-sponsored research contracts are subject to audit and require that we provide regular written technical updates on a monthly, quarterly or annual basis, and, at the conclusion of the research contract, a final report on the results of our technical research. Because these reports are generally available to the public, third parties may obtain some aspects of our sensitive confidential information. Moreover, if we fail to provide these reports or to provide accurate or complete reports, the government may obtain rights to any intellectual property arising from the related research. Funding from government contracts also may limit when and how we can deploy our technology developed under those contracts.

***If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected, which could in turn adversely affect our business, financial condition and results of operations.***

In addition to patented technology, we rely upon unpatented proprietary technology, processes and know-how, particularly with respect to our PowerBuoy control and electricity generating systems. We generally seek to protect this information in part by confidentiality agreements with our employees, consultants and third parties. These agreements may be breached, and we may not have adequate remedies for any such breach. In addition, our trade secrets may otherwise become known or be independently developed by competitors.

*If we infringe or are alleged to infringe intellectual property rights of third parties, our business, financial condition and results of operations could be adversely affected.*

Our products may infringe or be claimed to infringe patents or patent applications under which we do not hold licenses or other rights. Third parties may own or control these patents and patent applications in the United States and abroad. From time to time, we receive correspondence from third parties offering to license patents to us. Although such correspondence generally does not include a claim of infringement, correspondence of this nature might be used to establish that we received notice of certain patents in the event of subsequent patent infringement litigation. Third parties could bring claims against us that would cause us to incur substantial expenses and, if successfully asserted against us, could cause us to pay substantial damages. Further, if a patent infringement suit were brought against us, we could be forced to stop or delay manufacturing or sales of the product or component that is the subject of the suit.

As a result of patent infringement claims, or in order to avoid potential claims, we may choose or be required to seek a license from the third party and be required to pay license fees or royalties or both. These licenses may not be available on acceptable terms, or at all. Even if we were able to obtain a license, the rights may be nonexclusive, which could result in our competitors gaining access to the same intellectual property. Ultimately, we could be forced to cease some aspect of our business operations if, as a result of actual or threatened patent infringement claims, we are unable to enter into licenses on acceptable terms. This could significantly and adversely affect our business, financial condition and results of operations.

In addition to infringement claims against us, we may become a party to other types of patent litigation and other proceedings, including interference proceedings declared by the United States Patent and Trademark Office and opposition proceedings in the European Patent Office, regarding intellectual property rights with respect to our products and technology. The cost to us of any patent litigation or other proceeding, even if resolved in our favor, could be substantial. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our ability to compete in the marketplace. Patent litigation and other proceedings may also absorb significant management time.

#### **Risks Related to the Offering**

*Provisions in our corporate charter documents and under Delaware law may delay or prevent attempts by our stockholders to change our management and hinder efforts to acquire a controlling interest in us.*

After we reincorporate in Delaware, provisions of our certificate of incorporation and bylaws may discourage, delay or prevent a merger, acquisition or other change in control that stockholders may consider favorable, including transactions in which our stockholders might otherwise receive a premium for their shares. These provisions may also prevent or frustrate attempts by our stockholders to replace or remove our management. These provisions include:

- advance notice requirements for stockholder proposals and nominations;
- the inability of stockholders to act by written consent or to call special meetings; and
- the ability of our board of directors to designate the terms of and issue new series of preferred stock without stockholder approval, which could be used to institute a “poison pill” that would work to dilute the stock ownership of a potential hostile acquirer, effectively preventing acquisitions that have not been approved by our board of directors.

The affirmative vote of the holders of at least 75% of our shares of capital stock entitled to vote is necessary to amend or repeal the above provisions of our certificate of incorporation. In addition, absent approval of our board of directors, our bylaws may only be amended or repealed by the affirmative vote of the holders of at least 75% of our shares of capital stock entitled to vote.

In addition, Section 203 of the Delaware General Corporation Law prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person which together with its affiliates owns or within the last three years has owned 15% of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless

the business combination is approved in a prescribed manner. Accordingly, after we reincorporate in Delaware, Section 203 may discourage, delay or prevent a change in control of our company.

***An active trading market for our common stock may not develop in the United States.***

Prior to this offering, there has been no public market for shares of our common stock in the United States. Our common stock has been listed on the AIM market of the London Stock Exchange plc, referred to as the AIM market, under the symbol "OPT" since October 2003. However, there is currently a limited volume of trading in our common stock on the AIM market, which limits the liquidity of our common stock on that market. We cannot predict when or whether investor interest in our common stock on the AIM market might lead to an increase in its market price or the development of a more active trading market or how liquid that market might become.

The initial public offering price for our common stock was determined through negotiations with the underwriters based on a number of factors, including the historic trading prices of our common stock on the AIM market, that might not be indicative of prices that will prevail in the trading market for our common stock in the United States. Although we will apply to have our common stock approved for trading on The Nasdaq Global Market, an active trading market for our shares in the United States may never develop or be sustained following this offering. If an active market for our common stock does not develop, it may be difficult to sell shares you purchase in this offering without depressing the market price for the shares, or at all.

***Liquidity in the market for our common stock may be adversely affected by our maintenance of two exchange listings.***

Following this offering and after our common stock is traded on The Nasdaq Global Market, we currently expect to continue to list our common stock on the AIM market, although we cannot assure you that we will maintain that listing. We cannot predict the effect of having our common stock traded or listed on both of these markets. However, the dual listing of our common stock may dilute the liquidity of our common stock in one or both markets and may adversely affect the development of an active trading market for our shares in the United States.

***Our stock price is likely to be volatile, and purchasers of our common stock could incur substantial losses.***

The price of our common stock has been volatile on the AIM market, and after this offering our stock price is likely to continue to be volatile. The stock market in general has experienced extreme volatility that has often been unrelated to the operating performance of particular companies. As a result of this volatility, investors may not be able to sell their common stock at or above the initial public offering price. The market price for our common stock may be influenced by many factors, including:

- the success of competitive products or technologies;
- regulatory developments in the United States and foreign countries;
- developments or disputes concerning patents or other proprietary rights;
- the recruitment or departure of key personnel;
- quarterly or annual variations in our financial results or those of companies that are perceived to be similar to us;
- market conditions in the conventional and renewable energy industries and issuance of new or changed securities analysts' reports or recommendations;
- the failure of securities analysts to cover our common stock after this offering or changes in financial estimates by analysts;
- the inability to meet the financial estimates of analysts who follow our common stock;
- investor perception of our company and of the renewable energy industry; and
- general economic, political and market conditions.

***A substantial portion of our total outstanding shares may be sold into the market at any time. This could cause the market price of our common stock to drop significantly, even if our business is doing well.***

All of the shares being sold in this offering will be freely tradable without restriction or further registration under the federal securities laws, unless purchased by our “affiliates” as that term is defined in Rule 144 under the Securities Act. In addition, approximately            shares will be immediately eligible for sale after the completion of this offering pursuant to Rule 144(k) (without regard to the volume limitations and other applicable conditions of Rule 144) and approximately            shares will be eligible for sale upon completion of this offering pursuant to Rule 144 subject to the volume limitations and other applicable conditions of Rule 144 upon the expiration of 180-day lock-up agreements.

We also intend to register all shares of our common stock that we may issue under our employee benefit plans. Once we register these shares, they can be freely sold in the public market upon issuance, subject to the lock-up agreements described in “Underwriting.” Sales of a substantial number of shares of our common stock, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our common stock.

***We have broad discretion in the use of our net proceeds from this offering and may not use them effectively.***

Our management will have broad discretion in the application of the net proceeds from this offering and could spend the proceeds in ways that do not improve our operating results or enhance the value of our common stock. Our stockholders may not agree with the manner in which our management chooses to allocate and spend the net proceeds. The failure by our management to apply these funds effectively could result in financial losses that could have a material adverse effect on our business and cause the price of our common stock to decline. Pending their use, we may invest our net proceeds from this offering in a manner that does not produce income or that loses value.

***We have never paid cash dividends on our common stock, and we do not anticipate paying any cash dividends in the foreseeable future.***

We have not paid any cash dividends on our common stock to date. We currently intend to retain our future earnings, if any, to fund the development and growth of our business. In addition, the terms of any future debt agreements may preclude us from paying dividends. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future.

***If you purchase shares of our common stock in this offering, you will suffer immediate and substantial dilution of your investment.***

The initial public offering price of our common stock is substantially higher than the net tangible book value per share of our common stock. Therefore, if you purchase shares of our common stock in this offering, your interest will be diluted immediately to the extent of the difference between the initial public offering price per share of our common stock and the net tangible book value per share of our common stock after this offering. See “Dilution.”

***We will incur increased costs as a result of being a public company.***

As a public company in the United States, we will incur significant legal, accounting and other expenses that we have not incurred to date. In addition, the Sarbanes-Oxley Act of 2002, as well as new rules subsequently implemented by the SEC and The Nasdaq Stock Market, have required changes in corporate governance practices of public companies in the United States. We expect these new rules and regulations to increase our legal and financial compliance costs and to make some activities more time-consuming and costly. In addition, we will incur additional costs associated with our United States public company reporting requirements. We also expect these new rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified persons to serve on our board of directors or as executive officers. We are currently evaluating and monitoring developments with respect to these new rules, and we cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

#### SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, including the sections titled “Prospectus Summary,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business,” contains forward-looking statements. Forward-looking statements convey our current expectations or forecasts of future events. All statements contained in this prospectus other than statements of historical fact are forward-looking statements. Forward-looking statements include statements regarding our future financial position, business strategy, budgets, projected costs, plans and objectives of management for future operations. The words “may,” “continue,” “estimate,” “intend,” “plan,” “will,” “believe,” “project,” “expect,” “anticipate” and similar expressions may identify forward-looking statements, but the absence of these words does not necessarily mean that a statement is not forward-looking. These forward-looking statements include, among other things, statements about:

- our ability to identify and penetrate markets for our PowerBuoy systems and our wave energy technology;
- our ability to implement our commercialization strategy as planned, or at all;
- changes in current legislation or regulations that affect the demand for renewable energy;
- our ability to compete effectively in the renewable energy market;
- our limited operating history and history of operating losses;
- our sales and marketing capabilities and strategy in the United States and internationally;
- our intellectual property portfolio; and
- our estimates regarding expenses, future revenues, capital requirements and needs for additional financing.

Any or all of our forward-looking statements in this prospectus may turn out to be inaccurate. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. They may be affected by inaccurate assumptions we might make or unknown risks and uncertainties, including the risk, uncertainties and assumptions described in “Risk Factors.” In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this prospectus may not occur as contemplated, and actual results could differ materially from those anticipated or implied by the forward-looking statements.

You should not unduly rely on these forward-looking statements, which speak only as of the date of this prospectus. Unless required by law, we undertake no obligation to publicly update or revise any forward-looking statements to reflect new information or future events or otherwise. You should, however, review the factors and risks we describe in the reports we will file from time to time with the SEC after the date of this prospectus. See “Where You Can Find More Information.”

## USE OF PROCEEDS

We estimate that the net proceeds to us from the sale of the \_\_\_\_\_ shares of common stock we are offering will be approximately \$ \_\_\_\_\_ million, assuming an initial public offering price of \$ \_\_\_\_\_ per share, the midpoint of the estimated price range shown on the cover of this prospectus, and after deducting underwriting discounts and commissions and the estimated offering expenses payable by us. If the underwriters exercise their over-allotment option in full, we estimate the net proceeds to use from this offering will be approximately \$ \_\_\_\_\_ million.

The principal purposes of this offering are to obtain additional capital resources to construct demonstration wave power stations and to fund minority investments in wave station projects to encourage market adoption of our wave power stations; to fund the continued development and commercialization of our PowerBuoy system, including increases in system output; to expand our international sales and marketing capabilities; and for working capital and general corporate purposes, including potential acquisitions of complementary businesses, products or technologies. We intend to use the net proceeds of this offering as follows:

- approximately \$ \_\_\_\_\_ million to construct demonstration wave power stations and approximately \$ \_\_\_\_\_ million to fund minority investments in wave station projects to encourage market adoption of our wave power stations;
- approximately \$ \_\_\_\_\_ million to fund the continued development and commercialization of our PowerBuoy system, including increases in system output;
- approximately \$ \_\_\_\_\_ million to expand our international sales and marketing capabilities; and
- the balance for working capital and other general corporate purposes.

We may also use a portion of the net proceeds to acquire complementary products, technologies or businesses, although we currently have no agreements or commitments with respect to any such transactions.

Assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, after deducting the estimated underwriting discounts and commissions and other estimated offering expenses payable by us in connection with the offering, a \$1.00 increase (decrease) in the assumed public offering price of \$ \_\_\_\_\_ per share of common stock would increase (decrease) our expected net proceeds by approximately \$ \_\_\_\_\_ million.

As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds of this offering. The amounts and timing of our actual expenditures may vary significantly from our expectations depending upon numerous factors, including our development and commercialization efforts, our operating costs and capital expenditures, our future revenues and cash generated by operations. Accordingly, we will retain broad discretion to allocate the net proceeds of this offering among the identified uses described above, and we reserve the right to change the allocation of the net proceeds of this offering.

Pending use of the proceeds from this offering, we intend to invest the proceeds in short-term, investment-grade, interest-bearing instruments.

**PRICE RANGE OF OUR COMMON STOCK**

Prior to this offering, there has been no trading market for our common stock in the United States. Our common stock has been listed on the AIM market of the London Stock Exchange since October 2003 under the symbol "OPT." The historical trading prices of our common stock on the AIM market may not be indicative of prices that will prevail in the trading market for our common stock in the United States.

The following table sets forth, for the periods indicated, the average daily trading volume and the high and low closing sale prices for our common stock on the AIM market as reported by the London Stock Exchange. The sales prices for our shares of common stock on the AIM market are quoted in pound sterling (£), the lawful currency of the United Kingdom. The following table also shows the high and low closing sales price of our common stock expressed in dollars based upon the average noon buying rate for pound sterling for the periods indicated.

	<u>Average Daily Trading Volume</u>	<u>High</u>	<u>Low</u>	<u>High</u>	<u>Low</u>
<b>Year ended April 30, 2005</b>					
First quarter		£	£	\$	\$
Second quarter		£	£	\$	\$
Third quarter		£	£	\$	\$
Fourth quarter		£	£	\$	\$
<b>Year ended April 30, 2006</b>					
First quarter		£	£	\$	\$
Second quarter		£	£	\$	\$
Third quarter		£	£	\$	\$
Fourth quarter		£	£	\$	\$
<b>Year ending April 30, 2007</b>					
First quarter		£	£	\$	\$
Second quarter		£	£	\$	\$

On \_\_\_\_\_, 2006, the last reported sale price of our common stock on the AIM market was £ \_\_\_\_\_ per share, or approximately \$ \_\_\_\_\_ per share based on the noon buying rate for pound sterling of £1.00 = \$ \_\_\_\_\_ on that date.

The following table sets forth, for the periods indicated, the high, low, average and period end noon buying rate for pound sterling, expressed in dollars per pound sterling in New York City as certified for customs purposes by the Federal Reserve Bank of New York.

	<u>High</u>	<u>Low</u>	<u>Average</u>	<u>Period End</u>
<b>Year ended April 30, 2005</b>				
First quarter	\$ 1.87	\$ 1.75	\$ 1.82	\$ 1.82
Second quarter	\$ 1.85	\$ 1.77	\$ 1.81	\$ 1.83
Third quarter	\$ 1.95	\$ 1.83	\$ 1.89	\$ 1.89
Fourth quarter	\$ 1.93	\$ 1.86	\$ 1.90	\$ 1.91
<b>Year ended April 30, 2006</b>				
First quarter	\$ 1.90	\$ 1.73	\$ 1.81	\$ 1.76
Second quarter	\$ 1.84	\$ 1.75	\$ 1.79	\$ 1.77
Third quarter	\$ 1.79	\$ 1.71	\$ 1.75	\$ 1.78
Fourth quarter	\$ 1.82	\$ 1.73	\$ 1.75	\$ 1.82
<b>Year ending April 30, 2007</b>				
First quarter	\$ 1.89	\$ 1.81	\$ 1.85	\$ 1.87
Second quarter	\$ 1.91	\$ 1.85	\$ 1.89	\$ 1.91

The initial public offering price for the common stock being offered by this prospectus was determined by negotiation between us and the underwriters based on a number of factors which are described in "Underwriting — Determination of Offering Price."

**DIVIDEND POLICY**

We have never declared or paid any cash dividends on our common stock, and we do not currently anticipate declaring or paying cash dividends on our common stock in the foreseeable future. We currently intend to retain all of our future earnings, if any, to finance the growth and development of our business. Any future determination relating to our dividend policy will be made at the discretion of our board of directors and will depend on a number of factors, including future earnings, capital requirements, financial conditions, future prospects, contractual restrictions and covenants and other factors that our board of directors may deem relevant.

**CAPITALIZATION**

The following table sets forth our cash, cash equivalents and short-term investments and capitalization as of July 31, 2006:

- on an actual basis; and
- on an as adjusted basis to reflect the sale of the \_\_\_\_\_ shares of our common stock we are offering at an assumed initial public offering price of \$ \_\_\_\_\_ per share, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

	As of July 31, 2006	
	Actual	As Adjusted(1)
	(Unaudited)	
Cash, cash equivalents and certificates of deposit	\$ 31,135,988	\$ _____
Long-term debt	\$ 233,959	\$ _____
Stockholders' equity:		
Preferred stock, par value \$0.001 per share; 5,000,000 shares authorized; no shares outstanding actual and no shares outstanding as adjusted	—	—
Common stock, par value \$0.001 per share; 105,000,000 shares authorized; shares outstanding actual and _____ shares outstanding as adjusted	51,722	_____
Additional paid-in capital	60,132,479	_____
Accumulated deficit	(30,293,107)	_____
Accumulated other comprehensive loss	(35,111)	_____
Total stockholders' equity	29,855,983	_____
Total capitalization	\$ 30,089,942	\$ _____

(1) Assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, after deducting the estimated underwriting discounts and commissions and other estimated offering expenses payable by us in connection with the offering, a \$1.00 increase (decrease) in the assumed public offering price of \$ \_\_\_\_\_ per share of common stock (the midpoint of the range set forth on the cover of this prospectus) would increase (decrease) each of cash, cash equivalents and certificates of deposit, additional paid-in capital, total stockholders' equity and total capitalization by \$ \_\_\_\_\_ million.

The table above should be read in conjunction with our consolidated financial statements and related notes appearing at the end of this prospectus and the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section of this prospectus.

This table is based on \_\_\_\_\_ shares of our common stock outstanding as of July 31, 2006 and excludes:

- \_\_\_\_\_ shares of our common stock issuable upon the exercise of stock options outstanding as of July 31, 2006 at a weighted average exercise price of \$ \_\_\_\_\_ per share; and
- \_\_\_\_\_ shares of our common stock available for future grant under our equity compensation plans, including our new 2006 stock incentive plan, as of July 31, 2006.

**DILUTION**

If you invest in our common stock, your interest will be diluted immediately to the extent of the difference between the initial public offering price per share you will pay in this offering and the net tangible book value per share of our common stock after this offering.

Our actual net tangible book value as of July 31, 2006 was \$ million, or \$ per share of common stock. Net tangible book value per share represents the amount of our total tangible assets less total liabilities, divided by the number of shares of common stock outstanding.

After giving effect to the issuance and sale by us of the shares of common stock in this offering, at an assumed initial public offering price of \$ per share, the midpoint of the range set forth on the cover page of this prospectus, less the underwriting discounts and commissions and estimated offering expenses payable by us, our net tangible book value as of July 31, 2006 would have been \$ , or \$ per share of common stock. This represents an immediate increase in net tangible book value per share of \$ to existing stockholders and immediate dilution of \$ per share to new investors purchasing shares in this offering. Dilution per share to new investors is determined by subtracting the net tangible book value per share after this offering from the initial public offering price per share paid by a new investor. The following table illustrates the per share dilution without giving effect to the over-allotment option granted to the underwriters:

Assumed initial public offering price per share of common stock	\$
Actual net tangible book value per share as of July 31, 2006	\$
Increase in net tangible book value per share attributable to new investors	_____
Adjusted tangible book value per share after this offering	_____
Dilution per share to new investors	\$ _____

A \$1.00 increase (decrease) in the assumed public offering price of \$ per share would increase (decrease) the adjusted net tangible book value per share by \$ , and the dilution per share to new investors by \$ , assuming the number of shares offered by us in this offering as set forth on the cover page of this prospectus remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their over-allotment option in full, our net tangible book value will increase to \$ per share, representing an immediate increase to existing stockholders of \$ per share and an immediate dilution of \$ per share to new investors. If any shares are issued in connection with outstanding options, you will experience further dilution.

The following table summarizes as of July 31, 2006 the number of shares of common stock purchased or to be purchased from us, the total consideration paid or to be paid and the average price per share paid by (1) the stockholders that purchased our shares in our October 2003 offering on the AIM market of the London Stock Exchange, (2) other existing stockholders and (3) new investors in this offering, before deducting underwriting discounts and commissions and other estimated expenses of this offering.

	Total Shares		Total Consideration		Average Price per Share
	Number	%	Amount	%	
Stockholders that purchased in the AIM market offering		%	\$	%	\$
Other existing stockholders(1)					
New investors					
Total	_____	100%	\$ _____	100%	

(1) Includes shares held by our directors and executive officers, 78% of which shares were purchased more than five years prior to July 31, 2006.

The table above is based on shares outstanding as of July 31, 2006 and excludes:

- shares of our common stock issuable upon the exercise of stock options outstanding as of July 31, 2006 at a weighted average exercise price of \$ per share; and
- shares of our common stock available for future grant under our equity compensation plans, including our new 2006 stock incentive plan, as of July 31, 2006.

If the underwriters exercise their over-allotment option in full, the following will occur:

- the percentage of shares of common stock held by existing stockholders will decrease to approximately % of the total number of shares of our common stock outstanding after this offering; and
- the number of shares held by new investors will be increased to , or approximately %, of the total number of shares of our common stock outstanding after this offering.

**SELECTED CONSOLIDATED FINANCIAL DATA**

You should read the following selected consolidated financial data in conjunction with our consolidated financial statements and the related notes appearing at the end of this prospectus and the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of this prospectus. We have derived the consolidated statement of operations data for the fiscal years ended April 30, 2004, 2005 and 2006 and the consolidated balance sheet data as of April 30, 2005 and 2006 from our audited consolidated financial statements, which are included in this prospectus, as audited by KPMG LLP, our independent registered public accounting firm for fiscal 2005 and 2006 and by Deloitte & Touche LLP for fiscal 2004. We have derived the consolidated statement of operations data for the fiscal years ended April 30, 2002 and 2003 and the consolidated balance sheet data as of April 30, 2002, 2003 and 2004 from our audited consolidated financial statements, which are not included in this prospectus, as audited by Deloitte & Touche LLP. We have derived the consolidated statement of operations data for the three months ended July 31, 2005 and 2006 and the consolidated balance sheet data as of July 31, 2006 from our unaudited consolidated financial statements, which are included in this prospectus. The unaudited summary consolidated financial statement data include, in our opinion, all adjustments, consisting only of normal recurring adjustments, that are necessary for a fair presentation of our financial position and results of operations for these periods. Our historical results for any prior period are not necessarily indicative of results to be expected for any future period.

	Fiscal Years Ended April 30,					Three Months Ended July 31,	
	2002	2003	2004	2005	2006	2005	2006
<b>Consolidated Statement of Operations Data:</b>	(Unaudited)						
Revenues	\$ 1,375,339	\$ 2,548,294	\$ 4,713,202	\$ 5,365,235	\$ 1,747,715	\$ 492,820	\$ 305,186
Cost of revenues	3,619,996	2,555,267	4,319,850	5,170,521	2,059,318	616,435	225,965
Gross profit (loss)	(2,244,657)	(6,973)	393,352	194,714	(311,603)	(123,615)	79,221
Operating expenses:							
Product development costs	622,137	180,403	255,958	904,618	4,224,997	587,935	1,052,126
Selling, general and administrative costs	1,832,747	818,596	1,745,955	2,553,911	3,190,687	689,870	1,388,045
Total operating expenses	2,454,884	998,999	2,001,913	3,458,529	7,415,684	1,277,805	2,440,171
Operating loss	(4,699,541)	(1,005,972)	(1,608,561)	(3,263,815)	(7,727,287)	(1,401,420)	(2,360,950)
Other income (expense):							
Interest income	120,880	38,441	555,717	1,297,156	1,408,361	355,590	362,367
Other income (expense)	499,591	473	(3,500,096)(1)	1,545	74,294	—	—
Foreign exchange gain (loss)	—	—	1,585,345	1,507,145	(978,242)	(1,600,090)	337,629
Loss before incomes taxes	(4,079,070)	(967,058)	(2,967,595)	(457,969)	(7,222,874)	(2,645,920)	(1,660,954)
Income tax benefit	155,312	146,853	118,119	29,335	143,963	—	—
Net loss	\$ (3,923,758)	\$ (820,205)	\$ (2,849,476)	\$ (428,634)	\$ (7,078,911)	\$ (2,645,920)	\$ (1,660,954)
Basic and diluted net loss per share	\$	\$	\$	\$	\$	\$	\$
Basic and diluted weighted average shares outstanding							
	As of April 30,					As of July 31,	
	2002	2003	2004	2005	2006	2006	
<b>Consolidated Balance Sheet Data:</b>	(Unaudited)						
Cash, cash equivalents and certificates of deposit	\$ 3,255,238	\$ 2,246,175	\$ 39,565,574(2)	\$ 38,787,176	\$ 32,439,365	\$	\$ 31,135,988
Working capital	1,714,786	1,177,789	38,422,395	37,903,207	30,886,029		29,692,756
Total assets	3,837,915	2,878,947	40,747,479	41,596,387	33,996,138		32,655,409
Long-term debt, net of current portion	250,000	250,000	250,000	245,844	233,959		233,959
Accumulated deficit	(17,486,799)	(18,307,004)	(21,156,480)	(21,553,242)	(28,632,153)		(30,293,107)
Total stockholders’ equity	1,104,284	490,785	37,853,246	37,836,531	31,066,704		29,855,983

- (1) Other expense in fiscal 2004 resulted from a one time charge incurred at the time of our stock offering on the AIM market in October 2003 relating to a 1999 agreement between us and Tyco Electronics Corp.
- (2) On October 31, 2003, we completed our offering on the AIM market resulting in net proceeds to us of \$38.3 million.

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

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

### Overview

We develop and are commercializing proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. Our PowerBuoy systems use proprietary technologies to convert the mechanical energy created by the rising and falling of ocean waves into electricity. We currently offer two PowerBuoy products, our utility PowerBuoy system and our autonomous PowerBuoy system.

We market our utility PowerBuoy system, which is designed to supply electricity to a local or regional power grid, to utilities and other electrical power producers seeking to add electricity generated by wave energy to their existing electricity supply. We market our autonomous PowerBuoy system, which is designed to generate power for use independently of the power grid, to customers that require electricity in remote locations. We believe there are a variety of potential applications for our autonomous PowerBuoy system, including sonar and radar surveillance, offshore cellular phone service, tsunami warning, oceanographic data collection, offshore platforms and offshore aquaculture. We also plan to offer our customers operating and maintenance services for our PowerBuoy systems, which would provide additional recurring revenues.

We were incorporated in New Jersey in April 1984 and began commercial operations in 1994. We currently have four wholly owned subsidiaries, Ocean Power Technologies Ltd, OPT Wave Park LLC, Oregon Wave Energy Partners I, LLC and Oregon Wave Energy Partners II, LLC, and we own approximately 88% of the ordinary shares of Ocean Power Technologies (Australasia) Pty Ltd. Our revenues have been generated from research contracts and development and construction contracts relating to our wave energy technology. The development of our technology has been funded by capital we raised and by development engineering contracts we received starting in fiscal 1995. In fiscal 1996, we received the first of several research contracts with the US Navy to study the feasibility of wave energy. As a result of those research contracts, we entered into our first development and construction contract with the US Navy in fiscal 2002 under a still on-going project for the development and construction of a grid-connected wave power station at the US Marine Corps Base in Oahu, Hawaii. We generated our first revenue relating to our autonomous PowerBuoy system from contracts with Lockheed Martin Corporation in fiscal 2003, and we entered into our first development and construction contract with Lockheed Martin in fiscal 2004 for the development and construction of a prototype demonstration autonomous PowerBuoy system. In fiscal 2005, we entered into a development agreement with an affiliate of Iberdrola S.A., a large electric utility company located in Spain and one of the largest renewable energy producers in the world, and other parties to jointly study the possibility of developing a wave power station off the coast of northern Spain. An affiliate of Total S.A., which is one of the world's largest oil and gas companies, joined the development agreement in June 2005. In January 2006, we completed the assessment phase of the project, and in July 2006 we entered into an agreement with Iberdrola Energias Marinas de Cantabria, S.A. to complete the first phase of the construction of a 1.39 megawatt, or MW, wave power station. In addition, we have entered into a contract with affiliates of Iberdrola and Total to assess the viability of a 2 to 5MW power station off the coast of France.

Our fiscal year ends on April 30. For the three months ended July 31, 2006, we generated revenues of \$0.3 million and incurred a net loss of \$1.7 million, and for fiscal 2006 we generated revenues of \$1.7 million and incurred a net loss of \$7.1 million. As of July 31, 2006, our accumulated deficit was \$30.3 million. We have not been profitable since inception, and we do not know whether or when we will become profitable because of the significant uncertainties with respect to our ability to successfully commercialize our PowerBuoy systems in the emerging renewable energy market. Since fiscal 2002, the US Navy has accounted

for a significant majority of our revenues. We expect that over time revenues derived from utilities and other non-government commercial customers will increase more rapidly than sales to government customers and will, within a few years, represent the majority of our revenues.

**Financial Operations Overview**

The following describes certain line items in our statement of operations and some of the factors that affect our operating results.

**Revenues**

We have historically generated revenues primarily from the development and construction of our PowerBuoy systems for demonstration purposes and, to a lesser extent, from customer-sponsored research and development. In fiscal 2006, we derived approximately 96% of our revenues from government and commercial development and construction contracts and 4% of our revenues from customer-sponsored research and development contracts. For the three months ended July 31, 2006, we derived approximately 87% of our revenues from government and commercial development and construction contracts and 13% of our revenues from customer-sponsored research and development. Generally, we recognize revenue on the percentage-of-completion method based on the ratio of costs incurred to total estimated costs at completion. In certain circumstances, revenue under contracts that have specified milestones or other performance criteria may be recognized only when our customer acknowledges that such criteria have been satisfied. In addition, recognition of revenue (and the related costs) may be deferred for fixed-price contracts until contract completion if we are unable to reasonably estimate the total costs of the project prior to completion. Because we have a small number of contracts, revisions to the percentage of completion determination or delays in meeting performance criteria or in completing projects may have a significant effect on our revenue for the periods involved.

Our revenues increased in each of fiscal 2003, 2004 and 2005, but decreased significantly in fiscal 2006 as a result of delays in the timing of contract award and in the approval of the scope of work relating to our project for the US Navy for the development and construction of a wave power station in Hawaii, and the determination by Lockheed Martin and some of its subcontractors not to proceed with a project under consideration that would have utilized our autonomous PowerBuoy system.

The US Navy has been our largest customer since fiscal 2002. The US Navy accounted for approximately 63% of our revenues in the fiscal quarter ended July 31, 2006, approximately 61% of our revenues in fiscal 2006, 57% of our revenues in fiscal 2005 and approximately 95% of our revenues in fiscal 2004. We anticipate that the US Navy will continue to account for a substantial portion of our revenue in fiscal 2007 and, if our commercialization efforts are successful, its relative contribution to our revenue will decline thereafter. Lockheed Martin was also a significant customer in fiscal 2006 and 2005, accounting for approximately 22% of our revenues in fiscal 2006 and approximately 32% of our revenues in fiscal 2005.

We currently focus our sales and marketing efforts on coastal North America, the west coast of Europe, the coasts of Australia and the east coast of Japan. In fiscal 2006, we derived 9%, and for the three months ended July 31, 2006, we derived 24%, of our revenues from outside the United States. The following table provides information regarding the breakdown of our revenues by geographical region for fiscal years 2004, 2005 and 2006 and for the three months ended July 31, 2006:

Region	Percentage of Revenues			
	Year Ended April 30, 2004	Year Ended April 30, 2005	Year Ended April 30, 2006	Three Months Ended July 31, 2006
United States	100%	96%	91%	76%
Europe	—	4	9	12
Australia	—	—	—	12
Total	100%	100%	100%	100%

**Cost of revenues**

Our cost of revenues consists primarily of material, labor and manufacturing overhead expenses, such as engineering expense, equipment depreciation and maintenance and facility related expenses, and includes the cost of PowerBuoy parts and services supplied by third-party suppliers. Cost of revenues also includes PowerBuoy system delivery and deployment expenses.

In the three months ended July 31, 2006, we operated at a gross profit of approximately \$79,000, while in fiscal 2006 we operated at a gross loss of \$0.3 million and in fiscal 2005 we operated at a gross profit of \$0.2 million. Our ability to maintain gross profit will depend on our success at increasing sales of our PowerBuoy systems and on our ability to manage costs incurred on fixed price commercial contracts.

**Product development costs**

Our product development costs consist of salaries and other personnel-related costs and the costs of products, materials and outside services used in our product development and research activities. Our product development costs primarily relate to our efforts to increase the output of our current 40 kilowatt, or kW, utility PowerBuoy system to 150kW in 2007, then to 250kW in 2008 and ultimately to 500kW in 2010 and, to a lesser extent, to our research and development of new products, product applications and complementary technologies. We expense all of our product development costs as incurred, except for external patent costs, which we amortize over a 17-year period commencing with the issuance date of each patent.

Our product development costs increased significantly in each of fiscal 2005 and 2006 as a result of the development of our current 40kW utility PowerBuoy system, which was introduced in fiscal 2006. We expect our product development costs to increase in absolute dollars as we continue to increase the output and efficiency of our PowerBuoy systems.

During fiscal 2006, we refocused many of our engineering and development resources that had previously been deployed on our commercial research or product development contracts on the development effort for our current 40kW PowerBuoy system, including the development of the buoy structure, the power take off system and the power grid connection. We introduced our current 40kW PowerBuoy system in fiscal 2006 — one system has been deployed for twelve months off the coast of New Jersey, one system is expected to be deployed in Hawaii for the US Navy project in the second half of fiscal 2007 and another system is expected to be deployed for the wave power station off the coast of Spain in the first half of fiscal 2008.

**Selling, general and administrative costs**

Our selling, general and administrative costs consist primarily of salaries and other personnel-related costs for employees engaged in sales and marketing and support of our PowerBuoy systems, promotional and public relations expenses and management and administration expenses in support of sales and marketing, as well as costs for executive, accounting and administrative personnel, professional fees and other general corporate expenses.

We expect our selling, general and administrative costs to increase in absolute dollars as we expand our sales and marketing capabilities, including increased headcount, and as a result of our becoming a public company in the United States.

**Interest income**

Interest income consists primarily of interest received on cash and cash equivalents and investments in commercial bank-issued certificates of deposit. Most of our cash, cash equivalents and bank-issued certificates of deposit result from the remaining proceeds of our October 2003 offering on the AIM market. Total cash, cash equivalents and certificates of deposit were \$31.1 million as of July 31, 2006, \$32.4 million as of April 30, 2006 and \$38.8 million as of April 30, 2005. We expect that interest income will generally increase during periods of increasing interest rates and decrease during periods of declining interest rates, net of changes in invested balances. We anticipate that our interest income will increase significantly as a result of

the investment of the proceeds from this offering pending the application of the proceeds as described in "Use of Proceeds."

***Foreign exchange gain (loss)***

We transact business in various countries and have exposure to fluctuations in foreign currency exchange rates. Foreign exchange gains and losses arise in the translation of foreign-denominated assets and liabilities, which may result in realized and unrealized gains or losses from exchange rate fluctuations. Since we conduct our business in US dollars and our functional currency is the US dollar, our main foreign exchange exposure, if any, results from changes in the exchange rate between the US dollar and the British pound sterling, the Euro and the Australian dollar.

We invest in certificates of deposit and maintain cash accounts that are denominated in British pounds, Euros and Australian dollars. These foreign denominated certificates of deposit and cash accounts had a balance of approximately \$16.8 million as of July 31, 2006 and approximately \$16.7 million as of April 30, 2006, compared to our total certificates of deposits and cash account balances of \$31.1 million as of July 31, 2006 and \$32.4 million as of April 30, 2006. These foreign currency balances are translated at each month end to our functional currency, the US dollar, and any resulting gain or loss is recognized in our results of operations.

In addition, a portion of our operations is conducted through our subsidiaries in countries other than the United States, specifically Ocean Power Technologies Ltd. in the United Kingdom, the functional currency of which is the British pound sterling, and Ocean Power Technologies (Australasia) Pty Ltd. in Australia, the functional currency of which is the Australian dollar. Both of these subsidiaries have foreign exchange exposure that results from changes in the exchange rate between their functional currency and other foreign currencies in which they conduct business. All of our international revenues for the year ended April 30, 2006 were recorded in Euros or British pounds.

We currently do not hedge exchange rate exposure. However, we assess the anticipated foreign currency working capital requirements and capital asset acquisitions of our foreign operations and attempt to maintain a portion of our cash, cash equivalents and certificates of deposit denominated in foreign currencies sufficient to satisfy these anticipated requirements. We also assess the need and cost to utilize financial instruments to hedge currency exposures on an ongoing basis and may hedge against exchange rate exposure in the future.

***Income tax benefit***

As of April 30, 2006, we had federal research and development tax credits of \$0.5 million and federal net operating losses of approximately \$19.5 million to offset future federal taxable income. If not utilized, the credit carryforwards will expire at various dates through 2026, and the net operating loss carryforwards will expire at various dates through 2026. We may not achieve profitability in time to utilize the tax credit and net operating loss carryforwards in full or at all. In addition, the future utilization of our net operating loss carryforwards may be limited based upon changes in ownership, including changes resulting from this offering and the AIM offering in 2003, pursuant to regulations promulgated under the Internal Revenue Code. These limitations may result in the expiration of net operating losses and credits prior to utilization. As discussed in Note 12 to our consolidated financial statements included in this prospectus, we have established valuation allowances for the full value of our deferred tax assets, which was \$10.1 million as of April 30, 2006 and \$10.6 million as of July 31, 2006.

In fiscal 2004, 2005 and 2006, we sold a portion of our New Jersey state net operating losses and a portion of our New Jersey research and development credits under a program offered by the State of New Jersey, and recognized income tax benefits of approximately \$0.1 million in fiscal 2004, \$29,000 in fiscal 2005 and approximately \$0.1 million in fiscal 2006. Because we believe we are no longer eligible to participate in this program, we do not expect to sell any additional New Jersey state net operating losses or research and development credits in the future.

**Results of Operations**

**Three Months Ended July 31, 2005 and 2006**

The following table contains selected unaudited statement of operations information, which serves as the basis of the discussion of our results of operations for the three months ended July 31, 2005 and 2006:

	Three Months Ended July 31, 2005		Three Months Ended July 31, 2006		Change 2006 Period to 2005 Period	
	Amount	As a % of Revenues	Amount (Unaudited)	As a % of Revenues	\$ Change	% Change
Revenues	\$ 492,820	100%	\$ 305,186	100%	\$ (187,634)	(38)%
Cost of revenues	616,435	125	225,965	74	(390,470)	(63)%
Gross (loss) profit	(123,615)	(25)	79,221	26	202,836	(164)%
Operating expenses						
Product development costs	587,935	119	1,052,126	345	464,191	79%
Selling, general and administrative costs	689,870	140	1,388,045	455	698,175	101%
Total operating expenses	1,277,805	259	2,440,171	800	1,162,366	91%
Operating loss	(1,401,420)	(284)	(2,360,950)	(774)	(959,530)	68%
Interest income	355,590	72	362,367	118	7,482	2%
Foreign exchange (loss) gain	(1,600,090)	(324)	337,629	110	1,937,719	(121)%
Net loss	\$ (2,645,920)	(537)%	\$ (1,660,954)	(544)%	\$ 984,966	(37)%

*Revenues*

Revenues decreased by \$0.2 million in the first quarter of fiscal 2007, or 38%, to \$0.3 million as compared to \$0.5 million in the same period of fiscal 2006. The decrease in revenues was primarily attributable to the following factors:

- Revenues relating to our autonomous PowerBuoy system decreased by approximately \$0.3 million as a result of the completion of a development and construction contract with Lockheed Martin in the first quarter of fiscal 2006.
- Revenues from our US Navy project increased by approximately \$0.1 million as we continued to develop and build a wave power station in Hawaii.
- Revenues relating to our utility PowerBuoy system remained relatively flat as we started work on the first phase of construction of a 1.39MW wave power station off the coast of Spain and to assess the feasibility of a 2 to 5MW wave power station off the coast of France in the first quarter of fiscal 2007.
- Revenues decreased by approximately \$66,000 as a result of the completion of the demonstration wave power system that was deployed off the coast of New Jersey in fiscal 2006.
- Revenues were adversely affected by the determination by Lockheed Martin and some of its subcontractors not to proceed with an anticipated defense application project that would have utilized our autonomous PowerBuoy system, although this was partially offset by revenues from a contract with the US Department of Homeland Security to design and study an autonomous PowerBuoy system for offshore marine surveillance, with Lockheed Martin as our subcontractor.

*Cost of revenues*

Cost of revenues decreased by \$0.4 million, or 63%, to \$0.2 million in the first three months of fiscal 2007, as compared to \$0.6 million in the same period of fiscal 2006. The decrease in the cost of revenues was primarily attributable to the reduction in revenue during the first quarter of fiscal 2007. The increase in gross

margin in the three months ended July 31, 2006 as compared to the same period of fiscal 2006 reflected the higher level of materials and subcontractor costs in fiscal 2006.

*Product development costs*

Product development costs increased \$0.5 million, or 79%, to \$1.1 million in the three months ended July 31, 2006, as compared to \$0.6 million in the same period of fiscal 2006. The substantial increase in product development costs was primarily attributable to our efforts to increase the power output of our utility PowerBuoy system. As a percentage of revenues, product development costs increased to 345% in the three months ended July 31, 2006 from 119% in the same period in fiscal 2006. We anticipate that our product development costs related to the planned increase in the output of our utility PowerBuoy system will increase significantly over the next several years and that the amount of these expenditures will not necessarily be affected by the level of revenue generated over that time period. Accordingly, comparisons of product development costs as a percentage of revenue may not be meaningful.

*Selling, general and administrative costs*

Selling, general and administrative costs increased \$0.7 million, or 101%, to \$1.4 million in the three months ended July 31, 2006, as compared to \$0.7 million in the same period of fiscal 2006. The increase was primarily attributable to an increase of \$0.2 million related to additional marketing expenses and consulting costs, and \$0.4 million of compensation expense recorded under Statement of Financial Accounting Standards No. 123(R), *Share-Based Payment*, or SFAS 123(R), which requires companies to recognize compensation expense for all stock-based payments to employees. Because we adopted SFAS 123(R) effective May 1, 2006, we did not record similar compensation expense in the first three months of fiscal 2006.

*Interest income*

Interest income remained relatively flat at \$0.4 million in the three months ended July 31, 2006, compared to the same period of fiscal 2006, due to a reduction in the balance of our cash, cash equivalents and certificates of deposit between the two periods of \$5.5 million, offset by higher interest rates.

*Foreign exchange (loss) gain*

Foreign exchange gain was \$0.3 million in the three months ended July 31, 2006, compared to a foreign exchange loss of \$1.6 million in the same period of fiscal 2006. The gain in the first three months of fiscal 2007 was primarily attributable to the appreciation of the British pound compared to the US dollar.

**Fiscal Years Ended April 30, 2005 and 2006**

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the years ended April 30, 2005 and 2006:

	Fiscal Year Ended April 30, 2005		Fiscal Year Ended April 30, 2006		Change 2006 Period to 2005 Period	
	Amount	As a % of Revenues	Amount	As a % of Revenues	\$ Change	% Change
Revenues	\$ 5,365,235	100%	\$ 1,747,715	100%	\$ (3,617,520)	(67)%
Cost of revenues	5,171,521	96	2,059,318	117	(3,112,203)	(60)%
Gross profit (loss)	194,714	4	(311,603)	(18)	(506,317)	(260)%
Operating expenses						
Product development costs	904,618	17	4,224,997	242	3,320,379	367%
Selling, general and administrative costs	2,553,911	48	3,190,687	183	636,776	25%
Total operating expenses	3,458,529	64	7,415,684	424	3,957,155	114%
Operating loss	(3,263,815)	(61)	(7,727,287)	(442)	(4,463,472)	137%
Interest income	1,297,156	24	1,408,361	81	111,205	9%
Other income	1,545	0	74,294	4	72,749	4,709%
Foreign exchange gain (loss)	1,507,145	28	(978,242)	(56)	(2,485,387)	(165)%
Loss before income taxes	(457,969)	(9)	(7,222,874)	(413)	(6,764,905)	1,477%
Income tax benefit	29,335	1	143,963	8	114,628	58%
Net loss	\$ (428,634)	(8)%	\$ (7,078,911)	(405)%	\$ (6,650,277)	1,552%

**Revenues**

Revenues decreased by \$3.6 million in fiscal 2006, or 67%, to \$1.7 million as compared to \$5.4 million in fiscal 2005. The decrease in revenues was primarily attributable to the following factors:

- Revenues from our US Navy wave power station project in Hawaii decreased by approximately \$1.8 million as a result of delays in the timing of contract award and in the approval of the scope of development and construction of the wave power station.
- Revenues related to our autonomous PowerBuoy system decreased by approximately \$1.3 million as a result of the completion of a development and construction contract with Lockheed Martin in the first quarter of fiscal 2006, and the determination by Lockheed Martin and some of its subcontractors not to proceed with an anticipated defense application project that would have utilized our autonomous PowerBuoy system, partially offset by revenues of approximately \$61,000 from a contract with the US Department of Homeland Security to design and study an autonomous PowerBuoy system for offshore marine surveillance.
- Revenues decreased by approximately \$0.3 million as a result of the completion early in fiscal 2006 of the demonstration wave power station that was deployed off the coast of New Jersey under a contract with the New Jersey Board of Public Utilities.

**Cost of revenues**

Cost of revenues decreased by \$3.1 million, or 60%, to \$2.1 million in fiscal 2006 as compared to \$5.2 million in fiscal 2005. The decrease in the cost of revenues was primarily attributable to the reduction in revenue during fiscal 2006. Gross loss on revenues in fiscal 2006 primarily reflected discretionary costs incurred by us in connection with the deployment of the first PowerBuoy system in Hawaii that were not reimbursed under our agreement with the US Navy.

*Product development costs*

Product development costs increased \$3.3 million, or 367%, to \$4.2 million in fiscal 2006, as compared to \$0.9 million in fiscal 2005. The substantial increase in product development costs was primarily attributable to the development of our current 40kW PowerBuoy system, which was deployed in October 2005 off the coast of New Jersey and which is expected to be deployed in the second half of fiscal 2007 in Hawaii.

As discussed above, in fiscal 2006 we experienced a reduction in revenues from approximately \$5.4 million in fiscal 2005 to approximately \$1.7 million in fiscal 2006. In response to this reduction in revenues, during fiscal 2006 we refocused many of our engineering and development resources that had previously been deployed on our commercial research or development contracts on the product development effort for our current 40kW PowerBuoy system, including the development of the buoy structure, the power take off system and the power grid connection. We also began our efforts to increase the maximum output of our utility PowerBuoy system to 150kW.

*Selling, general and administrative costs*

Selling, general and administrative costs increased \$0.6 million, or 25%, to \$3.2 million in fiscal 2006, as compared to \$2.6 million in fiscal 2005. The increase was primarily attributable to a \$0.5 million increase in marketing expenses, including additional marketing personnel, and to increased professional fees.

*Interest income*

Interest income increased \$0.1 million, or 9%, to \$1.4 million in fiscal 2006, as compared to \$1.3 million in fiscal 2005. The increase was attributable to higher interest rates in fiscal 2006, which were partially offset by a reduction of our cash, cash equivalents and bank-issued certificates of deposit balances between the two periods of approximately \$6.3 million.

*Other income*

Other income in fiscal 2006 included the recognition of a one-time payment of \$0.1 million in fiscal 2006 in connection with the termination of a license development agreement entered into in April 2003. See Note 8 to our consolidated financial statements appearing elsewhere in this prospectus.

*Foreign exchange gain (loss)*

In fiscal 2006, we had a foreign exchange loss of \$1.0 million, as compared to a foreign exchange gain of \$1.5 million in fiscal 2005. The difference was primarily attributable to the appreciation of the US dollar compared to the British pound between the two periods.

*Income tax benefit*

During fiscal 2006, we recorded an income tax benefit of approximately \$0.1 million compared to an income tax benefit of approximately \$29,000 recorded in fiscal 2005. The income tax benefit recorded in both periods resulted from our sale of New Jersey state net operating losses under a program offered by the State of New Jersey, and the increase from fiscal 2005 to fiscal 2006 reflected the sale of more state net operating losses in fiscal 2006 than in fiscal 2005. Because we believe we are no longer eligible to participate in this program, we do not expect to sell any additional New Jersey state net operating losses or research and development credits in the future.

**Fiscal Years Ended April 30, 2004 and 2005**

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the years ended April 30, 2004 and 2005:

	Fiscal Year Ended April 30, 2004		Fiscal Year Ended April 30, 2005		Change 2005 Period to 2004 Period	
	Amount	As a % of Revenues	Amount	As a % of Revenues	\$ Change	% Change
Revenues	\$ 4,713,202	100%	\$ 5,365,235	100%	\$ 652,033	14%
Cost of revenues	4,319,850	92	5,171,521	96	850,671	20%
Gross profit	393,352	8	194,714	4	(198,638)	(50)%
Operating expenses						
Product development costs	255,958	5	904,618	17	648,660	253%
Selling, general and administrative costs	1,745,955	37	2,553,911	48	807,956	46%
Total operating expenses	2,001,913	42	3,458,529	64	1,456,616	73%
Operating loss	(1,608,561)	(34)	(3,263,815)	(61)	(1,655,254)	103%
Interest income	555,717	12	1,297,156	24	741,439	133%
Other income (expense)	(3,500,096)	(74)	1,545	0	3,501,641	(100)%
Foreign exchange gain	1,585,345	34	1,507,145	28	(78,200)	(5)%
Loss before income taxes	(2,967,595)	(63)	(457,969)	(9)	\$ 2,509,626	85%
Income tax benefit	118,119	3	29,335	1	(88,784)	(75)%
Net loss	\$ (2,849,476)	(60)%	\$ (428,634)	(8)%	\$ 2,420,842	(85)%

**Revenues**

Revenues increased by \$0.7 million in fiscal 2005, or 14%, to \$5.4 million as compared to \$4.7 million in fiscal 2004. The increase in revenues was primarily attributable to the following factors:

- Revenues relating to our autonomous PowerBuoy system increased by approximately \$1.5 million as a result of a development and construction contract with Lockheed Martin for an autonomous PowerBuoy system that was deployed in September 2004.
- Revenues relating to our utility PowerBuoy system increased by approximately \$0.2 million as we began the development phase of the project for a wave power station off the coast of Spain in fiscal 2005.
- Revenues increased by \$0.4 million as a result of the recognition of revenue attributable to work performed on the demonstration wave power station that subsequently was deployed off the coast of New Jersey.
- Revenues from our US Navy project in Hawaii decreased by approximately \$1.2 million as a result of lower revenue recognized in fiscal 2005 relating to the first deployment of a PowerBuoy in Hawaii that occurred in the first month of fiscal 2005 and revenues decreased an additional \$0.2 million as a result of a US Navy sponsored research contract that was completed during the first quarter of fiscal 2005 under which revenues were recognized for all of fiscal 2004.

**Cost of revenues**

Cost of revenues increased by \$0.9 million in fiscal 2005, or 20%, to \$5.2 million as compared to \$4.3 million in fiscal 2004. The increase in the cost of revenues was primarily attributable to the increase in revenues. The decrease in gross margin reflected the higher level of labor-related and subcontractor costs in fiscal 2005.

*Product development costs*

Product development costs increased \$0.6 million, or 253%, to \$0.9 million in fiscal 2005, as compared to \$0.3 million in fiscal 2004. The increase in product development costs was primarily attributable to our development efforts for the autonomous and utility PowerBuoy systems.

*Selling, general and administrative costs*

Selling, general and administrative costs increased \$0.8 million, or 46%, to \$2.6 million in fiscal 2005, as compared to \$1.7 million in fiscal 2004. The increase was primarily attributable to increased costs of approximately \$0.5 million as a result of our listing on the AIM market and increased costs of approximately \$0.4 million related to our United Kingdom operations which commenced in September 2004.

*Interest income*

Interest income increased \$0.7 million, or 133%, to \$1.3 million in fiscal 2005, as compared to \$0.6 million in fiscal 2004. The increase was attributable to a full year of interest income in fiscal 2005 on the proceeds from our stock offering on the AIM market in October 2003.

*Other income (expense)*

Other income was approximately \$2,000 in fiscal 2005, compared to net other expense of \$3.5 million in fiscal 2004. The \$3.5 million expense in fiscal 2004 resulted from a one time \$3.5 million charge at the time of our stock offering on the AIM market in October 2003 relating to a 1999 agreement between us and Tyco Electronics Corp. See Note 7 to our consolidated financial statements appearing elsewhere in this prospectus.

*Foreign exchange gain*

Foreign exchange gain decreased \$0.1 million, or 5%, to \$1.5 million in fiscal 2005, as compared to a foreign exchange gain of \$1.6 million in fiscal 2004. The decrease in the foreign exchange gain was primarily attributable to lower balances of funds held in British pound-denominated cash equivalents and certificates of deposit.

*Income tax benefit*

During fiscal 2005, we recorded an income tax benefit of approximately \$29,000 compared to an income tax benefit of \$0.1 million recorded in fiscal 2004. The income tax benefit recorded in both periods resulted from our sale of New Jersey state net operating losses under a program offered by the State of New Jersey, and the decrease from fiscal 2004 to fiscal 2005 reflected the sale of fewer state net operating losses in fiscal 2005 than in fiscal 2004.

**Liquidity and Capital Resources**

Since our inception, we have funded our operations through private placements of equity securities, our placement of common stock on the AIM market, our sale of New Jersey state net operating losses, an interest-free loan from the New Jersey Board of Public Utilities and cash generated from cash received from our customers. From May 1, 2003 through July 31, 2006, we had received gross proceeds of approximately \$43.0 million from the issuance of shares of common stock.

At July 31, 2006, our total cash, cash equivalents and certificates of deposit were \$31.1 million. Our cash and cash equivalents are highly liquid investments with maturities of three months or less at the date of purchase and consist primarily of time deposits with large commercial banks. Our certificates of deposit are denominated in US dollars and British pounds. The certificates of deposit generally have a fixed maturity date of more than 90 days but less than one year from the date of purchase.

**Cash Flows**

Net cash used in operating activities was \$1.6 million for the three months ended July 31, 2006. This primarily resulted from the net loss for the period of \$1.7 million. We used \$29.2 million of cash in investing activities for the three months ended July 31, 2006, which consisted primarily of the purchases of certificates of deposit.

Net cash used in operating activities was \$5.1 million for fiscal 2006. This primarily resulted from a net loss for the period of \$7.1 million, increased by a \$0.6 million reduction in our accounts payable and a \$0.1 million reduction in our accrued expenses, partially offset by a \$1.3 million decrease in our accounts receivable and unbilled receivables, a non-cash foreign exchange loss of \$1.0 million and \$0.2 million in depreciation and amortization. Net cash provided by investing activities was \$24.3 million for fiscal 2006 resulting primarily from \$87.4 million in maturities of certificates of deposit partially offset by \$62.7 million in purchases of certificates of deposit and \$0.4 million in purchases of equipment and patent costs. Net cash provided by financing activities was \$0.1 million for fiscal 2006 resulting from the proceeds from the exercise of stock options.

Net cash used in operating activities was \$1.9 million for fiscal 2005. This primarily resulted from the net loss for the period of \$0.4 million and a non-cash foreign exchange gain of \$1.5 million. Changes in working capital were offset by non-cash adjustments relating to depreciation and amortization and compensation expenses related to stock option grants. Net cash used in investing activities was \$25.1 million for fiscal 2005 and primarily consisted of \$58.1 million in purchases of certificates of deposit, partially offset by \$33.6 million in maturities of certificates of deposit. Net cash provided by financing activities was \$0.2 million for fiscal 2005 resulting from the proceeds from the exercise of stock options.

We expect to devote substantial resources to continue our development efforts for our PowerBuoy systems and to expand our sales, marketing and manufacturing programs associated with the commercialization of the PowerBuoy system. Our future capital requirements will depend on a number of factors, including:

- the success of our commercial relationships with Iberdrola, Total, the US Navy and Lockheed Martin;
- the cost of manufacturing activities;
- the cost of commercialization activities, including demonstration projects, product marketing and sales;
- our ability to establish and maintain additional commercial relationships;
- the implementation of our expansion plans, including the hiring of new employees;
- potential acquisitions of other products or technologies; and
- the costs involved in preparing, filing, prosecuting, maintaining and enforcing patent claims and other patent-related costs.

We believe that the net proceeds from this offering, together with our current cash and cash equivalents and certificates of deposit, will be sufficient to meet our anticipated cash needs for working capital and capital expenditures at least through fiscal 2008. If existing resources are insufficient to satisfy our liquidity requirements or if we acquire or license rights to additional product technologies, we may seek to sell additional equity or debt securities or obtain a credit facility. The sale of additional equity or convertible securities could result in dilution to our stockholders. If additional funds are raised through the issuance of debt securities, these securities could have rights senior to those associated with our common stock and could contain covenants that would restrict our operations. Financing may not be available in amounts or on terms acceptable to us. If we are unable to obtain required financing, we may be required to reduce the scope of our planned product development and marketing efforts, which could harm our financial condition and operating results.

**Contractual Obligations**

Our major outstanding contractual obligations relate to our facilities leases. We have summarized in the table below our fixed contractual cash obligations as of April 30, 2006.

	Payments Due by Period				
	Total	Less Than One Year	One to Three Years	Four to Five Years	More Than Five Years
Long-term debt	\$ 246,000	\$ 12,000	(1)	(1)	(1)
Operating leases	\$ 1,496,000	\$ 233,000	\$ 435,000	\$ 414,000	\$ 414,000

(1) Our long-term debt consists of an interest-free loan from the New Jersey Commission on Science and Technology. The amounts to be repaid each year are determined as a percentage of revenues we receive in that year from our customer contracts that meet criteria specified in the loan agreement, with any remaining amount due on January 15, 2012.

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

Since inception we have not engaged in any off balance sheet financing activities.

#### **Quantitative and Qualitative Disclosures About Market Risk**

Our primary exposure to market risk is currently confined to our cash, cash equivalents and certificates of deposit. None of these items that we hold have maturities that exceed one year. We currently do not hedge interest rate exposure. We have not used derivative financial instruments for speculative or trading purposes. Because the maturities of our cash, cash equivalents and certificates of deposit do not exceed one year, we do not believe that a change in market rates would have any significant impact on the realized value of our investments. We do not have market risk exposure on our long-term debt because it consists only of an interest-free loan from the New Jersey Board of Public Utilities.

We transact business in various countries and have exposure to fluctuations in foreign currency exchange rates. Foreign exchange gains and losses arise in the translation of foreign-denominated assets and liabilities, which may result in realized and unrealized gains or losses from exchange rate fluctuations. Since we conduct our business in US dollars and our functional currency is the US dollar, our main foreign exchange exposure, if any, results from changes in the exchange rate between the US dollar and the British pound sterling, the Euro and the Australian dollar.

We invest in certificates of deposit and maintain cash accounts that are denominated in British pounds, Euros and Australian dollars. These foreign denominated certificates of deposit and cash accounts had a balance of approximately \$16.8 million as of July 31, 2006 and approximately \$16.7 million as of April 30, 2006, compared to our total certificates of deposits and cash account balances of \$31.1 million as of July 31, 2006 and \$32.4 million as of April 30, 2006. These foreign currency balances are translated at each month end to our functional currency, the US dollar, and any resulting gain or loss is recognized in our results of operations.

In addition, a portion of our operations is conducted through our subsidiaries in countries other than the United States, specifically Ocean Power Technologies Ltd. in the United Kingdom, the functional currency of which is the British pound sterling, and Ocean Power Technologies (Australasia) Pty Ltd. in Australia, the functional currency of which is the Australian dollar. Both of these subsidiaries have foreign exchange exposure that results from changes in the exchange rate between their functional currency and other foreign currencies in which they conduct business. All of our international revenues for the year ended April 30, 2006 were recorded in Euros or British pounds. If the foreign currency exchange rates had fluctuated by 10% as of April 30, 2006, our foreign exchange loss would have changed by approximately \$1.7 million.

We currently do not hedge exchange rate exposure. However, we assess the anticipated foreign currency working capital requirements and capital asset acquisitions of our foreign operations and attempt to maintain a portion of our cash, cash equivalents and certificates of deposit denominated in foreign currencies sufficient to satisfy these anticipated requirements. We also assess the need and cost to utilize financial instruments to hedge currency exposures on an ongoing basis and may hedge against exchange rate exposure in the future.

#### **Critical Accounting Policies and Estimates**

The discussion and analysis of our financial condition and results of operations set forth above are based on our consolidated financial statements, which have been prepared in accordance with US generally accepted accounting principles. The preparation of these consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. On an ongoing basis, we evaluate our estimates and judgments, including those described below. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. These estimates and assumptions form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe the following accounting policies require significant judgment and estimates by us in the preparation of our consolidated financial statements.

**Revenue recognition and deferred revenue**

Generally, we recognize revenue on the percentage-of-completion method based on the ratio of costs incurred to total estimated costs at completion. In certain circumstances, revenue under contracts that have specified milestones or other performance criteria may be recognized only when our customer acknowledges that such criteria have been satisfied. In addition, recognition of revenue (and the related costs) may be deferred for fixed-price contracts until contract completion if we are unable to reasonably estimate the total costs of the project prior to completion. Because we have a small number of contracts, revisions to the percentage of completion determination or delays in meeting performance criteria or in completing projects may have a significant effect on our revenue for the periods involved.

Upon anticipating a loss on a contract, we recognize the full amount of the anticipated loss in the current period. We had loss reserves of \$0.8 million as of April 30, 2006 related to one contract and \$0.8 million as of April 30, 2005 related to two contracts.

Unbilled receivables represent expenditures on contracts, plus applicable profit margin, not yet billed. Unbilled receivables are normally billed and collected within one year. Billings made on contracts are recorded as a reduction in unbilled receivables, and to the extent that those billings exceed costs incurred plus applicable profit margin, they are recorded as unearned revenues.

**Stock-based compensation**

In December 2004, the Financial Accounting Standards Board issued SFAS 123(R), which requires companies to recognize compensation expense for all stock-based payments to employees, including grants of employee stock options, in their statement of operations based on the fair value of the awards. We adopted SFAS 123(R) effective May 1, 2006 using the modified prospective method. Under this method, compensation cost is recognized for all share-based payments granted subsequent to April 30, 2006, awards modified after April 30, 2006, and the remaining portion of the fair value of unvested awards at April 30, 2006. Prior to May 1, 2006, we used the intrinsic value method to determine values used in our pro forma stock-based compensation disclosures.

In March 2005, the SEC issued Staff Accounting Bulletin No. 107, or SAB 107, which provides guidance regarding the implementation of SFAS 123(R). In particular, SAB 107 provides guidance regarding calculating assumptions used in stock-based compensation valuation models, the classification of stock-based compensation expense, the capitalization of stock-based compensation costs and disclosures in filings with the SEC.

Determining the appropriate fair-value model and calculating the fair value of stock-based awards at the date of grant using any valuation model requires judgment. We use the Black-Scholes option pricing model to estimate the fair value of employee stock options, consistent with the provisions of SFAS 123(R). Option pricing models, including the Black-Scholes model, require the use of input assumptions, including expected volatility, expected term and the expected dividend rate. Because our stock is not currently publicly traded in the United States, we do not have an observable share-price volatility for the United States capital markets; therefore, we estimate our expected volatility based on that of what we consider to be similar publicly-traded companies and expect to continue to do so until such time as we have adequate historical data from our traded share price in the United States. We did not estimate our expected volatility based on the price of our common stock on the AIM market because we do not believe, based on the historically low trading volume of our shares on that market, that the price of our common stock on the AIM market is an appropriate indicator of the expected volatility of our common stock. Prior to fiscal 2007, we estimated the expected term of our options using our best estimate of the period of time from the grant date that we expect the options to remain outstanding. Beginning in fiscal 2007, we estimate the expected term using the average midpoint between the vesting terms and the contractual terms of our options as described in SAB 107. If we determine another method to estimate expected volatility or expected term is more reasonable than our current methods, or if another method for calculating these input assumptions is prescribed by authoritative guidance, the fair value calculated for future stock-based awards could change significantly. Higher volatility and longer expected terms have a significant impact on the value of stock-based compensation determined at the date of grant. The expected dividend rate is not as significant to the calculation of fair value.

In addition, SFAS 123(R) requires us to develop an estimate of the number of stock-based awards that will be forfeited due to employee turnover. Quarterly changes in the estimated forfeiture rate can have a significant effect on reported stock-based compensation. If the actual forfeiture rate is higher than the estimated forfeiture rate, then an adjustment is made to increase the estimated forfeiture rate, which will result in a decrease to the expense recognized in the consolidated financial statements during the quarter of the change. If the actual forfeiture rate is lower than the estimated forfeiture rate, then an adjustment is made to decrease the estimated forfeiture rate, which will result in an increase to the expense recognized in the consolidated financial statements. These adjustments affect our cost of revenues, product development costs and selling, general and administrative costs. Through the three months ended July 31, 2006, the effect of forfeiture adjustments on our consolidated financial statements has been insignificant. The expense we recognize in future periods could differ significantly from the current period and/or our forecasts due to adjustments in the assumed forfeiture rates.

As a result of the adoption of SFAS 123(R), in the quarter ended July 31, 2006, we recorded stock compensation expense of \$0.4 million.

#### **Income taxes**

We account for income taxes in accordance with SFAS No. 109, *Accounting for Income*, or SFAS 109. Under this method, we determine deferred tax assets and liabilities based upon the differences between the financial statement carrying amounts and the tax bases of assets and liabilities, as well as credit and net operating loss carryforwards, using enacted tax rates in effect for the year in which such items are expected to affect taxable income. The tax consequences of most events recognized in the current year's financial statements are included in determining income taxes currently payable. However, because tax laws and financial accounting standards differ in their recognition and measurement of assets, liabilities, equity, revenues, expenses, gains and losses, differences arise between the amount of taxable income and pretax financial income for a year and between the tax bases of assets or liabilities and their reported amounts in the financial statements. Because we assume that the reported amounts of assets and liabilities will be recovered and settled, respectively, a difference between the tax basis of an asset or a liability and its reported amount in the balance sheet will result in a taxable or a deductible amount in some future years when the related liabilities are settled or the reported amounts of the assets are recovered, giving rise to a deferred tax asset. We then assess the likelihood that our deferred tax assets will be recovered from future taxable income and, to the extent we believe that recovery is not likely, we establish a valuation allowance. As discussed in Note 12 to our consolidated financial statements included in this prospectus, we have established valuation allowances for the full value of our net deferred tax assets, which were \$10.1 million as of April 30, 2006 and \$10.6 million as of July 31, 2006.

#### **Recent Accounting Pronouncements**

In June 2005, the Financial Accounting Standards Board issued SFAS No. 154, *Accounting Changes and Error Corrections*, or SFAS 154, which requires entities that voluntarily make a change in accounting principle to apply that change retrospectively to prior periods' financial statements, unless this would be impracticable. SFAS 154 supersedes Accounting Principles Board Opinion No. 20, *Accounting Changes*, which previously required that most voluntary changes in accounting principles be recognized by including the cumulative effect of changing to the new accounting principle in the current period's net income or loss. SFAS No. 154 also makes a distinction between "retrospective application" of an accounting principle and the "restatement" of financial statements to reflect the correction of an error. Another significant change in practice under SFAS No. 154 will be that if an entity changes its method of depreciation, amortization or depletion for long-lived, non-financial assets, the change must be accounted for as a change in accounting estimate. Under Accounting Principles Board Opinion No. 20, such a change would have been reported as a change in accounting principle. SFAS 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. Adoption is not expected to have a material effect on our financial position or results of operations.

In July 2006, the Financial Accounting Standards Board issued Financial Accounting Standards Board Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, or FIN 48. FIN 48 clarifies the accounting

for uncertainty in income taxes recognized in an enterprises' financial statements in accordance with SFAS 109. FIN 48 prescribes a recognition and measurement method for tax positions taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosures and transitions. FIN 48 is effective for fiscal years beginning after December 15, 2006. We are currently analyzing the effects of FIN 48 but do not expect it to have a material effect on our financial position or results of operations.

In September 2006, the SEC issued Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements*, or SAB 108. SAB 108 provides guidance on how prior year misstatements should be taken into consideration when quantifying misstatements in current year financial statements for purposes of determining whether the current year's financial statements are materially misstated. SAB 108 becomes effective during our 2007 fiscal year. We do not expect the adoption of SAB 108 to have a material impact on our consolidated financial statements.

#### **Change in Accountants**

Deloitte & Touche LLP previously served as our independent registered public accounting firm. On July 27, 2004, the audit committee of our board of directors directed us to seek proposals from several accounting firms, with respect to the audit of our consolidated financial statements for the fiscal year ended April 30, 2005. On or about August 10, 2004, Deloitte & Touche LLP notified us that it declined to stand for reappointment as our independent auditors for the fiscal year ended April 30, 2005.

Deloitte & Touche LLP's audit reports on our consolidated financial statements as of and for the years ended April 30, 2003 and 2004 did not contain any adverse opinion or disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope or accounting principle. In connection with its audits of our financial statements as of April 30, 2003 and 2004 and for the years then ended and during the interim period from May 1, 2004 until the date Deloitte & Touche LLP notified us that it declined to stand for reappointment as our independent auditors, there were no disagreements with Deloitte & Touche LLP on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of Deloitte & Touche LLP, would have caused Deloitte & Touche LLP to make reference to the subject matter of the disagreement in connection with its audit reports related to our fiscal 2003 and 2004 consolidated financial statements. During our two fiscal years ended April 30, 2003 and 2004 and during the interim period from May 1, 2004 until the date Deloitte & Touche LLP notified us that it declined to stand for reappointment as our independent auditors, there were no reportable events as defined in Item 304(a)(1)(v) of Regulation S-K.

On November 24, 2004, the audit committee of our board of directors appointed KPMG LLP as our new independent registered public accounting firm for the fiscal year ended April 30, 2005. We did not consult with KPMG LLP on any financial or accounting reporting matters before its appointment.

## BUSINESS

### Overview

We develop and are commercializing proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. The energy in ocean waves is predictable, and electricity from wave energy can be produced on a consistent basis at numerous sites located near major population centers worldwide. Wave energy is an emerging segment of the renewable energy market. Based on our proprietary technology, considerable ocean experience, existing products and expanding commercial relationships, we believe we are the leading wave energy company.

We currently offer two products as part of our line of PowerBuoy® systems: a utility PowerBuoy system and an autonomous PowerBuoy system. Our PowerBuoy system is based on modular, ocean-going buoys, which we have been ocean testing for nearly a decade. The rising and falling of the waves moves the buoy-like structure creating mechanical energy that our proprietary technologies convert into electricity. We have tested and developed wave power generation and control technology using proven equipment and processes in novel applications. Our two products are designed for the following applications:

- Our utility PowerBuoy system is capable of supplying electricity to a local or regional electric power grid. Our wave power stations will be comprised of a single PowerBuoy system or an integrated array of PowerBuoy systems, plus the remaining components required to deliver electricity to a power grid. We intend to sell our utility PowerBuoy system to utilities and other electrical power producers seeking to add electricity generated by wave energy to their existing electricity supply.
- Our autonomous PowerBuoy system is designed to generate power for use independently of the power grid in remote locations. There are a variety of potential applications for this system, including sonar and radar surveillance, offshore cellular phone service, tsunami warning, oceanographic data collection, offshore platforms and offshore aquaculture.

We are expanding our key commercial opportunities for both the utility and the autonomous PowerBuoy systems. We currently have commercial relationships with the following:

- Iberdrola S.A., or Iberdrola, which is a large electric utility company located in Spain and one of the largest renewable energy producers in the world, Total S.A., or Total, which is one of the world's largest oil and gas companies, and two Spanish governmental agencies for the first phase of the construction of a 1.39 megawatt, or MW, wave power station off the coast of Santoña, Spain;
- Iberdrola and Total to evaluate the development of a wave power station off the coast of France;
- the United States Navy to develop and build a wave power station at the US Marine Corps Base in Oahu, Hawaii that we believe will serve as a prototype wave power station for the installation of wave power stations at other US Navy bases; and
- Lockheed Martin Corporation to market cooperatively with us our autonomous PowerBuoy system for use with Lockheed Martin equipment.

As part of our marketing efforts, we use demonstration wave power stations to establish the feasibility of wave power generation. We have operated a demonstration PowerBuoy system with a maximum rated output of 40 kilowatts, or kW, off the coast of New Jersey since October 2005 under a contract with the New Jersey Board of Public Utilities. This PowerBuoy system was removed from the ocean for maintenance in October 2006. We plan to develop and operate two additional demonstration wave power stations that, unlike the New Jersey power station, will, if approved and constructed as planned, be connected to the local power grids. In February 2006, we received approval from the South West of England Regional Development Agency to install a 5MW demonstration wave power station off the coast of Cornwall, England. In July 2006, we filed an application with the US Federal Energy Regulatory Commission for a preliminary permit to evaluate the feasibility of a location off the coast of Reedsport, Oregon for the proposed construction and operation of a wave power station with anticipated capacity of 50MW, of which the first 5MW will be a demonstration wave power station.

Our product development and engineering efforts are focused on increasing the maximum capacity of our utility PowerBuoy system from the current 40kW to 150kW in 2007, then to 250kW in 2008 and ultimately to 500kW in 2010. We believe by increasing system output, we will be able to decrease the cost per kW of our PowerBuoy system and the cost per kilowatt hour of the energy generated.

#### **Our Market**

Global demand for electric power is expected to increase from 14.8 trillion kilowatt hours in 2003 to 30.1 trillion kilowatt hours by 2030, according to the Energy Information Administration, or the EIA. To meet this demand, the International Energy Agency, or the IEA, estimates that investments in new generating capacity will exceed \$4 trillion in the period from 2003 to 2030, of which \$1.6 trillion will be for new renewable energy generation equipment.

According to the IEA, fossil fuels such as coal, oil and natural gas generated over 60% of the world's electricity in 2002. However, a variety of factors are contributing to the development of renewable energy systems that capture energy from replenishable natural resources, including ocean waves, flowing water, wind and sunlight, and convert it into electricity.

- *Rising cost of fossil fuels.* The cost of fossil fuel used to generate electricity has been rising. From 2000 to 2005 in the United States, the cost of coal used for electricity generation increased by 28%, the cost of natural gas used for electricity generation increased by 91% and the cost of oil used for electricity generation increased by 64%.
- *Dependence on energy from foreign sources.* Many countries, including the United States, Japan and much of Europe, depend on foreign resources for a majority of their domestic energy needs. Concerns over political and economic instability in some of the leading energy producing regions of the world are encouraging consuming countries to diversify their sources of energy.
- *Environmental concerns.* Environmental concerns regarding the by-products of fossil fuels have led many countries and several US states to agree to reduce emissions of carbon dioxide and other gases associated with the use of fossil fuels and to adopt policies promoting the development of cleaner technologies.
- *Government incentives.* Many countries have adopted policies to provide incentives for the development and use of renewable energy sources, such as subsidies to encourage the commercialization of renewable energy power generation.
- *Infrastructure constraints.* In many parts of the world, the existing electricity infrastructure is insufficient to meet projected, and in some places existing, demand. Expansion of generating capacity from existing energy sources is frequently hindered by significant regulatory, political and economic constraints.

As a result of these and other factors, the EIA projects that grid-connected generating capacity fueled by renewable energy resources will continue to grow over the next 25 years.

#### **Wave Energy**

The energy in ocean waves is a form of renewable energy that can be harnessed to generate electricity. Ocean waves are created when wind moves across the ocean surface. The interaction between the wind and the ocean surface causes energy to be exchanged. At first, small waves occur on the ocean surface. As this process continues, the waves become larger and the distance between the tops of the waves becomes longer. The size of the waves, and the amount of energy contained in the waves, depends on the wind speed, the time the wind blows over the waves and the distance it covers. The rising and falling of the waves moves our PowerBuoy system creating mechanical energy that our proprietary technologies convert into usable electricity.

There are a variety of benefits to using wave energy for electricity generation.

- *Scalability within a small site area.* Due to the tremendous energy in ocean waves, wave power stations with high capacity — 50MW and above — can be installed in a relatively small area. We estimate that, upon completion of the development of our 500kW PowerBuoy system, we would be able to construct a wave power station that would occupy less than one-tenth of the ocean surface occupied by an offshore wind power station of equivalent capacity.
- *Predictability.* The supply of electricity from wave energy can be forecasted in advance. The amount of energy a wave thousands of miles away will have when it arrives at a wave power station days later can be calculated based on satellite images and meteorological data with a high degree of accuracy. Customers can use this information to develop sourcing plans to meet their short-term electricity needs.
- *Constant Source of Energy.* The annual flow of waves at specific sites can be relatively constant. Based on our studies and analysis of our target sites, we believe our wave power stations will be able to produce usable electricity for approximately 90% of all hours during a year.

There are currently several approaches, in different stages of development, for capturing wave energy and converting it into electricity. Methods for generating electricity from wave energy can be divided into two general categories: onshore systems and offshore systems. Our PowerBuoy system is an offshore system. Offshore systems are typically located one to five miles offshore and in water depths of between 100 and 200 feet. The system can be above, on or below the ocean surface. Many offshore systems utilize a floatation device to harness wave energy. The heaving or pitching of the floatation device due to the force of the waves creates mechanical energy, which is converted into electricity by various technologies. Onshore systems are located at the edge of the shore, often on a sea cliff or a breakwater and typically must concentrate the wave energy first before using it to drive an electrical generator. Although maintenance costs of onshore systems may be less than those associated with offshore systems, there are a variety of disadvantages with these systems. As waves approach the shore, the energy in the waves decreases; therefore, onshore wave power stations do not take full advantage of the amount of energy that waves in deeper water produce. In addition, there are a limited number of suitable sites for onshore systems and there are environmental and possible aesthetic issues with these wave power stations due to their size and location on the seashore.

The scalability, predictability, constancy and limited environmental impact of offshore wave energy systems such as ours compare favorably with many other renewable energy technologies.

- Hydroelectric power generates electricity by capturing energy from flowing waters typically stored in and then released from reservoirs. The expansion of hydroelectric power may be limited due to the environmental and ecological impact of hydroelectric power stations.
- Wind power generates electricity by using wind turbines to harness the energy produced as a result of the wind's motion and to convert it into electricity. Wind turbine structures, which can be over 300 feet high and have blades with a span over 200 feet wide, require locations with plenty of open space and high average wind speeds. Due to the perceived aesthetic impact of wind turbines, some local governments have zoning restrictions prohibiting the installation of wind farms. In addition, because of their usual proximity to the shore, offshore wind farms share some of the same perceived aesthetic challenges as onshore wind farms.
- Solar power generates electricity from sunlight. Since the sun's energy is not always available and is widely scattered, current solar power technology is not scalable to create a large power station for supplying power to the grid.
- Tidal power captures energy contained in moving water due to tides and water current power captures energy contained in ocean and river flows and non-tidal currents. Both of these technologies require specific geographic characteristics for installation, which limits the availability of suitable sites.

## Our Competitive Advantages

We believe that our technology for generating electricity from wave energy and our commercial relationships give us several potential competitive advantages in the renewable energy market.

- *Our PowerBuoy system uses an ocean-tested technology to generate electricity.*
- We have been conducting ocean tests for nearly a decade in order to prove the viability of our technology. We initiated our first ocean installation in 1997 and have had several deployments of our systems for testing and operation since then, the longest of which has lasted 12 months. Our PowerBuoy systems have survived several hurricanes and winter storms while installed in the ocean.
- We have had an operational demonstration PowerBuoy system off the coast of New Jersey since October 2005, which system was removed from the ocean for maintenance in October 2006, and currently plan to build and deploy two additional demonstration wave power stations that, unlike the PowerBuoy system in New Jersey, will provide electricity to the local power grids. In February 2006, we received approval from the South West of England Regional Development Agency to install a demonstration wave power station off the coast of Cornwall, England and in July 2006, we filed an application with the US Federal Energy Regulatory Commission for a preliminary permit to evaluate the feasibility of a wave power station off the coast of Reedsport, Oregon, a portion of which will be for demonstration purposes.
- *Our PowerBuoy system is efficient in harnessing wave energy.*
- Our PowerBuoy system is designed to efficiently convert wave energy into electricity by using onboard sensors to detect actual wave conditions and then to automatically adjust the performance of the generator using our proprietary electrical and electronics-based control systems in response to that information.
- One measure of the efficiency of an electric power generation system is load factor. The load factor is the percent of kilowatt hours produced by a system in a given period as compared to the total possible kilowatt hours that could be produced by the system in that period. A high load factor indicates a high degree of utilization of the capacity of the system and provides a means to compare the efficiencies of different renewable energy technologies to produce equivalent power outputs (without taking into account the relative costs of constructing such systems). We believe the load factor for a PowerBuoy wave power station located at most of our targeted sites would be in the range of 30% to 45%.
- *Our PowerBuoy system takes advantage of time-tested and well-known technology.*
- Our PowerBuoy system is designed to combine features of ocean-going buoys with advanced electrical and electronics-based systems. Since standard ocean-going buoys have been deployed in maritime applications for decades, their survival and risk profiles are known and proven. By using electrical, rather than mechanical, engineering solutions whenever possible, we are able to control materials, construction and other capital costs while maintaining reliability.
- Our PowerBuoy system can be built using easily sourced components supplied by third parties. Due to the PowerBuoy system's modular design, total construction time is minimized as multiple components can be built simultaneously, and generating capacity can be scaled up or down by incrementally adding or subtracting groups of PowerBuoy units. In addition, our PowerBuoy system can be deployed using common maritime techniques.
- *Numerous potential sites for our wave power stations are located near major population centers worldwide.*
- Our systems are designed to work in sites with average annual wave energy of at least 20kW per meter of wave front, which can be found in many coastal locations around the world. In particular, we are targeting coastal North America, the west coast of Europe, the coasts of Australia and the east coast of Japan. These potential sites not only have appropriate natural resources for harnessing wave energy, but they are also located near large population centers with significant and increasing

electricity requirements. Due to seasonal and local variations, water depth and the effect of particular locations of islands and other geographical features, it is not necessarily the case that all locations in our targeted coastal areas are suitable sites for our systems.

- *We have significant commercial relationships.*
- Our current projects with Iberdrola and Total provide us with an initial opportunity to sell our wave power stations to utilities. By collaborating with leaders in renewable energy development, we believe we are able to accelerate both our in-house knowledge of the utility power generation market and our reputation as a credible renewable energy equipment supplier. If these projects are successful, we intend to leverage our experiences with the Spain and France projects to add supplementary wave power stations, new customers and complementary revenue streams from operating and maintenance contracts.
- For certain customers in need of electricity solutions independent of the grid in defense and related markets, our marketing relationship with Lockheed Martin will enable us to offer a complete solution — both equipment and power generation for that equipment — thereby maximizing the marketability of our autonomous PowerBuoy system for these remote applications.
- With the funding from the US Navy, we have been able to refine our PowerBuoy system while simultaneously preparing for commercial deployment to address a particular customer need. If we are able to successfully deploy PowerBuoy systems for the US Navy, we believe our market visibility will be significantly enhanced.
- *Our PowerBuoy system has the potential to offer a cost competitive renewable energy power generation solution.*
- Our product development and engineering efforts are focused on increasing the maximum capacity of our utility PowerBuoy system from the current 40kW to 150kW in 2007, then to 250kW in 2008 and ultimately to 500kW in 2010. Assuming we are able to reach manufacturing levels of at least 300 units of 500kW PowerBuoy systems per year, we believe, based upon our research and analysis, that the economies of scale we would have with our fabricators would allow us to offer a renewable electricity solution that competes on a non-subsidized basis with the price of wholesale electricity in key markets. We expect to complete development of our 500kW PowerBuoy system in 2010.
- Prior to achieving full production levels of the 500kW PowerBuoy system, if we achieve economies of scale for our 150kW or 250kW PowerBuoy systems, we expect to be able to offer a renewable electricity solution that competes with the price of electricity from traditional sources in certain local markets where the current retail price of electricity is relatively high or where sufficient subsidies are available.
- *Our systems are environmentally benign and aesthetically non-intrusive.*
- Our PowerBuoy system does not present significant risks to marine life and does not emit significant levels of pollutants. In connection with our project at the US Marine Corps Base in Hawaii, an independent environmental assessment of our PowerBuoy system required by the National Environmental Policy Act resulted in a Finding of No Significant Impact.
- Since our PowerBuoy systems are typically located one to five miles offshore, PowerBuoy wave power stations are usually not visible from the shore. Visual impact is often cited as one of the reasons that many communities have opposed plans to develop power stations. Our PowerBuoy system has the distinct advantage of having only a minimal visual profile. Only a small portion of the unit is visible at close range, with the bulk of the unit hidden below the water.

## Our Business Strategy

Our goal is to strengthen our leadership in developing wave energy technologies and commercializing wave power stations and related services. In order to achieve this goal, we are pursuing the following business strategies:

- *Concentrate sales and marketing efforts on four geographic markets.* We are focusing our sales and marketing efforts over the next three years on coastal North America, the west coast of Europe, the coasts of Australia and the east coast of Japan. We believe that each of these areas represents a strong potential market for our PowerBuoy wave power stations because they combine appropriate wave conditions, political and economic stability, large population centers, high levels of industrialization and significant and increasing electricity requirements.
- *Continue to increase PowerBuoy system output.* Our product development and engineering efforts are focused on increasing the output of our PowerBuoy systems from 40kW to 500kW. We plan to increase the output of our PowerBuoy system to 150kW in 2007, to 250kW in 2008 and ultimately to 500kW in 2010. We believe that by increasing system output, we will be able to decrease the cost per kW of our PowerBuoy system and the cost per kilowatt hour of the energy generated.
- *Construct demonstration wave power stations to encourage market adoption of our wave power stations.* Our demonstration wave power stations are intended to allow us to prove the viability of our PowerBuoy systems in a particular region. By enabling customers to experience our technology first-hand, we believe we will be able to facilitate our entry into our target markets. In addition, demonstration wave power stations provide us with the opportunity to test and refine our technology in actual operating conditions. In February 2006, we were approved by the South West of England Regional Development Agency to install a 5MW demonstration wave power station off the coast of Cornwall, England. In July 2006, we filed an application with the US Federal Energy Regulatory Commission for a preliminary permit to evaluate the feasibility of a location off the coast of Reedsport, Oregon for the proposed construction and operation of a wave power station with anticipated capacity of 50MW, of which the first 5MW will be a demonstration wave power station. The Cornwall and Reedsport power stations will, if approved and constructed as planned, be connected to local power grids.
- *Leverage customer relationships to enhance the commercial acceptance of our utility PowerBuoy system.* We currently have commercial relationships with Iberdrola and Total for two projects. We are in the first phase of the construction of a 1.39MW wave power station off the coast of Santoña, Spain, which phase is to be completed by December 31, 2009. We, along with affiliates of Iberdrola and Total, are currently assessing the viability of a 2 to 5MW power station off the coast of France. In addition, we believe that our project at the US Marine Corps Base in Oahu, Hawaii will serve as a prototype wave power station for the installation of wave power stations at other US Navy bases. We intend to build on these existing commercial relationships both by expanding the number and size of projects we have with our current customers and by entering into new alliances and commercial relationships with other utilities and independent power producers.
- *Expand revenue streams from our autonomous PowerBuoy system.* The autonomous PowerBuoy system addresses specific power generation needs of customers requiring off-grid electricity generation in remote locations in the open ocean. Since our PowerBuoy systems are well suited for many of these uses, we do not expect that they will require subsidies or other price incentives for commercial acceptance. This equipment might be used for powering sonar and radar surveillance, offshore cellular phone service, tsunami warning, oceanographic data collection, offshore platforms and offshore aquaculture. We have entered into a marketing cooperation agreement with Lockheed Martin to identify marketing opportunities for use of our autonomous PowerBuoy system to power Lockheed Martin equipment in remote locations.
- *Maximize revenue opportunities with existing customers.* We are pursuing operating and maintenance contracts for the Spain project once construction and deployment of the first phase of the 1.39MW

wave power station is complete, pursuant to which we would be paid fees for the operation and maintenance of the 40kW wave power station. We also plan to pursue operating and maintenance contracts with future customers, including with regard to our France project, in order to provide us with ongoing revenue streams.

## Our Products

We offer two types of PowerBuoy systems: our utility PowerBuoy system, which is designed to supply electricity to a local or regional electric power grid, and our autonomous PowerBuoy system, which is designed to generate power for use independently of the power grid in remote locations. Both products use the same PowerBuoy technology.

Pictured below is our 40kW utility PowerBuoy system at our facilities in New Jersey and installed in the ocean off the coast of New Jersey.



Our PowerBuoy system consists of a floating buoy-like device that is loosely moored to the seabed so that it can freely move up and down in response to the rising and falling of the waves, as well as a power take off device, an electrical generator, a power electronics system and our control system, all of which are sealed in the unit.

The power take off device converts the mechanical stroking created by the movement of the unit caused by ocean waves into rotational mechanical energy, which, in turn, drives the electrical generator. The power electronics system then conditions the output from the generator into usable electricity. The operation of the PowerBuoy system is controlled by our customized control system.

The control system uses sophisticated sensors and an onboard computer to continuously monitor the PowerBuoy subsystems as well as the height, frequency and shape of the waves interacting with the PowerBuoy system. The control system collects data from the sensors and uses proprietary algorithms to electrically adjust the performance of the PowerBuoy system in real-time and on a wave-by-wave basis. By making these electrical adjustments automatically, the PowerBuoy system is able to maximize the amount of usable electricity generated from each wave. We believe that this ability to optimize the performance of the PowerBuoy system in real-time is a significant advantage of our product.

In the event of storm waves larger than 13 feet, the control system automatically locks down the PowerBuoy system and electricity generation is suspended. When the wave heights return to a normal operating range of 13 feet or less, the control system automatically unlocks the PowerBuoy system and electricity generation and transmission recommences. This safety feature prevents the PowerBuoy system from being damaged by the increased amount of energy in storm waves.

Our 40kW PowerBuoy system has a maximum diameter of 12 feet near the surface, and is 52 feet long, with approximately 13 feet of the PowerBuoy system protruding above the surface of the ocean. Larger

PowerBuoy systems will be slightly longer and have a larger diameter. For example, our 500kW PowerBuoy system, once developed and manufactured, is expected to have a maximum diameter of approximately 42 feet and be approximately 62 feet long with approximately 18 feet protruding above the ocean surface.

#### ***Utility PowerBuoy System***

The utility PowerBuoy system is designed to transmit electricity to shore by an underwater power cable, which would then be connected to a power grid. Our utility PowerBuoy system presently has a capacity of 40kW, which we are working to increase to 150kW in 2007, to 250kW in 2008 and ultimately to 500kW in 2010. The utility PowerBuoy system is designed to be positioned in water with a depth of 100 to 200 feet, which can usually be found one to five miles offshore. This depth allows the system to capture meaningful amounts of energy from the waves, since decreasing water depth depletes the energy in the waves.

The mooring system for keeping a utility PowerBuoy system in position connects it by slack lines to three floats that, in turn, are connected by slack lines to three anchors. This is a well-established mooring system, referred to as three-point mooring, which we have improved upon with various technologies that reduce cost and deployment time.

We refer to the entire utility power generation system at one location as a wave power station, which can either be comprised of a single PowerBuoy system or an integrated array of PowerBuoy systems connected to an underwater cable to transmit the electricity to shore. Our system is designed to be scalable as multiple PowerBuoy units can be integrated to create a wave power station with a larger output capacity. An array of PowerBuoy systems would typically be arranged in three staggered rows parallel to the incoming wave front to form a long rectangle. This staggered arrangement would maximize the level of wave energy that the wave power station can capture. For example, to create the planned 1.39MW station off the coast of Santoña, Spain, we intend to use an array of one 40kW PowerBuoy system and nine 150kW PowerBuoy systems arranged in three staggered parallel rows of two or four PowerBuoy systems each.

In addition, we are exploring the use of our utility PowerBuoy systems for applications that include generating electricity for desalination of water, hydrogen production, water treatment and natural resource processing. In these instances, the power generated by the utility PowerBuoy system would bypass the grid and be delivered directly to the point of electricity consumption.

#### ***Autonomous PowerBuoy System***

The autonomous PowerBuoy system is based on the same technology as the utility PowerBuoy system but is designed for electricity generation of relatively low amounts of power for use independently of the power grid in remote locations. The autonomous PowerBuoy system currently has a capacity ranging from 300 watts to 40kW, depending on the application. Our autonomous PowerBuoy system is designed to operate anywhere in the ocean and in any depth of water.

We expect that autonomous PowerBuoy systems will generally be suitable for use on a stand-alone basis for providing power for specific applications, including sonar and radar surveillance, offshore cellular phone service, tsunami warning, oceanographic data collection, offshore platforms and offshore aquaculture.

**Product Deployments**

The following chart describes the current status of recent and planned deployments of our PowerBuoy systems. The deployments are in most cases subject to further negotiation and agreement with third parties, including joint venture partners, and the receipt of necessary government permits and other approvals.

Location	Customer or Power Producer	Project Objective	Planned Capacity and Use	Status
<b>Utility PowerBuoy Systems</b>				
<i>Santoña, Spain</i>	Iberdrola, Total and regional and federal Spanish government agencies	Commercial electricity supply to Spain	1.39MW for grid connection	Planning phase complete; have begun construction of a 40kW PowerBuoy and underwater infrastructure
<i>West Coast, France</i>	Iberdrola and Total	Commercial electricity supply to France	2MW — 5MW for grid connection	In the planning and development phase
<i>Marine Corps Base, Oahu, Hawaii</i>	United States Navy	Demonstrate viability of wave power stations for use at US Navy bases	Electricity supply to naval base	One system installed for a total of eight months over a two-year period; an improved system is planned to be deployed in fiscal 2007
<i>Cornwall, England</i>	Wave power station to be operated by us as an independent power provider	Demonstration wave power station; commercial power supply to Cornwall, England	5MW for grid connection	In the planning and development phase
<i>Reedsport, Oregon</i>	Initial 5MW wave power station to be operated by us as an independent power provider	Demonstration wave power station; commercial power supply to Oregon	Initial 5MW capacity planned for grid connection	Permit application filed for 50MW wave power station
<b>Autonomous PowerBuoy Systems</b>				
<i>Atlantic City, New Jersey</i>	New Jersey Board of Public Utilities	Demonstrate viability of PowerBuoy system off the coast of New Jersey	One free-standing demonstration system with a maximum output of 40kW	Deployed from October 2005 to October 2006; undergoing scheduled maintenance out of the water
<i>Gray's Harbor, Washington</i>	Lockheed Martin	Temporary installation to demonstrate ability to power underwater sensing and communications equipment	1kW for distributed power use on location	Testing completed successfully
<i>Free-standing ocean sites to be determined</i>	US Department of Homeland Security	Design, analysis and planning of an ocean-based system to be used for detection and tracking of ocean vessels	Output to be determined; to be used for on location distributed power	Initial phase completed; further development subject to US Department of Homeland Security and other governmental approvals

## **Marketing and Sales**

We are developing our sales capabilities and have begun commercial marketing and selling of our PowerBuoy systems. Our marketing and sales efforts are currently led and coordinated by Dr. George W. Taylor, our chief executive officer, and Mr. Mark R. Draper, the chief executive of Ocean Power Technologies Limited, our wholly-owned subsidiary located in the United Kingdom. Because our products use a new commercial technology, the decision process of a customer requires substantial educational efforts, in which many of our employees may participate. We are currently seeking to hire a vice president of business development and marketing.

In addition to our own direct sales, we will continue to enter into development agreements and strategic alliances with regional utility and energy companies committed to providing electricity from renewable energy sources. We plan to leverage these relationships to sell and market our PowerBuoy wave power stations to these companies and their affiliates and to other customers in the region. We plan to expand our relationships by entering into long-term operations and maintenance contracts to support completed wave power stations.

In order to penetrate international markets, we plan to implement marketing strategies that respond to local market demands. In particular markets, we may grant licenses to local businesses, including independent power producers, to sell, manufacture or operate PowerBuoy wave power stations.

### ***Utility PowerBuoy System Marketing***

We plan to market our utility PowerBuoy systems to utilities and independent power producers interested in adding electricity generated from renewable sources to their existing electricity supply. We are currently targeting customers in coastal North America, the west coast of Europe, the coasts of Australia and the east coast of Japan. In addition, we are exploring the use of our utility PowerBuoy systems for applications that include desalination of water, hydrogen production, water treatment and natural resource processing. In these instances, the power generated by the utility PowerBuoy system would bypass the grid and be delivered directly to the point of electricity consumption.

### ***Subsidies and Incentives***

Countries in Europe and Asia and several states in the United States have adopted a variety of government subsidies to allow renewable sources of electricity to compete with conventional sources of electricity, such as fossil fuels. Government subsidies and incentives generally focus on grid-connected systems and take several forms, including tariff subsidies, renewable portfolio standards, rebates, tax incentives and low interest loans. In addition, the adoption by governments of limits on carbon dioxide emissions and targets for renewable energy production has spurred a market for trading of surplus carbon credits and renewable energy certificates.

We expect to be able to use the availability of subsidies and other incentives to market the electricity generated by wave power stations as an alternative to fossil fuel generated electricity. We plan to educate potential customers on the availability of these incentives and, where appropriate, work with them to prepare and file the necessary applications, select sites to meet program requirements and take advantage of these incentives.

### ***Demonstration Wave Power Stations***

We use demonstration PowerBuoy systems to establish the feasibility of providing wave-generated electricity to customers. Demonstration wave power stations allow potential customers to see first-hand the viability of wave energy as a significant source of electricity. Since October 2005, we have operated a demonstration PowerBuoy system off the coast of New Jersey, which allowed us to continuously monitor the system and evaluate its performance in actual wave conditions. This PowerBuoy system was removed from the ocean for maintenance in October 2006. Although the system did not supply electricity to the power grid, it provided us with valuable operational data as well as important marketing opportunities.

We have identified a site off the coast of the United Kingdom to install a demonstration wave power station of up to 5MW that will connect to the power grid in Cornwall, England. In connection with the development of this wave power station, we are planning to take advantage of incentives offered in the United Kingdom to encourage growth in power derived from renewable sources.

We have also filed an application for a permit with the US Federal Energy Regulatory Commission to develop a 50MW PowerBuoy wave power station off the coast of Oregon that will be connected to the local power grid, the first phase of which is expected to be a 5MW demonstration wave power station. We will need additional authorization from the US Federal Energy Regulatory Commission to sell electric power generated from the Oregon wave power station into the wholesale or retail markets.

#### **Autonomous PowerBuoy System Marketing**

There are a variety of potential customers, such as the US Department of Homeland Security, that have specific needs for off-grid power generation that can be supplied by our autonomous PowerBuoy. Potential applications for off-grid power supply include sonar and radar surveillance, offshore cellular phone service, tsunami warning, oceanographic data collection, offshore platforms and offshore aquaculture.

In September 2006, we entered into a marketing cooperation agreement with Lockheed Martin under which Lockheed Martin's Maritime Systems and Sensory business unit and we will work together to identify marketing opportunities for our autonomous PowerBuoy system. For each marketing opportunity Lockheed Martin and we agree to pursue, a subsequent agreement will be entered into setting forth the terms of the specific arrangement. The marketing cooperation agreement terminates in September 2009, and either Lockheed Martin or we may terminate the agreement earlier upon 30 days' prior written notice.

#### **Customers**

The table below shows the percentage of our revenue we derived from significant customers for the periods indicated:

<u>Customer</u>	<u>Fiscal 2004</u>	<u>Fiscal 2005</u>	<u>Fiscal 2006</u>	<u>Three Months Ended July 31, 2006</u>
US Navy	95%	57%	61%	63%
New Jersey Board of Public Utilities	1%	7%	5%	—
Iberdrola and Total	—	4%	9%	12%
Lockheed Martin	4%	32%	22%	—
US Department of Interior for Department of Homeland Security	—	—	3%	13%

We anticipate that the US Navy will continue to account for a substantial portion of our revenue in fiscal 2007 and, if we are successful in obtaining commercial acceptance of our systems, its relative contribution to our revenue will decline thereafter.

#### **Spain Project**

In July 2004, we entered into a development agreement, which we refer to as the Spain development agreement, with Iberdrola Energias Renovables II, S.A., an affiliate of Iberdrola, Sociedad para el Desarrollo Regional de Cantabria, S.A., or SODERCAN, which is the industrial development agency of the Spanish region of Cantabria, and Instituto para la Diversificación y Ahorro de la Energía, S.A., or IDAE, a Spanish government agency dedicated to energy conservation and diversification efforts, to jointly study the possibility of developing a wave power station off the coast of Santoña, located in the Cantabria region in northern Spain. Total Eolica S.A., an affiliate of Total, joined the development agreement in June 2005. In January 2006, we completed the assessment phase of the project, which included an assessment of wave energy resources at the site, feasibility analysis for deployment at the site, determination of capacity and design, and an estimation of investments needed for the project as well as anticipated costs for operation, maintenance and repairs.

Expenses associated with this phase were shared among the parties to the agreement based on agreed upon percentages. As of July 31, 2006, we had invested less than \$0.1 million for our share of the assessment phase funding, and had recognized revenue of approximately \$0.4 million under the Spain development agreement.

In July 2006, Iberdrola Energias Marinas de Cantabria, S.A., or Iberdrola Cantabria, was formed for the purpose of constructing and operating a wave power station off the coast of Santoña, Spain. Iberdrola Energias is the largest shareholder of Iberdrola Cantabria. Total Eolica, SODERCAN, IDAE and we each have minority ownership positions. Expenses will be shared among the parties to the agreement based on agreed upon percentages. We own 10% of Iberdrola Cantabria.

In July 2006, we entered into a construction agreement with Iberdrola Cantabria, which we refer to as the Spain construction agreement. Under this agreement, we have agreed to complete the first phase of the construction of a 1.39MW wave power station. This phase of construction includes the manufacturing and deployment of one 40kW PowerBuoy system, installation of the underwater power transmission cable and the deployment of the underwater substation required for connecting the 40kW PowerBuoy system with nine additional 150kW PowerBuoy systems that together are contemplated to constitute the 1.39MW wave power station. Under the Spanish construction agreement, we are required to bear the first €0.5 million of any cost overruns. The Spain construction agreement does not cover the terms for the second phase of the 1.39MW wave power station project, which encompasses the deployment of the nine additional 150kW PowerBuoy systems. We will need to agree to the terms for the second phase of this project and enter into a subsequent contract with Iberdrola Cantabria before we can complete the construction of the full wave power station. We currently plan to deploy the initial 40kW PowerBuoy system for this project in the first quarter of fiscal 2008, and, if we can reach agreement as to the second phase of the project, we plan to deploy the remainder of the PowerBuoy systems in fiscal 2009. Under the Spain construction agreement, Iberdrola Cantabria has the right to terminate the agreement if we interrupt our services for more than 180 days and do not resume within a 30-day period, the first phase of construction is not completed by December 31, 2009 for reasons attributable to us, or for a serious and repeated breach of a major obligation that is not cured within a 30-day period after we receive notice of the breach. In addition, we have made guarantees to Iberdrola Cantabria associated with the first phase of construction in respect of the quality, repair and replacement of the 40kW PowerBuoy system and ocean-based substation and the level of power output of the 40kW PowerBuoy system.

We are paid under the Spanish construction agreement as we complete certain milestones for a total potential payment for the first phase of construction of approximately €2.7 million. As of July 31, 2006, we had recognized revenue of less than \$0.1 million under the Spanish construction agreement. In order to receive additional funding for the project, we must enter into additional contracts with Iberdrola Cantabria. There are no assurances that we will be able to reach agreement with Iberdrola Cantabria for the future phases of the project.

#### **France Project**

In June 2005, we entered into a development agreement, which we refer to as the France development agreement, with Total Energie Development S.A., an affiliate of Total, and Iberdrola Energias Renovables II, S.A., an affiliate of Iberdrola, to study and assess by December 2006 the feasibility of a 2MW to 5MW wave power station off the coast of France. Expenses are shared among the parties based on agreed upon percentages, which also reflect the parties' anticipated ownership interest in the wave power station. Iberdrola Energias has a majority interest, while Total Energie and we have minority interests. Our interest is 10%. In addition, pursuant to the France development agreement, we are restricted from developing or building, or supplying equipment for use in, a PowerBuoy system for any other customer in France until December 2008.

If upon completion of the feasibility study, Iberdrola Energias, Total Energie and we unanimously conclude that the operation of a wave power station off the coast of France is economically, technically and financially feasible, we will meet to discuss whether and how the wave power station should be implemented. If we proceed, Iberdrola Energias, Total Energie and we will form a company for the purpose of constructing and operating the wave power station. Each party will be entitled to retain its current percentage interest by making a proportionate capital investment. Regardless of our participation in the new company, we are

obligated to supply and install equipment on market terms so that the new company can operate the wave power station. Specific terms, including price and schedule, for these supply and installation obligations are not included in the France development agreement. Iberdrola Energias and Total Energie may withdraw from the France development agreement. If we withdraw, however, we will remain bound by our supply and installation obligations under the contract.

As of July 31, 2006, we had contributed approximately \$11,500 for expenses and had recognized revenue of approximately \$13,000 under the France development agreement. In order to receive additional funding for the project, we must enter into additional contracts. There are no assurances that we will be able to reach agreement for future phases of the project.

#### **US Navy**

Since September 2001, we have entered into a series of contracts with the United States Office of Naval Research for the development and construction of a wave power station at the Marine Corps Base in Oahu, Hawaii. Under the contract for the current phase of the project, which was entered into in September 2005 and expires in March 2007, we are reimbursed for costs and paid a fixed fee for total potential revenue of \$2.8 million.

In order to receive additional funding for the project, we must enter into additional contracts with the Office of Naval Research, which will require appropriation of funds by the US Congress. There are no assurances that our funding will be approved or that we will be able to reach agreement with the Office of Naval Research in future years.

#### **Backlog**

Our contract backlog consists of the aggregate anticipated revenue remaining to be earned at a given time from the uncompleted portions of our existing customer contracts. As of July 31, 2006, our contract backlog was \$5.5 million as compared to \$0.8 million as of July 31, 2005. We anticipate that a majority of our backlog will be recognized as revenue over the next 12 months.

The amount of contract backlog is not necessarily indicative of future revenue because modifications to or terminations of present contracts and production delays can provide additional revenue or reduce anticipated revenue. A substantial majority of our revenue is recognized using the percentage-of-completion method, and changes from time to time in estimates may have a significant effect on revenue and backlog. Our backlog is also typically subject to large variations from time to time due to the timing of new awards. Consequently, it is difficult to make meaningful comparisons of backlog.

#### **Manufacturing and Deployment**

##### ***Manufacturing and Raw Materials***

We engage in two types of manufacturing activities: the manufacturing of the high value-added components, or modules, for systems control, power generation and power conversion for each PowerBuoy system, and the contracting and fabrication of the buoy-like structure, anchoring and mooring, and cabling.

Our core in-house manufacturing activity is the assembly and testing of the power generation and control modules at our Pennington, New Jersey facility. The power generation and control modules include the critical electrical and electronic systems that convert the mechanical energy into usable electrical energy. The sensors and control systems use sophisticated technology to monitor ocean conditions and automatically optimize the performance of the PowerBuoy system in response to those changing conditions. We have several patents, including those that cover our power generation, power conversion and control technologies. Due to the critical and proprietary nature of these systems, we do not outsource their assembly and testing. After a generator and

control module passes our rigorous quality control procedures, it is transported as a ready-to-install component to the project site. We currently employ nine engineers who are responsible for manufacturing and testing our generators and control systems. In order to meet our growth objectives, by the end of fiscal 2010 we will need to increase our engineering and manufacturing staff by over 120 people. In addition to adding engineers with various specialties, by the end of fiscal 2008 we plan to hire a manager of our production manufacturing and a manager of our supply chain.

We purchase the remaining components of and raw materials for each PowerBuoy system from various vendors. Currently, we contract for these components on a project-by-project basis. We conduct a bidding process to select a supplier with the optimal combination of price, delivery terms and quality. Our goal is to develop ongoing relationships with select vendors centrally located in different regions, which will allow us to reduce unit costs as our volume increases. We provide specifications to each vendor who is responsible for performing quality analysis and quality control over the course of construction, subject to our review of the quality test procedures and results. After each vendor completes testing of the component, it is transported ready-to-install to the project site.

Upon arrival at the project site, the generator and control modules are integrated with the balance of the components of the PowerBuoy system. We are highly dependent on our third-party suppliers; however, we actively manage key steps in the supply chain. We act as the general contractor, and retain the ultimate responsibility for building the PowerBuoy wave power station, and installing, testing and deploying the complete wave power station at the project site. This process requires significant project and contract management by us. We currently employ individuals who have experience with all aspects of both the manufacturing and engineering contracting processes, and demonstrated organizational capabilities in these critical areas.

We do not have long-term contracts with our third-party manufacturers or vendors. If, for any reason, our third-party manufacturers or vendors are not willing or able to provide us with components or supplies in a timely fashion, or at all, our ability to manufacture and sell many of our products could be impaired. To date, we have been able to obtain adequate outsourced manufacturing services and supplies from our third-party manufacturers and vendors in a timely manner. We believe that over time alternative component manufacturers and vendors can be identified if our current third-party manufacturers and vendors fail to fulfill our requirements.

#### ***Deployment***

For our existing and currently planned deployments, we purchase from subcontractors the mooring system and cables needed to install the PowerBuoy system and connect it to either the power grid or a remote power site. The vendor transports these components to the project site.

Each step in the deployment process for our existing and currently planned deployments is outsourced to subcontractors located near the project site. First the mooring system, consisting of floats, anchors and chains, are brought to the wave power station's ultimate ocean location by workboats. At the same time, the cable to transmit the generated electricity is laid by a subcontractor. Next the PowerBuoy system is towed to the ocean location and fixed to the mooring system. The PowerBuoy system would then be connected to the transmission cable, which would then be connected to the grid or the distributed power site. At this point, we would have a fully assembled PowerBuoy wave power station, which, subject to final testing, would be ready for operation. We expect to be able to install an array of PowerBuoy systems using a similar approach.

Although we expect that the subcontractor services required for deployment of a wave power station will be readily available in the locations where we currently plan to deploy our systems, we are dependent on third parties for the entire process. We actively manage each step with personnel who have significant project management and deployment experience.

## **Research and Development**

Our research and development team consists of employees with a broad range of experience in mechanical engineering, electrical engineering, hydrodynamics and systems engineering. We engage in extensive research and development efforts to improve PowerBuoy efficiency and power output and to reduce manufacturing cost and complexity. Our research and development efforts are currently focused on product development, in particular increasing the output of our utility PowerBuoy system. We are also conducting research on improvements to our current technology, including alternative power generation and power take off systems.

Research and development expenses are reflected on our consolidated statements of operations as product development costs. Our company-sponsored research and development expenses were approximately \$0.3 million for fiscal 2004, \$0.9 million for fiscal 2005, \$4.2 million for fiscal 2006 and \$1.1 million in the three months ended July 31, 2006. In addition, while we have in the past self-funded the majority of our research and development expenditures, we also have customer-sponsored research and development expenses of approximately \$0.4 million for fiscal 2004, \$0.2 million for fiscal 2005, \$0.1 million for fiscal 2006 and \$39,000 in the three months ended July 31, 2006.

We currently plan to increase the output of our utility PowerBuoy system to 150kW in 2007, to 250kW in 2008 and ultimately to 500kW in 2010. The key to increasing the output of the PowerBuoy system is to increase the system's efficiency as well as its diameter, which is directly related to the capacity of the system. For example, if we double the size of the unit's diameter, we will quadruple its power capacity. We believe that we will be able to increase the output capacity of the PowerBuoy system using technology that we have already developed, so our focus is on the design, manufacture, testing and deployment of the higher capacity systems. We are exploring design and construction techniques that will enable the larger PowerBuoy systems to be deployed cost effectively and without damage. For example, our 40kW PowerBuoy systems are transported to the onshore deployment sites using standard flatbed trucks. However, the assembled 150kW PowerBuoy systems will be too large for these trucks and will need to be transported in modules and assembled on-site. In addition, we may need to adjust the mooring system to account for the larger-sized PowerBuoy systems.

We also plan to continue our technology development of specific applications for our PowerBuoy systems to expand our growth opportunities. For example, we are exploring applications that include desalination of water, hydrogen production, water treatment and natural resource processing.

We expect our research and development expenses to continue to rise in the next several years, with our product development expenses increasing more rapidly than our research expenses.

## **Intellectual Property**

We believe that our technology differentiates us from other providers of wave and other renewable energy technologies. As a result, our success depends in part on our ability to obtain and maintain proprietary protection for our products, technology and know-how, to operate without infringing the proprietary rights of others and to prevent others from infringing our proprietary rights. Our policy is to seek to protect our proprietary position by, among other methods, filing United States and foreign patent applications related to our proprietary technology, inventions and improvements that are important to the development of our business. We also rely on trade secrets, know-how, and continuing technological innovation and may rely on in-licensing opportunities to develop and maintain our proprietary position.

As of October 1, 2006, we owned a total of 24 United States patents and 16 United States patent applications, five of which are provisional patent applications. We have pending foreign counterparts to six of our issued patents and nine of our pending non-provisional patent applications.

Our patent portfolio includes patents and patent applications with claims directed to:

- system design;
- control systems;
- power conversion;
- anchoring and mooring; and
- wave farm architecture.

The expiration dates for our issued United States patents range from 2015 to 2023. We do not consider any single patent or patent application that we hold to be material to our business. The patent positions of companies like ours are generally uncertain and involve complex legal and factual questions. Our ability to maintain and solidify our proprietary position for our technology will depend on our success in obtaining effective patent claims and enforcing those claims once granted. In addition, certain technologies that we developed with US federal government funding are subject to certain government rights as described in “Risk Factors — Risks Relating to Our Business.”

We rely, in some circumstances, on trade secrets to protect our technology. Trade secrets, however, are difficult to protect. We seek to protect our proprietary technology and processes, in part, by confidentiality agreements with our employees, consultants and other contractors; however, these agreements may be breached. In addition, our trade secrets may otherwise become known or be independently discovered by competitors. To the extent that our employees, consultants or contractors use intellectual property owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions.

We use trademarks on nearly all of our products and believe that having distinctive marks is an important factor in marketing our products. We have registered our PowerBuoy® mark and filed applications to register our CellBuoy™ and Talk on Water™ marks for a cellular telephone service application of our autonomous PowerBuoy system and our Making Waves in PowerSM service mark in the United States.

### **Competition**

We compete and will compete with power generation equipment suppliers in all segments of the electric power industry, including wave energy, other forms of renewable energy and traditional fossil fuel. The renewable energy industry is both highly competitive and continually evolving as participants strive to distinguish themselves within their markets and compete within the larger electric power industry. Many of our competitors in certain of these segments have established a stronger market position than ours and have greater resources and name recognition than we have. In addition, there are many companies, including some of the largest multinational energy companies, that are developing or sponsoring innovative technologies for renewable energy production. Accordingly, our success depends in part on developing and demonstrating the commercial viability of wave energy solutions and identifying markets for and applications of our PowerBuoy systems and technology.

Although the market for equipment that generates electricity from wave energy is in its early stage of commercial development, there are a number of private companies, some with institutional funding, developing technologies to generate electricity from wave energy, and we compete or will compete with them. We believe there are 20 to 30 companies worldwide developing wave energy technologies. Most of these companies are located in the United Kingdom, continental Europe, the United States and Australia, and almost all are focused on offshore systems. A few of these companies have conducted ocean testing of their systems, which is the critical factor in proving the survivability and performance of any wave energy system.

Sixteen companies expressed an interest to the South West of England Regional Development Agency in participating in the development of a new Wave Hub power station project off the coast of Cornwall, England. Three companies were ultimately selected: Ocean Prospect Ltd., a subsidiary of the Wind Prospect group, Fred.Olsen Ltd. and us.

Ocean Prospect Ltd. has stated that it will deploy the Pelamis device developed by Ocean Power Delivery at the Cornwall site. The Pelamis system is a semi-submerged, articulated structure composed of cylindrical sections linked by hinged joints. The wave-induced motion of these cylinders relative to each other is used to pump hydraulic power take off systems, providing the mechanical power to turn the generators to produce electricity. Fred.Olsen, a ship and offshore platform builder, intends to deploy a multiple point-absorber system comprised of a number of floating buoys attached to a stable floating platform. Additional competitors may enter the market, and we are likely to compete with new companies in the future.

To compete effectively, we have to demonstrate that our PowerBuoy systems are attractive, compared to other wave energy systems and other renewable energy systems, by differentiating our systems on the basis of performance, survivability in operation and storm wave conditions, cost effectiveness and the operating and maintenance services that we provide. We believe that we perform favorably to our competition with respect to each of these factors.

#### **Government Regulation**

The electric power industry is subject to extensive regulation, which varies by jurisdiction. For example, the electricity industry in the United States is governed by both federal and state laws and regulations, with the federal government having jurisdiction over the sale and transmission of electricity at the wholesale level in interstate commerce, and the states having jurisdiction over the sale and distribution of electricity at the retail level. The electricity industry in the European Union, or the EU, is primarily governed by national law, but a number of EU-level regulations impose obligations on member states, notably with respect to the liberalization of the electricity markets.

The renewable energy industry has also been subject to increasing regulation, however none of the countries in which we are currently marketing our PowerBuoy systems have comprehensive regulatory schemes tailored to wave energy. As the renewable energy industry continues to evolve and as the wave energy industry in particular develops, we anticipate that wave energy technology and our PowerBuoy systems and their deployment will be subject to increased oversight and regulation in accordance with international, national and local regulations relating to safety, sites, environmental protection, utility interconnection and metering and related matters.

Our PowerBuoy wave power stations currently face regulation in the US and in foreign jurisdictions concerning, among other areas, the sale and transmission of electricity, site approval and environmental approval and compliance. In addition, in order to encourage the adoption of renewable energy systems, many governments offer subsidies and other financial incentives and have mandated renewable energy targets. These subsidies, incentives and targets may not be applicable to our wave energy technology and therefore may not be available for us or our customers.

#### ***Sale and Transmission of Electricity***

The US government regulates the electricity wholesale and transmission business through the Federal Energy Regulatory Commission, or FERC. The FERC regulates the rates and terms for sales of electricity at the wholesale level, and the organization, governance and financing of the companies engaged in electricity sales. As a result, the FERC regulates the rates charged for sales of electric power from a wave power station into the wholesale market, although it is possible to obtain an exemption from the FERC that would allow those sales to occur at market-based rates. The FERC also regulates the construction, operation, and maintenance of any dam, water conduit, reservoir or powerhouse along or in any of the navigable waters of the United States for the purpose of generating electric power. As a result, the construction and operation of a wave power station in the United States requires the issuance of a license by the FERC. We have filed an application for a preliminary permit with the FERC to evaluate the feasibility of a 50MW wave power station off the coast of Oregon. An application to the FERC was not required for the current project in New Jersey because the system is not grid-connected and is for demonstration purposes.

Under Spanish law, each of the Spanish Autonomous Regions, including the Cantabria region, has the power to issue administrative authorizations for the construction and exploitation of installations for the production of renewable energy, including installations that use the energy of waves.

#### **Site Approval**

Generally, we expect that we will deploy our PowerBuoy systems in the range of one to five miles from the shore, subject to water depth and overall wave heights. Although regulations regarding the use of ocean space vary around the world, we do not expect significant delay in obtaining site approvals, as governments have to date encouraged the use of renewable energy sources. Our customers for the Spain and France projects and the South West of England Regional Development Agency for the Cornwall, England project are responsible for obtaining the necessary siting permits for their projects.

In the United States, federal agencies regulate the siting of renewable energy and related-uses located on the outer continental shelf, which is generally more than three miles offshore. For projects located within three miles of the US shore, the adjacent state would be responsible for issuing a lease and other required authorizations for the location of the project. In either case an assessment of the potential environmental impact of the project would be conducted in addition to other requirements. In Spain, the owner of the wave power station will be required to pay rent to the Spanish government, which will be negotiated prior to installation.

#### **Environmental Approval and Compliance**

We are subject to various foreign, federal, state and local environmental protection and health and safety laws and regulations governing, among other things: the generation, storage, handling, use and transportation of hazardous materials; the emission and discharge of hazardous materials into the ground, air or water; and the health and safety of our employees. In addition, in the United States, the construction and operation of a power system offshore would require permits and approvals from the FERC, Coast Guard, Army Corps of Engineers and other governmental authorities. These required permits and approvals evaluate, among other things, whether the proposed project is in the public interest and ensure that the project would not create a hazard to navigation. Other foreign and international laws may require similar approvals. Each PowerBuoy system installed within Spanish territorial waters must be approved and authorized by the Spanish Ministry of Environment. In addition, we anticipate that our PowerBuoy systems will be subject to EU law on the protection of the environment and environmental assessments of development projects including the Environmental Impact Assessment and Strategic Environmental Assessment Directives.

We believe that a significant advantage of our PowerBuoy systems is that they do not present significant environmental risks when compared to traditional power generation technologies, as there is no significant visual or audible impact and such systems have not been shown to have a significant negative effect on fish or sea mammals. We are not aware of any liabilities in connection with compliance with such laws, regulations, permits and approvals that would have a material adverse effect on our financial position, results of operations or cash flows.

#### **Subsidies and Incentives**

Several governments have enacted subsidies and incentives designed to encourage the development of renewable energy resources. Because of the relative novelty of wave energy generation, these government programs generally do not apply specifically to wave energy generation, and so these programs may not be available to our customers or us in all cases.

Under a tariff subsidy, the government sets price subsidies to be paid to electricity producers for renewable electricity generated by them. The prices are set above market rates and may be differentiated based on system size or application. Under a renewable portfolio standard, the government requires regulated utilities to supply a portion of their total electricity in the form of renewable electricity. Some programs further specify that a portion of the renewable energy quota must be from a particular renewable energy source, although none have specific quotas for wave energy.

Tax incentive programs for renewable energy exist in the United States at both the federal and state level and can take the form of investment tax credits, accelerated depreciation and property tax exemptions. Several governments also facilitate low interest loans for renewable energy systems, either through direct lending, credit enhancement or other programs.

Each of the member states of the EU has a country-specific target for the level of consumption of electricity from renewable sources that it should attain by 2010. The United Kingdom Renewables Obligation of April 2002 included a target of 10% of electricity generation to come from renewable sources by 2010 and 15% by 2016, which will continue until 2027. Electricity suppliers that are unable to otherwise meet their renewables obligation have to pay a buy-out price (currently £0.033 per kWh) or purchase Renewables Obligation Certificates from companies that generate electricity from renewable resources. The United Kingdom Department of Trade and Industry has established a £50 million Marine Renewables Deployment Fund of which £42 million is allocated to provide a maximum seven-year benefit to any one marine power technology of £9 million, in the form of a 25% capital grant and a tariff supplement of £0.10 per kilowatt-hour generated.

Many countries and other local jurisdictions have established limits on carbon dioxide emissions. In particular, a key component of the Kyoto Protocol is the commitments made by certain countries to reduce carbon dioxide emissions. The country, locality or companies within the jurisdiction are given carbon emission allowances, or carbon credits, which represent the right to emit a specific amount of carbon dioxide. A country, locality or company having emissions that exceed its allocated carbon credits may purchase unused carbon credits from a country, locality or company that has reduced its emissions beyond its requirements to do so. The carbon dioxide emissions from a PowerBuoy wave power station are far lower than the emissions from a fossil fuel power station of the same capacity. Therefore, a PowerBuoy wave power station may generate carbon credits that could be used and sold.

In 2000, we entered into an agreement with Woodside Sustainable Energy Solutions Pty. Ltd., or Woodside, under which we received \$0.6 million in exchange for granting Woodside an option to purchase, at a 30% discount from the then-prevailing market rate, up to 500,000 metric tons of carbon emission credits we generate during the years 2008 through 2012. However, if by December 31, 2012 we do not become entitled under applicable laws to the full amount of emission credits covered by the option, we are obligated to return the option fee of \$0.6 million, less the aggregate discount on any emission credits sold to Woodside prior to such date. If we receive emission credits under applicable laws and fail to sell to Woodside the credits up to the full amount of emission credits covered by the option, Woodside is entitled to liquidated damages equal to 30% of the aggregate market value of the shortfall in emission credits (subject to a limit on the market price of emission credits).

#### **Employees**

As of July 31, 2006, we had 33 employees, including nine employees in manufacturing, 15 in research, development and engineering functions and nine employees in selling, general and administrative functions. Of these employees, 28 are located in Pennington, New Jersey and five are located in Warwick, UK. We believe that our future success will depend in part on our continued ability to attract, hire and retain qualified personnel. None of our employees is represented by a labor union, and we believe our employee relations are good.

In order to meet our short-term goals, by the end of fiscal 2007, we plan to add approximately 20 employees, including a vice president of business development. The remainder will primarily be engineers with varying areas of expertise. By the end of fiscal 2010, we will need to increase our staff by nearly six times in order to meet our current manufacturing targets. The majority of our new hires will be engineers, project managers and manufacturing personnel.

#### **Facilities**

Our corporate headquarters are located in Pennington, New Jersey, where we occupy approximately 22,000 square feet under a lease expiring on April 30, 2013. We use these facilities for administration, research and development, as well as assembly and testing of the generators and control models.

We also have an office in Warwick, United Kingdom, where we occupy 845 square feet under a lease expiring on February 21, 2008. Five employees, all members of the executive, engineering, administration and business development teams, operate out of this office, which serves as a hub for our European presence.

We plan to add sales, marketing and engineering offices in additional locations, including Australia, Japan, continental Europe and the west coast of the United States. We currently estimate that by the end of fiscal 2010 we will need to add approximately 90,000 square feet of leased space for sales, marketing, engineering, assembly and testing in order to meet our current manufacturing targets.

**Product Insurance**

We currently have a property and liability insurance policy underwritten by Lloyd's Underwriters that covers our PowerBuoy systems in Hawaii and New Jersey, and that can be expanded to cover our PowerBuoy systems to be deployed off the coasts of Santoña, Spain and Cornwall, England. We have not claimed any losses under this policy.

**Legal Proceedings**

We are subject to legal proceedings, claims and litigation arising in the ordinary course of business. While the outcome of these matters is currently not determinable, we do not expect that the ultimate costs to resolve these matters will have a material adverse effect on our financial position, results of operations or cash flows.

## MANAGEMENT

### Executive Officers and Directors

Our executive officers and directors and their respective ages and positions as of September 30, 2006 are as follows:

<u>Name</u>	<u>Age</u>	<u>Position</u>
<b>Executive Officers</b>		
Dr. George W. Taylor	72	Chief Executive Officer
Charles F. Dunleavy	57	Chief Financial Officer, Senior Vice President, Treasurer and Secretary
Mark R. Draper	43	Chief Executive and Director of Ocean Power Technologies Ltd.
John A. Baylouny	45	Senior Vice President, Engineering
<b>Directors</b>		
Sir Eric A. Ash	78	Director
Thomas J. Meaney	71	Director
Seymour S. Preston III	73	Chairman of the Board of Directors
Dr. George W. Taylor	72	Director
Charles F. Dunleavy	57	Director

*Dr. George W. Taylor* has served as our chief executive officer since 1993 and as a director since 1984, when he co-founded our company. From 1990 to 2004, Dr. Taylor was our president and from 1984 to 1990, he was our vice president. In 1979, he co-founded and served as president of Princeton Research Associates, Inc., a consulting engineering, technical marketing and product development company. In 1971, Dr. Taylor co-founded Princeton Materials Science, Inc., a manufacturer of liquid crystal displays and digital watches. Dr. Taylor received a Bachelor of Engineering degree with First Class Honours in Electrical Engineering and a Doctor of Engineering degree from the University of Western Australia and a Ph.D. in Electrical Engineering degree from the University of London. He is a Fellow of the Institute of Engineers, Australia and the Institute of Electrical Engineers, London.

*Charles F. Dunleavy* has served as our chief financial officer and our senior vice president since 2000 and as our treasurer, secretary and director since 1990. From 1993 to 2001, Mr. Dunleavy served as our vice president, finance. From 1990 to 1993, Mr. Dunleavy served as vice president and chief financial officer of Whole Systems International Corp., a privately held company specializing in multimedia instructional systems and information technology. From 1983 to 1990, Mr. Dunleavy was the corporate controller for Intermetrics, Inc., a publicly held software engineering company that is now a part of Titan Corporation. Mr. Dunleavy is a Certified Public Accountant and holds a Masters of Business Administration with honors from Rutgers Graduate School of Business Administration. He received his A.B. degree from Colgate University with honors.

*Mark R. Draper* has served as the chief executive and director of our wholly-owned European subsidiary based in the UK, Ocean Power Technologies Ltd., since September 2004. From 2001 to May 2004, Mr. Draper served as managing director, generation business of PowerGen plc, a UK power utility. In this capacity, he was responsible for over 9,000MW of power generating assets, including a 60MW offshore wind power station. He is a fellow of both the Institutes of Mechanical and Electrical Engineers and serves as a non-executive Director on the Board of Slough Heat & Power, a utility company. He also serves as a director of Iberdrola Energias Marinas de Cantabria, S.A., the joint venture in which we participate with affiliates of Iberdrola and Total. Mr. Draper holds a Master's degree in Mechanical and Electrical Engineering from Cambridge University.

*John A. Baylouny* has served as our senior vice president, engineering since November 2005. From January 2000 to November 2005, Mr. Baylouny served as vice president and general manager of DRS Data & Imaging Systems, Inc., a subsidiary of DRS Technologies, Inc., a defense technology company, and from 1996

to 1999, Mr. Baylouny served as head of engineering and led the technical strategic planning at DRS. Mr. Baylouny held engineering positions at ITT Avionics, a defense technology company, from 1983 to 1986. He holds a Masters degree in Electrical Engineering from Stevens Institute of Technology and a Bachelors degree in Electrical Engineering from Fairleigh Dickenson University.

*Eric A. Ash* has been a director since 2001. Since December 2005, he has served as a member of the international advisory group of Keppel Corporation Limited, a marine engineering company based in Singapore. He is a member of the board of NeST (Europe) Ltd., an electronics company. Eric Ash is a Fellow of the Royal Society of London, where he served as treasurer and vice president from 1997 to 2002. He is a Fellow of the Royal Academy of Engineering, a foreign member of the US National Academy of Engineering, and a foreign member of the Russian Academy of Science. Eric Ash's academic appointments include the headship of the Department of Electronic Engineering at University College London, and a period of eight years as the Rector of Imperial College London. He was appointed a Knight Bachelor in 1990.

*Thomas J. Meaney* has been a director since June 2006. He is the president, chief executive officer and a director of Mikros Systems Corp., an electronics equipment company. From 1983 to 1986, Mr. Meaney served as a senior vice president and director at Robotic Vision Systems, Inc., an electronics company, and from 1977 to 1983 he served as the vice president of business development of the Norden Systems Division of United Technologies Corp., an electronics company. Mr. Meaney holds a Master of Science degree in Mechanical Engineering from Drexel University and a Bachelors degree in Mechanical Engineering from Villanova University.

*Seymour S. Preston III* has been a director since September 2003. Mr. Preston is also a director of Albemarle Corporation, a specialty chemicals company, Scott Specialty Gas Corporation, a provider of gases for calibration, testing and emission standards, Tufco Technologies, Inc., a consumer products contract manufacturing company, and Independent Publications, Inc., a newspaper publisher. From 1994 to 2003, he was the chairman and chief executive officer of AAC Engineered Systems, Inc., a privately-held manufacturing company. Over the period from 1961 to 1990, Mr. Preston served as president, chief operating officer and director at Pennwalt Corporation, a chemical, industrial equipment and health products company. Mr. Preston served as president and chief executive officer of Elf Atochem North America, Inc., a chemical and plastics company from 1990 to 1993 following that company's acquisition of Pennwalt in 1989. Mr. Preston received his Masters of Business Administration from Harvard Business School and his B.A. degree from Williams College.

There are no family relationships among any of our directors or executive officers.

#### **Board Composition and Election of Directors**

Our board of directors consists of five members. All directors serve for one-year terms and are elected for a new one-year term at our annual meeting of stockholders.

Three of our current directors, Eric Ash, Thomas Meaney and Seymour Preston, are independent directors, as defined by the applicable rules of The Nasdaq Stock Market.

#### **Board Committees**

Our board of directors has established an audit committee, a compensation committee and a nominating and corporate governance committee. The composition of each committee will be effective upon the closing of this offering.

##### ***Audit Committee***

The members of our audit committee are \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. \_\_\_\_\_ is the chair of the committee. Our audit committee assists our board of directors in its oversight of the integrity of our consolidated financial statements, our independent registered public accounting firm's qualifications and independence and the performance of our independent registered public accounting firm.

Upon the completion of this offering, our audit committee's responsibilities will include:

- appointing, approving the compensation of, and assessing the independence of, our independent registered public accounting firm;
- overseeing the work of our independent registered public accounting firm, including through the receipt and consideration of reports from our independent registered public accounting firm;
- reviewing and discussing with management and our independent registered public accounting firm our annual and quarterly consolidated financial statements and related disclosures;
- monitoring our internal control over financial reporting, disclosure controls and procedures and code of business conduct and ethics;
- establishing procedures for the receipt and retention of accounting related complaints and concerns;
- meeting independently with our internal auditing staff, our independent registered public accounting firm and management; and
- preparing the audit committee report required by SEC rules.

All audit services to be provided to us and all non-audit services, other than de minimus non-audit services, to be provided to us by our independent registered public accounting firm must be approved in advance by our audit committee. is our audit committee financial expert. We believe that the composition of our audit committee meets the requirements for independence under the current Nasdaq Global Market and SEC rules and regulations.

#### **Compensation Committee**

The members of our compensation committee are , and . is the chair of the committee. Our compensation committee assists our board of directors in the discharge of its responsibilities relating to the compensation of our executive officers.

Upon the completion of this offering, our compensation committee's responsibilities will include:

- reviewing and approving, or making recommendation to the board of directors with respect to, our chief executive officer's compensation;
- evaluating the performance of our executive officers and reviewing and approving, or making recommendations to the board of directors with respect to, the compensation of our other executive officers;
- overseeing and administering, and making recommendations to the board of directors with respect to, our cash and equity incentive plans;
- reviewing and making recommendations to the board of directors with respect to director compensation; and
- preparing the compensation committee report required by SEC rules.

#### **Nominating and Corporate Governance Committee**

The members of our nominating and corporate governance committee are , and . is the chair of the committee.

Upon completion of this offering, our nominating and corporate governance committee's responsibilities will include:

- recommending to the board of directors the persons to be nominated for election as directors or to fill vacancies on the board of directors, and to be appointed to each of the board's committees;
- overseeing an annual review by the board of directors with respect to management succession planning;

- developing and recommending to the board of directors corporate governance principles and guidelines; and
- overseeing periodic evaluations of the board of directors.

**Compensation Committee Interlocks and Insider Participation**

None of our executive officers serves as a member of the board of directors or compensation committee, or other committee serving an equivalent function, of any entity that has one or more executive officers who serve as members of our board of directors or our compensation committee. None of the members of our compensation committee has ever been our employee.

**Director Compensation**

In September 2003, our board of directors approved a compensation program pursuant to which we pay each of our directors who is not our employee, whom we refer to as a non-employee directors, fees for service on our board of directors and for attendance at board and board committee meetings. After our annual general meeting, each non-employee director currently receives \$15,000 and an option to purchase shares of our stock that is fully vested at the time of grant. Each non-employee director also receives \$2,000 for each board meeting he attends in person or by video or teleconference, \$2,000 for each audit committee meeting he attends in person or by video or teleconference and \$1,000 for each compensation committee and nominating and corporate governance committee meeting that he attends in person or by video or teleconference.

We reimburse each non-employee member of our board of directors for out-of-pocket expenses incurred in connection with attending our board and board committee meetings. Compensation for our directors, including cash and equity compensation, is determined, and remains subject to adjustment, by our board of directors.

**Executive Compensation**

The following table sets forth the compensation paid or accrued during the fiscal year ended April 30, 2006 to our chief executive officer and to our three other most highly compensated executive officers whose salary and bonus exceeded \$100,000 for the year ended April 30, 2006. We refer to these officers collectively as our named executive officers.

**Summary Compensation Table**

Name and Principal Position	Annual compensation			Long-Term Compensation Securities Underlying Options (#)
	Salary	Bonus	Other Annual Compensation	
Dr. George W. Taylor Chief Executive Officer	\$ 289,554	\$ 85,000	\$ —	
Charles F. Dunleavy Chief Financial Officer, Senior Vice President, Treasurer and Secretary	212,673	70,000	—	
Mark R. Draper Chief Executive and Director of Ocean Power Technologies Ltd.	270,630(1)	79,897(1)	52,696(1)(2)	
John A. Baylouny Senior Vice President, Engineering	88,520(3)	35,000	—	

(1) Based on the average buying rate of \$1.77548 for £1 over the period from May 1, 2005 through April 30, 2006.

(2) Represents amounts paid for health insurance and pension benefits.

(3) Mr. Baylouny joined our company in November 2005. His annual base salary is currently \$213,750.

**Stock Options**

The following table contains information regarding options to purchase shares of our common stock granted to our named executive officers during the year ended April 30, 2006. Amounts in the following table represent potential realizable gains that could be achieved for the options if exercised at the end of the option term. The 5% and 10% assumed annual rates of compounded stock price appreciation are calculated based on the requirements of the SEC and do not represent an estimate or projection of our future stock prices. These amounts represent certain assumed rates of appreciation in the value of our common stock from the fair market value on the date of grant. Actual gains, if any, on stock option exercises depend on the future performance of the common stock and overall stock market conditions. The amounts reflected in the following table may not necessarily be achieved.

**Option Grants in Last Fiscal Year**

Name	Number of Securities Underlying Options Granted(1)	Percentage of Total Options Granted to Employees in Fiscal Year	Exercise Price per Share	Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term (2)	
					5%(\$)	10%(\$)
Dr. George W. Taylor		7.5		6/17/2010	28,350	82,350
Charles F. Dunleavy		7.5		6/17/2015	101,250	256,500
Mark R. Draper		11.1		11/10/2015	230,000	516,000
John A. Baylouny		7.5		6/17/2015	101,250	256,500
		16.7		11/21/2015	252,000	636,000

(1) To date, the options that we have granted to our executive officers and other employees typically vest monthly over a period of five years from the date of grant. See “— Stock Option and Other Compensation Plans — 1994 Stock Option Plan,” “— Stock Option and Other Compensation Plans — Incentive Stock Option Plan” and “— Stock Option and Other Compensation Plans — 2001 Stock Plan” below for information regarding the vesting of options under the 1994 stock option plan, the incentive stock option plan and the 2001 stock plan.

(2) The dollar amounts under these columns are the result of calculations at rates set by the SEC and, therefore, are not intended to forecast possible future appreciation, if any, in the price of the underlying common stock. These amounts represent total hypothetical gains that could be achieved for the respective options if exercised at the end of the option term. These amounts assume that our stock price will appreciate from the fair market value on the date of grant at a rate of 5% and 10% compounded annually from the date on which the options were granted until their expiration. We calculated these values assuming that the fair market value of our common stock on the date of grant was equal to the closing price of our common stock on the AIM market on that date.

In June 2006, we granted additional options to purchase shares of common stock to most of our employees, including each of our executive officers. Dr. Taylor was granted an option to purchase shares. Mr. Dunleavy was granted an option to purchase shares. Mr. Draper was granted an option to purchase shares. Mr. Baylouny was granted an option to purchase shares. Each of the options has an exercise price per share of \$ , the closing price of our common stock on the AIM market on the date of grant, and expires on June 16, 2016, with the exception of the option granted to Dr. Taylor, which expires on June 16, 2011.

**Option Exercises and Year-End Option Values**

The following table provides information about the exercise of stock options during fiscal 2006 and the number and value of options held by our named executive officers at April 30, 2006. There was no public trading market in the United States for our common stock as of April 30, 2006. Accordingly, as permitted by the rules of the SEC, we have calculated the value of unexercised in-the-money options at fiscal year end assuming that the fair market value of our common stock as of April 30, 2006 was equal to \$ , the closing price of our common stock on the AIM market on April 27, 2006, based on the noon buying rate for pound sterling on that date.

**Aggregated Option Exercises in Last Fiscal Year and  
Fiscal Year-End Option Values**

Name	Shares Acquired on Exercise (#)	Value Realized(1) (\$)	Number of Securities Underlying Unexercised Options at Fiscal Year-End (#)		Value of Unexercised In-the-Money Options at Fiscal Year-End (\$)	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Dr. George W. Taylor		—			\$ 2,251,100	\$ 119,450
Charles F. Dunleavy		123,000			706,275	79,650
Mark R. Draper		—			61,200	228,450
John A. Baylouny		—			45,000	90,000

(1) Value represents the difference between the exercise price per share of common stock and the fair market value per share of our common stock on the date of exercise, determined by the closing price of our common stock on the AIM market on the date of exercise, multiplied by the number of shares acquired on exercise.

**Employment Agreements**

*Dr. George W. Taylor.* We employ Dr. Taylor as our chief executive officer. Under an employment agreement entered into in October 2003, Dr. Taylor was entitled to an annual base salary of \$250,000 for the first year of his employment with us, subject to adjustment upon annual review by our board of directors. Dr. Taylor's annual base salary has been adjusted by our board of directors and is currently \$303,000. Dr. Taylor is also eligible to earn discretionary incentive bonuses and incentive compensation.

Upon the termination of his employment other than for cause, or if he terminates his employment for good reason, Dr. Taylor has the right to receive severance payments equal to one year of his base salary then in effect. Dr. Taylor is not entitled to severance if we terminate his employment for cause or if he resigns without good reason. Pursuant to this agreement, Dr. Taylor is prohibited from competing with us and soliciting our customers, prospective customers or employees during the term of his employment and for a period of one year after the termination or expiration of his employment.

*Charles F. Dunleavy.* We employ Mr. Dunleavy as our chief financial officer and senior vice president. Under an employment agreement entered into in October 2003, Mr. Dunleavy was entitled to an annual base salary of \$170,000 for the first year of his employment with us, subject to adjustment upon annual review by our board of directors. Mr. Dunleavy's annual base salary has been adjusted by our board of directors and is currently \$214,000. Mr. Dunleavy is also eligible to earn discretionary incentive bonuses and incentive compensation.

Upon the termination of his employment other than for cause, or if he terminates his employment for good reason, Mr. Dunleavy has the right to receive severance payments equal to one year of his base salary then in effect. Mr. Dunleavy is not entitled to severance if we terminate his employment for cause or if he resigns without good reason. Pursuant to this agreement, Mr. Dunleavy is prohibited from competing with us

and soliciting our customers, prospective customers or employees during the term of his employment and for a period of one year after the termination or expiration of his employment.

*Mark R. Draper.* We employ Mr. Draper as the chief executive and director of our wholly-owned UK subsidiary, Ocean Power Technologies, Ltd. Under a service agreement entered into in September 2004, Mr. Draper was entitled to an annual base salary of £136,000 for the first year of his employment with our subsidiary, subject to adjustment upon annual review. Mr. Draper's annual base salary has been adjusted and is currently £156,000. Mr. Draper is also eligible to earn a discretionary annual incentive bonus in an amount up to 50% of his annual base salary.

Upon the termination of his employment or upon a termination or resignation that occurs within six months of a change in control, Mr. Draper has the right to receive a severance payment equal to 25% of his base salary that is then in effect. In addition, if we give Mr. Draper less than one year's written notice of termination, he is entitled to receive his base salary for any unexpired portion of that one year notice period. Pursuant to this agreement, Mr. Draper is prohibited from competing with us and soliciting our customers, prospective customers or employees during the term of his employment and for a period of one year after the termination or expiration of his employment.

*John A. Baylouny.* We employ Mr. Baylouny as our senior vice president, engineering. Under a letter agreement entered into in September 2005, Mr. Baylouny was entitled to an annual base salary of \$205,000 for the first year of his employment with us, subject to adjustment. Mr. Baylouny's annual base salary has been adjusted by our board of directors and is currently \$213,750. Mr. Baylouny is also eligible to earn discretionary incentive bonuses and incentive compensation.

Upon the termination of his employment other than for cause, Mr. Baylouny has the right to receive a severance payment equal to six months of his base salary then in effect. Mr. Baylouny is not entitled to severance if we terminate his employment for cause.

## **Stock Option and Other Compensation Plans**

### ***1994 Stock Option Plan***

Our 1994 stock option plan was adopted by our board of directors on May 4, 1994, approved by our stockholders on August 22, 1994 and expired on August 24, 2001. The 1994 stock option plan provided for the grant of non-statutory options to our employees, officers, directors, consultants and advisors. A maximum of \_\_\_\_\_ shares of common stock were authorized for issuance under this plan.

The 1994 stock option plan provides that outstanding options shall become fully exercisable if we undergo a fundamental transaction, as defined in the 1994 stock option plan, and the successor entity does not assume the options under the 1994 stock option plan or substitute equivalent options.

As of April 30, 2006, options to purchase \_\_\_\_\_ shares of our common stock at a weighted average exercise price of \$ \_\_\_\_\_ were outstanding under our 1994 stock option plan, options to purchase \_\_\_\_\_ shares of common stock had been exercised and options to purchase \_\_\_\_\_ shares of common stock had been forfeited. No awards have been granted under the 1994 stock option plan since its expiration in 2001.

### ***Incentive Stock Option Plan***

Our incentive stock option plan was adopted by our board of directors on May 4, 1994, approved by our stockholders on August 22, 1994 and expired on August 24, 2001. The incentive stock option plan provided for the grant of incentive stock options to our employees and officers. A maximum of \_\_\_\_\_ shares of common stock were authorized for issuance under this plan.

The incentive stock option plan provides that outstanding options shall become fully exercisable if we undergo a fundamental transaction, as defined in the incentive stock option plan, and the successor entity does not assume the options under the incentive stock option plan or substitute equivalent options.

As of April 30, 2006, options to purchase \_\_\_\_\_ shares of our common stock at a weighted average exercise price of \$ \_\_\_\_\_ were outstanding under our incentive stock option plan, options to purchase \_\_\_\_\_ shares of common stock had been exercised and options to purchase \_\_\_\_\_ shares of common stock had been forfeited. No awards have been granted under the incentive stock option plan since its expiration in 2001.

#### **2001 Stock Plan**

Our 2001 stock plan was adopted by our board of directors and approved by our stockholders on August 24, 2001. The 2001 stock plan provides for the grant of incentive stock options, non-statutory options, restricted stock awards and stock awards. A maximum of \_\_\_\_\_ shares of common stock are authorized for issuance under our 2001 stock option plan. Our employees, officers, directors, consultants and advisors are eligible to receive awards under our 2001 stock plan; however, incentive stock options may only be granted to our employees.

Our board of directors administers our 2001 stock option plan. Pursuant to the terms of our 2001 stock option plan, and to the extent permitted by law, our board may delegate administrative authority to a committee composed of two or more of our non-executive directors. Our board of directors, or a committee to whom the board of directors delegates authority, selects the recipients of awards and determines:

- the number of shares of common stock covered by options and the dates upon which the options become exercisable;
- the exercise price of options;
- the duration of the options; and
- the terms and conditions of awards, including transfer restrictions, conditions for repurchase and rights of first refusal.

The 2001 stock plan provides that outstanding options shall become fully exercisable if we undergo a fundamental transaction, as defined in the 2001 stock plan, and the successor entity does not assume the options under the 2001 stock plan or substitute equivalent options.

The 2001 stock plan provides that, prior to an initial public offering which is defined as an underwritten offering pursuant to an effective registration statement under the Securities Act, we have a right of first refusal on any shares held by optionees under the 2001 stock plan and we may repurchase any stock or stock awards upon the exercise of options at the fair market value on the date of purchase.

No award may be granted under the 2001 stock plan after August 23, 2011. Our board of directors may amend or terminate this plan at any time.

As of April 30, 2006, options to purchase 6,948,807 shares of our common stock at a weighted average exercise price of \$ \_\_\_\_\_ were outstanding under our 2001 stock plan, \_\_\_\_\_ options to purchase shares of common stock had been exercised and \_\_\_\_\_ options to purchase shares of common stock had been forfeited. After the effectiveness of the 2006 stock incentive plan described below, we will grant no further stock options or other awards under the 2001 stock plan.

#### **2006 Stock Incentive Plan**

Our 2006 stock incentive plan, which will become effective on the date that the registration statement for this offering is declared effective, was adopted by our board of directors on \_\_\_\_\_, 2006 and approved by our stockholders on \_\_\_\_\_, 2006. The 2006 stock incentive plan provides for the grant of incentive stock options, nonstatutory stock options, restricted stock awards and other stock-based awards. Upon effectiveness of the plan, the number of shares of common stock that will be reserved for issuance under the 2006 stock incentive plan will be \_\_\_\_\_ shares plus the number of shares of common stock equal to the number of shares of common stock then available for issuance under the 2001 stock plan, up to a maximum of \_\_\_\_\_ shares.

In addition, our 2006 stock incentive plan contains an “evergreen provision” that allows for an annual increase in the number of shares available for issuance under our 2006 stock incentive plan on the first day of each fiscal year beginning in fiscal 2009 and ending on the second day of fiscal 2016. The annual increase in the number of shares shall be equal to the lowest of:

- shares;
- % of the number of shares of common stock outstanding on the first day of the fiscal year; and
- an amount determined by our board of directors.

Under this provision, no annual increase shall be made to the extent that the number of shares of common stock available for issuance under the 2006 stock incentive plan and all other employee or director equity incentive plans would exceed of our outstanding shares on the first day of the applicable fiscal year.

Our employees, officers, directors, consultants and advisors are eligible to receive awards under our 2006 stock incentive plan; however, incentive stock options may only be granted to our employees. The maximum number of shares of common stock with respect to which awards may be granted to any participant under the 2006 stock incentive plan is per calendar year.

Our 2006 stock incentive plan is administered by our board of directors. Pursuant to the terms of the 2006 stock incentive plan, and to the extent permitted by law, our board of directors may delegate authority to one or more committees or subcommittees of the board of directors or to our executive officers. Our board of directors or any committee to whom the board of directors delegates authority selects the recipients of awards and determines:

- the number of shares of common stock covered by options and the dates upon which the options become exercisable;
- the exercise price of options;
- the duration of the options; and
- the number of shares of common stock subject to any restricted stock or other stock-based awards and the terms and conditions of such awards, including conditions for repurchase, issue price and repurchase price.

If our board of directors delegates authority to an executive officer, the executive officer has the power to make awards to all of our employees, except to executive officers. Our board of directors will fix the terms of the awards to be granted by such executive officer, including the exercise price of such awards, and the maximum number of shares subject to awards that such executive officer may make.

If a merger or other reorganization event occurs, our board of directors shall provide that all of our outstanding options are to be assumed or substituted by the successor corporation. If the merger or reorganization event also constitutes a change in control event under our 2006 stock incentive plan, the assumed or substituted options will become immediately exercisable in full if on or prior to the 18-month anniversary of the reorganization event, an option holder’s employment with us or the succeeding corporation is terminated by the option holder for good reason or is terminated by us or the succeeding corporation without cause, each as defined in our 2006 stock incentive plan. In the event the succeeding corporation does not agree to assume, or substitute for, outstanding options, then our board of directors shall provide that all unexercised options will become exercisable in full prior to the completion of the event and that these options will terminate immediately prior to the completion of the merger or other reorganization event if not previously exercised. Our board of directors may also provide for a cash out of the value of any outstanding options. In addition, upon the occurrence of a change in control event that does not also constitute a reorganization event under our 2006 stock incentive plan, each option will continue to vest according to its original vesting schedule, except that an option will become immediately exercisable in full if on or prior to the 18-month anniversary of the reorganization event, an option holder’s employment with us or the succeeding corporation is terminated by the option holder for good reason or is terminated by us or the succeeding corporation without cause.

No award may be granted under the 2006 stock incentive plan after \_\_\_\_\_, 2016, but the vesting and effectiveness of awards granted before that date may extend beyond that date. Our board of directors may amend, suspend or terminate the 2006 stock incentive plan at any time, except that stockholder approval will be required for any revision that would materially increase the number of shares reserved for issuance, expand the types of awards available under the plan, materially modify plan eligibility requirements, extend the term of the plan or materially modify the method of determining the exercise price of options granted under the plan, or otherwise as required to comply with applicable law or stock market requirements.

**401(k) Retirement Plan**

We maintain a 401(k) retirement plan that is intended to be a tax-qualified defined contribution plan under Section 401(k) of the Internal Revenue Code. In general, all of our employees are eligible to participate, subject to a 30-day waiting period. The 401(k) plan includes a salary deferral arrangement pursuant to which participants may elect to reduce their current compensation by up to the statutorily prescribed limit, equal to \$15,000 in 2006 for certain age groups, and have the amount of the reduction contributed to the 401(k) plan. We are permitted to match employees' 401(k) plan contributions; however, we have not done so to date.

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Since May 1, 2005, we have engaged in the following transactions with our directors, executive officers and holders of more than 5% of our voting securities, and affiliates of our directors, executive officers and 5% stockholders:

### Consulting Agreement

In August 1999, we entered into a consulting agreement with Thomas J. Meaney, who became a member of our board of directors in June 2006, for marketing services at a rate of \$600 per day of services provided. We paid Mr. Meaney for his services and related expenses \$42,000 in fiscal 2004, \$51,000 in fiscal 2005 and \$53,000 in fiscal 2006 under this consulting agreement.

### Agreement Relating to Patent Royalties

In November 1993, we entered into an agreement providing for royalty payments to Dr. George W. Taylor, our chief executive officer, Michael Y. Epstein and Joseph R. Burns, whose estate transferred his interests under this agreement to our stockholder, JoAnne E. Burns. The royalty payments are based on revenues from specified piezoelectric technology covered by U.S. patent 4404490 entitled "Power Generation from Waves Near the Surface of Bodies of Water." Under the agreement, we are obligated to pay to the other parties to this agreement royalties of six percent of license fees received and four percent of product sales and development contract revenues, up to an aggregate amount of \$0.9 million. As of April 30, 2006, approximately \$0.2 million of royalties had been earned. We made payments of \$48,000 in fiscal 2004 under this agreement, and no payments in fiscal 2005 or fiscal 2006. As of October 1, 2006, we have accrued \$26,100 in unpaid fees to Dr. Taylor under the terms of this agreement. We are not currently using the technology covered by this patent, and we do not anticipate that any further royalties will be earned under the agreement.

### Director Compensation

Please see "Management — Director Compensation" for a discussion of options granted to our non-employee directors.

### Executive Compensation and Employment Agreements

Please see "Management — Executive Compensation" and "— Stock Options" for additional information on compensation of our executive officers. Information regarding employment agreements with several of our executive officers is set forth under "Management — Employment Agreements."

**PRINCIPAL STOCKHOLDERS**

The following table sets forth information with respect to the beneficial ownership of our common stock, as of July 31, 2006, by:

- each of our directors;
- each of our named executive officers;
- each person, or group of affiliated persons, who is known by us to beneficially own more than 5% of our common stock; and
- all of our directors and executive officers as a group.

The percentage of shares beneficially owned prior to the offering is based on \_\_\_\_\_ shares of our common stock being outstanding as of July 31, 2006. The percentage of shares beneficially owned after the offering is based on \_\_\_\_\_ shares of our common stock to be outstanding after this offering, including the \_\_\_\_\_ shares of common stock that we are selling in this offering. Our shares are traded on the AIM market of the London Stock Exchange, and brokers or other nominees may hold shares of our common stock in “street name” for customers who are the beneficial owners of the shares. As a result, we may not be aware of each person or group of affiliated persons who own more than 5% of our common stock.

For purposes of the table below, and in accordance with the rules of the SEC, we deem shares of common stock subject to options that are currently exercisable or exercisable within 60 days of July 31, 2006 to be outstanding and to be beneficially owned by the person holding the options for the purpose of computing the percentage ownership of that person, but we do not treat them as outstanding for the purpose of computing the percentage ownership of any other person. Except as otherwise noted, the persons or entities in this table have sole voting and investing power with respect to all of the shares of common stock beneficially owned by them, subject to community property laws, where applicable. Except as otherwise set forth below, the street address of the beneficial owner is c/o Ocean Power Technologies, Inc. 1590 Reed Road, Pennington, NJ 08534. The following table assumes that the underwriters’ over-allotment option is not exercised.

Name of Beneficial Owner	Shares Beneficially Owned Prior to Offering		Shares Beneficially Owned After Offering	
	Common Stock		Common Stock	
	Shares	%	Shares	%
<b>Officers and Directors</b>				
Dr. George W. Taylor(1)				
Charles F. Dunleavy(2)				
John A. Baylouny(3)				
Mark F. Draper(4)				
Sir Eric A. Ash(5)				
Thomas J. Meaney				
Seymour S. Preston, III(6)				
All Executive Officers and Directors as a group (7 individuals)				
<b>5% Stockholders</b>				
JoAnne E. Burns(7)				

(1) Includes \_\_\_\_\_ shares held by Princeton Research Associates, Inc. Dr. Taylor is President and a director of Princeton Research Associates. Dr. Taylor disclaims beneficial ownership of the shares held by Princeton Research Associates except to the extent of his pecuniary interest therein. Also includes \_\_\_\_\_ shares owned by JoAnne E. Burns over which Dr. Taylor has sole voting power pursuant to a Voting and First Refusal Agreement between Dr. Taylor and Ms. Burns, dated September 27, 2003 and

- amended and restated on April 18, 2005. Also includes        shares of common stock issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 31, 2006.
- (2) Includes        shares held by Dunfield Investment Company. Mr. Dunleavy is a Managing Partner of Dunfield Investment Company. Mr. Dunleavy disclaims beneficial ownership of the shares held by Dunfield Investment Company except to the extent of his pecuniary interest therein. Also includes        shares of common stock issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 31, 2006.
  - (3) Consists of        shares of common stock issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 31, 2006.
  - (4) Consists of        shares of common stock issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 31, 2006.
  - (5) Includes        shares of common stock issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 31, 2006.
  - (6) Includes        shares of common stock issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 31, 2006.
  - (7) Includes        shares owned by JoAnne E. Burns over which Dr. George W. Taylor has sole voting power pursuant to a Voting and First Refusal Agreement between Dr. Taylor and Ms. Burns, dated September 27, 2003 and amended and restated on April 18, 2005.

## DESCRIPTION OF CAPITAL STOCK

### General

The following description of our capital stock and provisions of our certificate of incorporation and bylaws are summaries and are qualified by reference to the certificate of incorporation and the bylaws that will be in effect upon our reincorporation in Delaware prior to completion of this offering. Copies of these documents have been filed with the SEC as exhibits to our registration statement, of which this prospectus forms a part. The descriptions of the common stock and preferred stock reflect changes to our capital structure that will occur prior to this offering.

Immediately prior to this offering, our authorized capital stock will consist of \_\_\_\_\_ shares of common stock, par value \$0.001 per share, and \_\_\_\_\_ shares of preferred stock, par value \$0.001 per share, all of which will be undesignated.

As of April 30, 2006, we had issued and outstanding \_\_\_\_\_ shares of common stock, held by 478 stockholders of record. As of July 31, 2006, we had issued and outstanding \_\_\_\_\_ shares of common stock, held by 545 stockholders of record. As of July 31, 2006, we also had outstanding options to purchase \_\_\_\_\_ shares of common stock at a weighted average exercise price of \$ \_\_\_\_\_ per share.

### Common Stock

Holders of common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders and do not have cumulative voting rights. Accordingly, holders of a majority of the shares of common stock entitled to vote in any election of directors may elect all of the directors standing for election. Holders of common stock are entitled to receive proportionately any dividends as may be declared by our board of directors, subject to any preferential dividend rights of outstanding preferred stock. Upon our liquidation, dissolution or winding up, the holders of common stock are entitled to receive proportionately our net assets available after the payment of all debts and other liabilities and subject to the prior rights of any outstanding preferred stock. Holders of common stock have no preemptive, subscription, redemption or conversion rights. Our outstanding shares of common stock are, and the shares offered by us in this offering will be, when issued and paid for, fully paid and nonassessable. The rights, preferences and privileges of holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate and issue in the future.

### Preferred Stock

Under the terms of our certificate of incorporation, our board of directors is authorized to issue shares of preferred stock in one or more series without stockholder approval. Our board of directors has the discretion to determine the rights, preferences, privileges and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences, of each series of preferred stock.

Authorizing our board of directors to issue preferred stock and determine its rights and preferences has the effect of eliminating delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions, future financings and other corporate purposes, could have the effect of making it more difficult for a third party to acquire, or could discourage a third party from seeking to acquire, a majority of our outstanding common stock. Upon completion of this offering, there will be no shares of preferred stock outstanding, and we have no present plans to issue any shares of preferred stock.

### Anti-Takeover Effects of Delaware Law; Our Certificate of Incorporation and Our Bylaws

Delaware law, our certificate of incorporation and our bylaws contain provisions that could have the effect of delaying, deferring or discouraging another party from acquiring control of us. These provisions, which are summarized below, are intended to discourage coercive takeover practices and inadequate takeover

bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors.

***Removal of Directors***

Our certificate of incorporation and our bylaws provide that directors may be removed only for cause and only by the affirmative vote of the holders of 75% of our shares of capital stock present in person or by proxy and entitled to vote. Under our certificate of incorporation and bylaws, any vacancy on our board of directors, including a vacancy resulting from an enlargement of our board of directors, may be filled only by vote of a majority of our directors then in office.

The limitations on the ability of our stockholders to remove directors and fill vacancies could make it more difficult for a third party to acquire, or discourage a third party from seeking to acquire, control of us.

***Stockholder Action by Written Consent; Special Meetings***

Our certificate of incorporation provides that any action required or permitted to be taken by our stockholders must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders. Our certificate of incorporation and our bylaws also provide that, except as otherwise required by law, special meetings of our stockholders can only be called by our chairman of the board, our chief executive officer or our board of directors.

***Advance Notice Requirements for Stockholder Proposals***

Our bylaws establish an advance notice procedure for stockholder proposals to be brought before an annual meeting of stockholders, including proposed nominations of persons for election to the board of directors. Stockholders at an annual meeting may only consider proposals or nominations specified in the notice of meeting or brought before the meeting by or at the direction of the board of directors or by a stockholder of record on the record date for the meeting, who is entitled to vote at the meeting and who has delivered to our secretary a timely written notice in proper form of the stockholder's intention to bring such business before the meeting. These provisions could have the effect of delaying until the next stockholder meeting stockholder actions that are favored by the holders of a majority of our outstanding voting securities.

***Delaware Business Combination Statute***

Upon reincorporation in Delaware, we will be subject to Section 203 of the Delaware General Corporation Law. Subject to certain exceptions, Section 203 prevents a publicly held Delaware corporation from engaging in a "business combination" with any "interested stockholder" for three years following the date that the person became an interested stockholder, unless the interested stockholder attained such status with the approval of our board of directors or unless the business combination is approved in a prescribed manner. A "business combination" includes, among other things, a merger or consolidation involving us and the "interested stockholder" and the sale of more than 10% of our assets. In general, an "interested stockholder" is any entity or person beneficially owning 15% or more of our outstanding voting stock and any entity or person affiliated with or controlling or controlled by such entity or person.

***Amendment of Certificate of Incorporation and Bylaws***

The Delaware General Corporation Law provides generally that the affirmative vote of a majority of the shares entitled to vote on any matter is required to amend a corporation's certificate of incorporation or bylaws, unless a corporation's certificate of incorporation or bylaws, as the case may be, requires a greater percentage. Our bylaws may be amended or repealed by a majority vote of our board of directors or the affirmative vote of the holders of at least 75% of the voting power of our capital stock issued and outstanding and entitled to vote on the matter.

**Limitation of Liability and Indemnification of Officers and Directors**

Our certificate of incorporation that will be in effect upon the completion of this offering limits the personal liability of directors for breach of fiduciary duty to the maximum extent permitted by the Delaware General Corporation Law. Our certificate of incorporation provides that no director will have personal liability to us or to our stockholders for monetary damages for breach of fiduciary duty or other duty as a director. However, these provisions do not eliminate or limit the liability of any of our directors:

- for any breach of their duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- for voting or assenting to unlawful payments of dividends or other distributions; or
- for any transaction from which the director derived an improper personal benefit.

Any amendment to or repeal of these provisions will not eliminate or reduce the effect of these provisions in respect of any act or failure to act, or any cause of action, suit or claim that would accrue or arise prior to any amendment or repeal or adoption of an inconsistent provision. If the Delaware General Corporation Law is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of our directors will be further limited to the greatest extent permitted by the Delaware General Corporation Law.

In addition, our certificate of incorporation provides that we must indemnify our directors and officers and we must advance expenses, including attorneys' fees, to our directors and officers in connection with legal proceedings, subject to limited exceptions.

**Authorized But Unissued Shares**

The authorized but unissued shares of common stock and preferred stock are available for future issuance without stockholder approval, subject to any limitations imposed by the listing standards of The Nasdaq Market and the AIM market. These additional shares may be used for a variety of corporate finance transactions, acquisitions and employee benefit plans. The existence of authorized but unissued and unreserved common stock and preferred stock could make it more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger or otherwise.

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Computershare Limited.

## SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no market for our common stock in the United States, and a liquid trading market for our common stock in the United States may not develop or be sustained after this offering. Our common stock has been listed on the AIM market of the London Stock Exchange under the symbol "OPT" since October 2003, and we expect that it will continue to be listed on the AIM market after this offering. Future sales of substantial amounts of common stock, including shares issued upon exercise of outstanding options or in the public markets after this offering, or the anticipation of those sales, could adversely affect market prices prevailing from time to time and could impair our ability to raise capital through sales of our equity securities. We have applied for the quotation of our common stock on The Nasdaq Global Market under the symbol "OPTT."

Upon the completion of this offering, we will have outstanding \_\_\_\_\_ shares of common stock. All the shares of common stock sold in this offering will be freely tradable in the United States without restriction or further registration under the Securities Act, except for any shares purchased by our "affiliates," as that term is defined in Rule 144 under the Securities Act. The balance of our outstanding securities are "restricted securities" under Rule 144. A portion of these restricted securities will be subject to the 180-day lock-up period described below.

These restricted securities may be sold in the public market in the United States only if registered or if they qualify for an exemption from registration under Rules 144 or 701 under the Securities Act.

### Rule 144

In general, under Rule 144, beginning 90 days after the date of this prospectus, a person who has beneficially owned shares of our common stock for at least one year would be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately \_\_\_\_\_ shares immediately after this offering, and
- the average weekly trading volume in our common stock on The Nasdaq Global Market during the four calendar weeks preceding the sale.

Sales under Rule 144 are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us. Approximately \_\_\_\_\_ shares of common stock will be eligible for sale under Rule 144 beginning 90 days after the date of this prospectus. Upon the expiration of the 180-day lock-up period described below, approximately \_\_\_\_\_ additional shares of common stock will also be eligible for sale under Rule 144.

### Rule 144(k)

Shares of our common stock eligible for sale under Rule 144(k) may be sold in the United States immediately upon the completion of this offering. In general, under Rule 144(k), a person may sell shares of common stock acquired from us immediately upon the completion of this offering, without regard to the volume, manner of sale or availability of public information requirements of Rule 144, if:

- the person is not our affiliate and has not been our affiliate at any time during the three months preceding the sale; and
- the person has beneficially owned the shares proposed to be sold for at least two years, including the holding period of any prior owner other than an affiliate.

Approximately \_\_\_\_\_ shares, or \_\_\_\_\_ %, of our common stock will be eligible for sale under Rule 144(k) immediately upon completion of this offering. Upon the expiration of the 180-day lock-up period described below, approximately \_\_\_\_\_ additional shares, or \_\_\_\_\_ %, of our common stock will also be eligible for sale under Rule 144(k).

**Rule 701**

In general, under Rule 701 of the Securities Act, any of our employees, consultants or advisors who purchased shares from us in connection with a qualified compensatory stock plan or other written agreement is eligible to resell those shares 90 days after the effective date of this offering in reliance on Rule 144, but without compliance with the various restrictions, including the holding period, contained in Rule 144. Subject to the 180-day lock-up period described below, approximately \_\_\_\_\_ shares of our common stock will be eligible for sale in accordance with Rule 701.

**Lock-Up Agreements**

The holders of approximately \_\_\_\_\_ % of our currently outstanding common stock have agreed that, without the prior written consent of UBS Securities LLC, Banc of America Securities LLC and Bear, Stearns & Co. Inc., they will not, during the period ending 180 days after the date of this prospectus, offer, sell, contract to sell or otherwise dispose of, directly or indirectly, or hedge our common stock or securities convertible into or exchangeable for or exercisable for our common stock, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise dispose of, directly or indirectly, any shares of common stock or any securities convertible into or exercisable for common stock.

**Stock Options**

As of July 31, 2006, we had outstanding options to purchase \_\_\_\_\_ shares of common stock, of which options to purchase \_\_\_\_\_ shares of common stock were vested as of that date. Following this offering, we intend to file registration statements on Form S-8 under the Securities Act to register all of the shares of common stock subject to outstanding options and other awards issuable pursuant to our 1994 stock option plan, incentive stock option plan, 2001 stock plan and 2006 stock incentive plan. Please see "Management — Stock Option and Other Compensation Plans" for additional information regarding these plans.

**MATERIAL US FEDERAL INCOME AND  
ESTATE TAX CONSEQUENCES TO NON-US HOLDERS**

The following is a general discussion of the material US federal income and estate tax consequences of the ownership and disposition of our common stock by a non-US holder that acquires common stock pursuant to this offering. The discussion is based on provisions of the Internal Revenue Code of 1986, as amended, which we refer to as the Code, applicable US Treasury regulations promulgated thereunder and administrative and judicial interpretations, all as in effect on the date of this prospectus, and all of which are subject to change, possibly on a retroactive basis. The discussion is limited to non-US holders that hold our common stock as a “capital asset” within the meaning of Section 1221 of the Code — generally, as property held for investment. As used in this discussion, the term “non-US holder” means a beneficial owner of our common stock that is not, for US federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation or partnership, including any entity treated as a corporation or partnership for US federal income tax purposes, created or organized in or under the laws of the United States or any state of the United States or the District of Columbia, other than a partnership treated as foreign under US Treasury regulations;
- an estate the income of which is includible in gross income for US federal income tax purposes regardless of its source; or
- a trust (1) if a US court is able to exercise primary supervision over the administration of the trust and one or more US persons have authority to control all substantial decisions of the trust, or (2) that has a valid election in effect under applicable US Treasury regulations to be treated as a US person.

This discussion does not consider:

- US federal gift tax consequences, or US state or local or non-US tax consequences of an investment in our common stock;
- specific facts and circumstances that may be relevant to a particular non-US holder’s tax position, including, if the non-US holder is a partnership, that the US tax consequences of holding and disposing of our common stock may be affected by certain determinations made at the partner level;
- the tax consequences for partnerships or persons who hold their interests through a partnership or other entity classified as a partnership for US federal income tax purposes;
- the tax consequences for the stockholders or beneficiaries of a non-US holder;
- all of the US federal tax considerations that may be relevant to a non-US holder in light of its particular circumstances or to non-US holders that may be subject to special treatment under US federal tax laws, such as financial institutions, insurance companies, tax-exempt organizations, certain trusts, hybrid entities, certain former citizens or residents of the United States, holders subject to US federal alternative minimum tax, broker-dealers, traders in securities, pension plans and regulated investment companies; or
- special tax rules that may apply to a non-US holder that holds our common stock as part of a “straddle,” “hedge,” “conversion transaction,” “synthetic security” or other integrated investment.

**Prospective investors are urged to consult their own tax advisors regarding the US federal, state, local and non-US income and other tax considerations with respect to owning and disposing of shares of our common stock.**

**Dividends**

As previously discussed, we do not anticipate paying dividends on our common stock in the foreseeable future. See “Dividend Policy.” If we make distributions on our common stock, those payments will constitute dividends for US federal income tax purposes to the extent paid from our current or accumulated earnings and

profits, as determined under US federal income tax principles. To the extent those distributions exceed our current and accumulated earnings and profits, the excess will constitute a return of capital and first reduce the non-US holder's basis, but not below zero, and then will be treated as gain from the sale of stock.

We will have to withhold US federal income tax at a rate of 30%, or a lower rate under an applicable income tax treaty, from the gross amount of the dividends paid to a non-US holder, unless the dividend is (1) effectively connected with the conduct of a trade or business of the non-US holder within the United States or (2) if an income tax treaty applies, attributable to a permanent establishment or fixed base of the non-US holder within the United States. Under applicable US Treasury regulations, a non-US holder, including, in certain cases of non-US holders that are entities, the owner or owners of such entities, will be required to satisfy certain certification requirements in order to claim a reduced rate of withholding pursuant to an applicable income tax treaty. Non-US holders should consult their tax advisors regarding their entitlement to benefits under any relevant income tax treaty.

Dividends that are effectively connected with a non-US holder's conduct of a trade or business in the United States and, if an income tax treaty applies, attributable to a permanent establishment or fixed base of the non-US holder within the United States, are taxed on a net income basis at the regular graduated US federal income tax rates in the same manner as if the non-US holder were a resident of the United States. In such cases, we will not have to withhold US federal income tax if the non-US holder complies with applicable certification and disclosure requirements. In addition, a "branch profits tax" may be imposed at a 30% rate, or a lower rate under an applicable income tax treaty, on dividends received by a foreign corporation that are effectively connected with the conduct of a trade or business in the United States.

In order to claim the benefit of an income tax treaty or to claim exemption from withholding because the income is effectively connected with the conduct of a trade or business in the United States, the non-US holder must provide a properly executed IRS Form W-8BEN, for treaty benefits, or W-8ECL, for effectively connected income, or such successor forms as the Internal Revenue Service, or IRS, designates prior to the payment of dividends. These forms must be periodically updated.

A non-US holder that is eligible for a reduced rate of US federal withholding tax under an income tax treaty may obtain a refund of any excess amounts withheld by filing with the IRS an appropriate claim for a refund together with the required information.

#### **Gain on Disposition of Common Stock**

A non-US holder generally will not be subject to US federal income tax or withholding tax with respect to gain realized on a sale or other disposition of our common stock unless one of the following applies:

- the gain is effectively connected with the non-US holder's conduct of a trade or business in the United States and, if an income tax treaty applies, is attributable to a permanent establishment or fixed base maintained by the non-US holder in the United States; in these cases, the non-US holder will generally be taxed on its net gain derived from the disposition in the manner and at the regular graduated US federal income tax rates applicable to United States persons, as defined in the Code, and, if the non-US holder is a foreign corporation, the "branch profits tax" described above may also apply;
- the non-US holder is a nonresident alien individual who is present in the United States for 183 days or more in the taxable year of the disposition and meets certain other requirements; in this case, the non-US holder will be subject to a 30% tax on the gain derived from the disposition, which may be offset by US source capital losses of the non-US holder, if any; or
- our common stock constitutes a United States real property interest by reason of our status as a "United States real property holding corporation," or a USRPHC, for US federal income tax purposes at any time during the shorter of the five-year period ending on the date of such disposition or the period that the non-US holder held our common stock. We believe that we are not currently and will not become a USRPHC. However, because the determination of whether we are a USRPHC depends on the fair market value of our United States real property interests relative to the fair market value of our other business assets, there can be no assurance that we will not become a USRPHC in the future. As long as

our common stock is “regularly traded on an established securities market” within the meaning of Section 897(c)(3) of the Code, however, such common stock will be treated as United States real property interests only if a non-US holder owned directly or indirectly more than 5% of such regularly traded common stock during the shorter of the five-year period ending on the date of disposition or the period that the non-US holder held our common stock and we were a USRPHC during such period. If we are or were to become a USRPHC and a non-US holder owned directly or indirectly more than 5% of our common stock during the period described above or our common stock is not “regularly traded on an established securities market,” then a non-US holder would generally be subject to US federal income tax on its net gain derived from the disposition of our common stock at the regular graduated US federal income tax rates applicable to United States persons, as defined in the Code.

#### **Federal Estate Tax**

Common stock owned or treated as owned at the time of death by an individual who is not a citizen or resident of the United States, as specifically defined for US federal estate tax purposes, will be included in the individual’s gross estate for US federal estate tax purposes, unless an applicable estate tax or other treaty provides otherwise, and, therefore, may be subject to US federal estate tax.

#### **Information Reporting and Backup Withholding Tax**

We must report annually to the IRS and to each non-US holder the gross amount of the distributions paid to that holder and the tax withheld from those distributions. These reporting requirements apply regardless of whether withholding was reduced or eliminated by an applicable income tax treaty. Copies of the information returns reporting those distributions and withholding may also be made available under the provisions of an applicable income tax treaty or agreement to the tax authorities in the country in which the non-US holder is a resident or incorporated.

Under some circumstances, US Treasury regulations require backup withholding and additional information reporting on reportable payments on common stock. The gross amount of dividends paid to a non-US holder that fails to certify its non-US holder status in accordance with applicable US Treasury regulations generally will be reduced by backup withholding at the applicable rate, currently 28%. Dividends paid to non-US holders subject to the US withholding tax at a rate of 30%, described above in “Dividends,” generally will be exempt from US backup withholding.

The payment of the proceeds of the sale or other disposition of common stock by a non-US holder effected by or through the US office of any broker, US or non-US, generally will be reported to the IRS and reduced by backup withholding, unless the non-US holder either certifies its status as a non-US holder under penalties of perjury or otherwise establishes an exemption. The payment of the proceeds from the disposition of common stock by a non-US holder effected by or through a non-US office of a non-US broker generally will not be reduced by backup withholding or reported to the IRS, unless the non-US broker has certain enumerated connections with the United States. In general, the payment of proceeds from the disposition of common stock effected by or through a non-US office of a broker that is a US person or has certain enumerated connections with the United States will be reported to the IRS and may be reduced by backup withholding unless the broker receives a statement from the non-US holder that certifies its status as a non-US holder under penalties of perjury or the broker has documentary evidence in its files that the holder is a non-US holder.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a non-US holder can be refunded or credited against the non-US holder’s US federal income tax liability, if any, provided that the required information is furnished to the IRS in a timely manner. These backup withholding and information reporting rules are complex and non-US holders are urged to consult their own tax advisors regarding the application of these rules to them.

**The foregoing discussion of US federal income and estate tax considerations is not tax advice and is not based on an opinion of counsel. Accordingly, each prospective non-US holder of our common stock should consult that holder’s own tax advisor with respect to the federal, state, local and non-US tax consequences of the ownership and disposition of our common stock.**

**UNDERWRITING**

We are offering the shares of our common stock described in this prospectus through the underwriters named below. UBS Securities LLC, Banc of America Securities LLC and Bear, Stearns & Co. Inc. are the joint bookrunners and representatives of the underwriters. We have entered into an underwriting agreement with the underwriters named below. Subject to the terms and conditions of the underwriting agreement, each of the underwriters has severally agreed to purchase the number of shares of common stock listed next to its name in the following table.

<u>Underwriter</u>	<u>Number of Shares</u>
UBS Securities LLC	
Banc of America Securities LLC	
Bear, Stearns & Co. Inc.	
First Albany Capital Inc.	
<b>Total</b>	

The underwriting agreement provides that the underwriters must buy all of the shares if they buy any of them. However, the underwriters are not required to take or pay for the shares covered by the underwriters' over-allotment option described below.

The common stock is offered subject to a number of conditions, including:

- receipt and acceptance of the common stock by the underwriters, and
- the underwriters' right to reject orders in whole or in part.

In connection with this offering, certain of the underwriters or securities dealers may distribute prospectuses electronically.

Sales of shares made outside of the United States may be made by affiliates of the underwriters.

**Over-Allotment Option**

We have granted the underwriters an option to buy up to \_\_\_\_\_ additional shares of our common stock. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with this offering. The underwriters have 30 days from the date of this prospectus to exercise this option. If the underwriters exercise this option, they will each purchase additional shares approximately in proportion to the amounts specified in the table above.

**Commissions and Discounts**

Shares sold by the underwriters to the public will initially be offered at the offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to \$ \_\_\_\_\_ per share from the public offering price. Any of these securities dealers may resell any shares purchased from the underwriters to other brokers or dealers at a discount of up to \$ \_\_\_\_\_ per share from the public offering price. If all the shares are not sold at the initial public offering price, the representatives may change the offering price and the other selling terms. The underwriters have informed us that they do not expect discretionary sales to exceed 5% of the shares of common stock to be offered.

The following table shows the per share and total underwriting discounts and commissions we will pay to the underwriters, assuming both no exercise and full exercise of the underwriters' option to purchase up to \_\_\_\_\_ additional shares:

	<u>No Exercise</u>	<u>Full Exercise</u>
Per share	\$	\$
Total	\$	\$

We estimate that the total expenses of this offering payable by us, not including the underwriting discounts and commissions, will be approximately \$      million.

**No Sales of Similar Securities**

We, our executive officers and directors and other holders of approximately      shares of our common stock have entered into lock-up agreements with the underwriters. These lock-up agreements cover approximately % of our common stock outstanding prior to this offering. Under these agreements, we and each of these persons may not, without the prior written approval of UBS Securities LLC, Banc of America Securities LLC and Bear, Stearns & Co. Inc., offer, sell, contract to sell or otherwise dispose of or hedge our common stock or securities convertible into or exchangeable for our common stock. These restrictions will be in effect for a period of 180 days after the date of this prospectus. At any time and without public notice, UBS Securities LLC, Banc of America Securities LLC and Bear, Stearns & Co. Inc. may in their sole discretion release some or all of the securities from these lock-up agreements.

If:

- during the period that begins on the date that is 15 calendar days plus three business days before the last day of the 180-day lock-up period and ends on the last day of the 180-day lock-up period,
- we issue an earnings release or
- material news or a material event relating to us occurs; or
- prior to the expiration of the 180-day lock-up period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day lock-up period,

then the 180-day lock-up period will be extended until the expiration of the date that is 15 calendar days plus three business days after the date on which the issuance of the earnings release or the material news or material event occurs.

**Indemnification and Contribution**

We have agreed to indemnify the underwriters and their controlling persons against certain liabilities, including liabilities under the Securities Act. If we are unable to provide this indemnification, we will contribute to payments the underwriters and their controlling persons may be required to make in respect of those liabilities.

**Nasdaq Listing**

We have applied to have our common stock listed on The Nasdaq Global Market under the trading symbol "OPTT."

**AIM Market Listing**

Our common stock has been listed on the AIM market of the London Stock Exchange since October 2003 under the symbol "OPT." We will apply to list the shares of common stock being offered by this prospectus on the AIM market, although we cannot assure you that we will maintain the listing of our common stock on the AIM market.

### **Price Stabilization, Short Positions**

In connection with this offering, the underwriters may engage in activities that stabilize, maintain or otherwise affect the price of our common stock on the Nasdaq Global Market, including:

- stabilizing transactions;
- short sales;
- purchases to cover positions created by short sales;
- imposition of penalty bids;
- syndicate covering transactions; and
- passive market making.

Stabilizing transactions consist of bids or purchases made for the purpose of preventing or retarding a decline in the market price of our common stock while this offering is in progress. These transactions may also include making short sales of our common stock, which involve the sale by the underwriters of a greater number of shares of common stock than they are required to purchase in this offering. Short sales may be “covered short sales,” which are short positions in an amount not greater than the underwriters’ over-allotment option referred to above, or may be “naked short sales,” which are short positions in excess of that amount.

The underwriters may close out any covered short position either by exercising their over-allotment option, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market compared to the price at which they may purchase shares through the over-allotment option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market that could adversely affect investors who purchased in this offering.

The underwriters also may impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of that underwriter in stabilizing or short covering transactions. In connection with this offering, certain underwriters and selling group members, if any, who are qualified market makers on The Nasdaq Global Market may engage in passive market making transactions in our common stock on The Nasdaq Global Market in accordance with Rule 103 of Regulation M under the Securities Exchange Act of 1934. In general, a passive market maker must display its bid at a price not in excess of the highest independent bid of such security; if all independent bids are lowered below the passive market maker’s bid, however, such bid must then be lowered when certain purchase limits are exceeded.

As a result of these activities, the price of our common stock may be higher than the price that otherwise might exist in the open market. If these activities are commenced, they may be discontinued by the underwriters at any time. The underwriters may carry out these transactions on The Nasdaq Global Market in the over-the-counter market or otherwise.

### **Determination Of Offering Price**

Prior to this offering, there has been no trading market for our common stock in the United States. Our common stock has been listed on the AIM market of the London Stock Exchange since October 2003 under the symbol “OPT.” The initial public offering price of the common stock being offered by this prospectus will be determined by negotiation by us and the representatives of the underwriters. The principal factors to be considered in determining the initial public offering price include:

- the information set forth in this prospectus and otherwise available to the representatives;
- our history and prospects and the history of, and prospects for, the industry in which we compete;
- our past and present financial performance and an assessment of our management;
- our prospects for future earnings and the present state of our development;

- the general condition of the securities markets at the time of this offering;
- the recent market prices of, and the demand for, publicly traded common stock of generally comparable companies and of us;
- the historical trading prices of our common stock on the AIM market, which may not be indicative of prices that will prevail in the trading market for our common stock in the United States; and
- other factors deemed relevant by the underwriters and us.

#### **Affiliations**

Certain of the underwriters and their affiliates have in the past provided and may from time to time provide certain commercial banking, financial advisory, investment banking and other services for us for which they were and will be entitled to receive separate fees.

The underwriters and their affiliates may from time to time in the future engage in transactions with us and perform services for us in the ordinary course of their business.

#### **Selling Restrictions**

Each underwriter intends to comply with all applicable laws and regulations in each jurisdiction in which it acquires, offers, sells or delivers shares of our common stock or has in its possession or distributes this prospectus.

##### ***European Economic Area***

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a Relevant Member State), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the Relevant Implementation Date), an offer of shares of our common stock to the public may not be made in that Relevant Member State prior to the publication of a prospectus in relation to such shares which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that an offer to the public in that Relevant Member State of any shares of our common stock may be made at any time under the following exemptions under the Prospectus Directive if they have been implemented in the Relevant Member State:

- (a) to legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;
- (b) to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts; or
- (c) in any other circumstances falling within Article 3 (2) of the Prospectus Directive, provided that no such offer of Securities shall result in a requirement for the publication by the us or any underwriter of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an “offer of shares of our common stock to the public” in relation to any shares of our common stock in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares of our common stock to be offered so as to enable an investor to decide to purchase or subscribe the shares of our common stock, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression Prospectus Directive means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

**France**

No prospectus (including any amendment, supplement or replacement thereto) has been prepared in connection with the offering of the shares of our common stock that has been approved by the Autorité des marchés financiers or by the competent authority of another State that is a contracting party to the Agreement on the European Economic Area and notified to the Autorité des marchés financiers; no shares of our common stock have been offered or sold and will be offered or sold, directly or indirectly, to the public in France except to permitted investors ("Permitted Investors") consisting of persons licensed to provide the investment service of portfolio management for the account of third parties, qualified investors (investisseurs qualifiés) acting for their own account and/or investors belonging to a limited circle of investors (cercle restreint d'investisseurs) acting for their own account, with "qualified investors" and "limited circle of investors" having the meaning ascribed to them in Articles L. 411-2, D. 411-1, D. 411-2, D. 411-4, D. 734-1, D. 744-1, D. 754-1 and D. 764-1 of the French Code Monétaire et Financier and applicable regulations thereunder; none of this prospectus or any other materials related to the offering or information contained therein relating to the shares of our common stock has been released, issued or distributed to the public in France except to Permitted Investors; and the direct or indirect resale to the public in France of any Securities acquired by any Permitted Investors may be made only as provided by Articles L. 411-1, L. 411-2, L. 412-1 and L. 621-8 to L. 621-8-3 of the French Code Monétaire et Financier and applicable regulations thereunder.

**United Kingdom**

Each underwriter acknowledges and agrees that:

(i) it has not offered or sold and will not offer or sell shares of our common stock other than to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of such shares would otherwise constitute a contravention of Section 19 of the Financial Services and Markets Act 2000 (the "FSMA") by us;

(ii) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the shares in circumstances in which Section 21(1) of the FSMA does not apply to us; and

(iii) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the shares in, from or otherwise involving the United Kingdom.

This document is only being distributed to and is only directed at (i) persons who are outside the United Kingdom or (ii) to investment professionals falling within Article 19(5) of the FSMA (Financial Promotion) Order 2005 (the "Order") or (iii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as "relevant persons"). The shares are only available to, and any invitation, offer or agreement to subscribe, purchase or otherwise acquire such shares will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this document or any of its contents.

**Italy**

The offering of shares of our common stock has not been cleared by the Italian Securities Exchange Commission (Commissione Nazionale per le Società e la Borsa, the "CONSOB") pursuant to Italian securities legislation and, accordingly, each underwriter acknowledges and agrees that the shares of our common stock may not and will not be offered, sold or delivered, nor may or will copies of this prospectus or any other documents relating to the shares of our common stock be distributed in Italy, except (i) to professional investors (operatori qualificati), as defined in Article 31, second paragraph, of CONSOB Regulation No. 11522 of July 1, 1998, as amended, (the "Regulation No. 11522"), or (ii) in other circumstances which are exempted from the rules on solicitation of investments pursuant to Article 100 of Legislative Decree No. 58 of

February 24, 1998 (the “Financial Service Act”) and Article 33, first paragraph, of CONSOB Regulation No. 11971 of May 14, 1999, as amended.

Any offer, sale or delivery of shares of our common stock or distribution of copies of this prospectus or any other document relating to the shares of our common stock in Italy may and will be effected in accordance with all Italian securities, tax, exchange control and other applicable laws and regulations, and, in particular, will be: (i) made by an investment firm, bank or financial intermediary permitted to conduct such activities in Italy in accordance with the Financial Services Act, Legislative Decree No. 385 of September 1, 1993, as amended (the “Italian Banking Law”), Regulation No. 11522, and any other applicable laws and regulations; (ii) in compliance with Article 129 of the Italian Banking Law and the implementing guidelines of the Bank of Italy; and (iii) in compliance with any other applicable notification requirement or limitation which may be imposed by CONSOB or the Bank of Italy.

Any investor purchasing shares of our common stock in the offering is solely responsible for ensuring that any offer or resale of the shares of our common stock it purchased in the offering occurs in compliance with applicable laws and regulations.

This prospectus and the information contained therein are intended only for the use of its recipient and, unless in circumstances which are exempted from the rules on solicitation of investments pursuant to Article 100 of the “Financial Service Act” and Article 33, first paragraph, of CONSOB Regulation No. 11971 of May 14, 1999, as amended, is not to be distributed, for any reason, to any third party resident or located in Italy. No person resident or located in Italy other than the original recipients of this document may rely on it or its content.

Italy has only partially implemented the Prospectus Directive, the provisions under the heading “European Economic Area” above shall apply with respect to Italy only to the extent that the relevant provisions of the Prospectus Directive have already been implemented in Italy.

Insofar as the requirements above are based on laws that are superseded at any time pursuant to the implementation of the Prospectus Directive, such requirements shall be replaced by the applicable requirements under the Prospectus Directive.

#### **LEGAL MATTERS**

The validity of the common stock we are offering will be passed upon by Wilmer Cutler Pickering Hale and Dorr LLP, New York, New York. Davis Polk & Wardwell, New York, New York is counsel for the underwriters in connection with this offering.

#### **EXPERTS**

Our consolidated financial statements as of April 30, 2005 and 2006, and for the years then ended, have been included herein and in the registration statement in reliance upon the report of KPMG LLP, independent registered public accounting firm, appearing elsewhere herein, and upon the authority of said firm as experts in accounting and auditing.

Our consolidated financial statements for the year ended April 30, 2004 included in this prospectus and elsewhere in the registration statement have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report (which report expresses an unqualified opinion and includes an explanatory paragraph relating to the restatement discussed in Note 1(b)) appearing herein and have been so included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

#### WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act of 1933 with respect to the shares of common stock we are offering to sell. This prospectus, which constitutes part of the registration statement, does not include all of the information contained in the registration statement and the exhibits, schedules and amendments to the registration statement. For further information with respect to us and our common stock, we refer you to the registration statement and to the exhibits and schedules to the registration statement. Statements contained in this prospectus about the contents of any contract or any other document are not necessarily complete, and, in each instance, we refer you to the copy of the contract or other documents filed as an exhibit to the registration statement. Each of these statements is qualified in all respects by this reference.

You may read and copy the registration statement of which this prospectus is a part at the SEC's public reference room, which is located at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You can request copies of the registration statement by writing to the SEC and paying a fee for the copying cost. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the SEC's public reference room. In addition, the SEC maintains an Internet website, which is located at <http://www.sec.gov>, that contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC. You may access the registration statement of which this prospectus is a part at the SEC's Internet website. Upon completion of this offering, we will be subject to the information reporting requirements of the Securities Exchange Act of 1934, and we will file reports, proxy statements and other information with the SEC.

We maintain an Internet website at [www.oceanpowertechnologies.com](http://www.oceanpowertechnologies.com). We have not incorporated by reference into this prospectus the information on our website, and you should not consider it to be part of this prospectus.

This prospectus includes statistical data that were obtained from industry publications. These industry publications generally indicate that the authors of these publications have obtained information from sources believed to be reliable but do not guarantee the accuracy and completeness of their information. While we believe these industry publications to be reliable, we have not independently verified their data.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

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**Report of Independent Registered Public Accounting Firm**

The Board of Directors and Stockholders  
Ocean Power Technologies, Inc.:

We have audited the accompanying consolidated balance sheets of Ocean Power Technologies, Inc. and subsidiaries as of April 30, 2005 and 2006, and the related consolidated statements of operations, stockholders' equity and comprehensive loss, and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Ocean Power Technologies, Inc. and subsidiaries as of April 30, 2005 and 2006, and the results of their operations and their cash flows for the years then ended, in conformity with U.S. generally accepted accounting principles.

As further discussed in Note 1(b), the Company has restated its consolidated statement of cash flows for the year ended April 30, 2005.

/s/ KPMG LLP

Philadelphia, Pennsylvania  
October 30, 2006

**Report of Independent Registered Public Accounting Firm**

The Board of Directors and Stockholders  
Ocean Power Technologies, Inc.:

We have audited the accompanying consolidated statements of operations, stockholders' equity and comprehensive loss, and cash flows of Ocean Power Technologies, Inc. and subsidiary for the year ended April 30, 2004. These consolidated financial statements are the responsibility of the Company's management.

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, such consolidated financial statements referred to above present fairly, in all material respects, the results of operations and cash flows of Ocean Power Technologies, Inc. and subsidiary for the year ended April 30, 2004, in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 1(b), the Company has restated its consolidated statement of cash flows for the year ended April 30, 2004.

/s/ Deloitte & Touche LLP

Parsippany, New Jersey  
July 20, 2004, (November 8, 2006 as to the effects of the restatement discussed in Note 1(b))

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Consolidated Balance Sheets

	April 30,		July 31,
	2005	2006	2006 (Unaudited)
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	\$ 13,584,814	31,957,209	1,530,539
Certificates of deposit	25,202,362	482,156	29,605,449
Accounts receivable	668,424	—	7,656
Unbilled receivables	822,037	211,000	159,018
Other current assets	464,582	331,139	348,796
Total current assets	40,742,219	32,981,504	31,651,458
Property and equipment, net	427,613	544,285	500,144
Patents, net of accumulated amortization of \$137,693, \$157,451 and \$161,997 (unaudited), respectively	334,809	372,448	386,334
Other noncurrent assets	91,746	97,901	117,473
Total assets	\$ 41,596,387	33,996,138	32,655,409
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>			
Current liabilities:			
Accounts payable	\$ 876,968	242,624	156,938
Accrued expenses	1,891,483	1,726,870	1,710,771
Unearned revenues	16,788	14,405	—
Other current liabilities	53,773	111,576	90,993
Total current liabilities	2,839,012	2,095,475	1,958,702
Long-term debt	245,844	233,959	233,959
Deferred rent	—	—	6,765
Deferred credits	675,000	600,000	600,000
Total liabilities	3,759,856	2,929,434	2,799,426
Commitments and contingencies (note 13)			
Stockholders' equity:			
Preferred stock, \$0.001 par value; authorized 5,000,000 shares; none issued or outstanding	—	—	—
Common stock, \$0.001 par value; authorized 105,000,000 shares; issued and outstanding 51,512,953, 51,711,941 and 51,721,941 (unaudited) shares, respectively	51,513	51,712	51,722
Additional paid-in capital	59,377,593	59,679,236	60,132,479
Accumulated deficit	(21,553,242)	(28,632,153)	(30,293,107)
Accumulated other comprehensive loss	(39,333)	(32,091)	(35,111)
Total stockholders' equity	37,836,531	31,066,704	29,855,983
Total liabilities and stockholders' equity	\$ 41,596,387	33,996,138	32,655,409

See accompanying notes to consolidated financial statements.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Consolidated Statements of Operations

	Year Ended April 30,			Three Months Ended July 31,	
	2004	2005	2006	2005	2006
	(Unaudited)				
Revenues	\$ 4,713,202	5,365,235	1,747,715	492,820	305,186
Cost of revenues	4,319,850	5,170,521	2,059,318	616,435	225,965
Gross profit (loss)	393,352	194,714	(311,603)	(123,615)	79,221
Operating expenses:					
Product development costs	255,958	904,618	4,224,997	587,935	1,052,126
Selling, general, and administrative costs	1,745,955	2,553,911	3,190,687	689,870	1,388,045
Total operating expenses	2,001,913	3,458,529	7,415,684	1,277,805	2,440,171
Operating loss	(1,608,561)	(3,263,815)	(7,727,287)	(1,401,420)	(2,360,950)
Interest income	555,717	1,297,156	1,408,361	355,590	362,367
Other income (expense)	(3,500,096)	1,545	74,294	—	—
Foreign exchange gain (loss)	1,585,345	1,507,145	(978,242)	(1,600,090)	337,629
Loss before income taxes	(2,967,595)	(457,969)	(7,222,874)	(2,645,920)	(1,660,954)
Income tax benefit	118,119	29,335	143,963	—	—
Net loss	\$ (2,849,476)	(428,634)	(7,078,911)	(2,645,920)	(1,660,954)
Basic and diluted net loss per share	\$ (0.07)	(0.01)	(0.14)	(0.05)	(0.03)
Weighted average shares used to compute basic and diluted net loss per share	40,375,011	51,355,495	51,623,404	51,512,953	51,715,274

See accompanying notes to consolidated financial statements.

**OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Stockholders' Equity and Comprehensive Loss**

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Stockholders' Equity
	Shares	Amount				
Balance, May 1, 2003	30,231,913	\$ 13,278,892	\$ 5,521,324	\$ (18,275,132)	\$ (34,299)	\$ 490,785
Net loss	—	—	—	(2,849,476)	—	(2,849,476)
Foreign currency translation adjustment	—	—	—	—	1,371	1,371
Total comprehensive loss	—	—	—	—	—	(2,848,105)
Change to \$0.001 par value	—	(13,248,660)	13,248,660	—	—	—
Compensation related to stock issued for services	49,791	50	92,300	—	—	92,350
Compensation related to stock option grants issued for services	—	—	311,024	—	—	311,024
Sale of common stock, net of issuance costs (including 178,172 shares issued as fee payment)	20,178,172	20,178	38,287,014	—	—	38,307,192
Stock issued under agreement with AMP Incorporation (now Tyco Electronics)	705,882	706	1,499,294	—	—	1,500,000
Balance, April 30, 2004	51,165,758	51,166	58,959,616	(21,124,608)	(32,928)	37,853,246
Net loss	—	—	—	(428,634)	—	(428,634)
Foreign currency translation adjustment	—	—	—	—	(6,405)	(6,405)
Total comprehensive loss	—	—	—	—	—	(435,039)
Compensation related to stock option grants issued to employees	—	—	131,500	—	—	131,500
Compensation related to stock option grants issued for services	—	—	53,174	—	—	53,174
Adjustment for shareholder reduction in shares held	(13,971)	(14)	14	—	—	—
Proceeds from exercise of stock options	361,166	361	233,289	—	—	233,650
Balance, April 30, 2005	51,512,953	51,513	59,377,593	(21,553,242)	(39,333)	37,836,531
Net loss	—	—	—	(7,078,911)	—	(7,078,911)
Foreign currency translation adjustment	—	—	—	—	7,242	7,242
Total comprehensive loss	—	—	—	—	—	(7,071,669)
Compensation related to stock option grants issued to employees	—	—	44,000	—	—	44,000
Compensation related to stock option grants issued for services	—	—	85,139	—	—	85,139
Stock issued for amounts received in prior years	27,322	27	49,973	—	—	50,000
Proceeds from exercise of stock options	171,666	172	122,531	—	—	122,703
Balance, April 30, 2006	51,711,941	51,712	59,679,236	(28,632,153)	(32,091)	31,066,704
Net loss (unaudited)	—	—	—	(1,660,954)	—	(1,660,954)
Foreign currency translation adjustment (unaudited)	—	—	—	—	(3,020)	(3,020)
Total comprehensive loss (unaudited)	—	—	—	—	—	(1,663,974)
Compensation related to stock option grants issued to employees (unaudited)	—	—	445,553	—	—	445,553
Compensation related to stock option grants issued for services (unaudited)	—	—	7,690	—	—	7,700
Proceeds from exercise of stock options (unaudited)	10,000	10	—	—	—	—
Balance, July 31, 2006 (unaudited)	51,721,941	\$ 51,722	\$ 60,132,479	\$ (30,293,107)	\$ (35,111)	\$ 29,855,983

See accompanying notes to consolidated financial statements.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Consolidated Statements of Cash Flows

	Year Ended April 30,			Three Months Ended July 31,	
	2004 (Restated)	2005 (Restated)	2006	2005 (Unaudited)	2006
<b>Cash flows from operating activities:</b>					
Net loss	\$ (2,849,476)	(428,634)	(7,078,911)	(2,645,920)	(1,660,954)
<b>Adjustments to reconcile net loss to net cash used in operating activities:</b>					
Foreign exchange (gain) loss	(1,585,345)	(1,507,145)	978,242	1,600,090	(337,629)
Depreciation and amortization	42,005	140,984	233,132	52,392	65,671
Compensation expense related to stock option grants and common stock issuance	403,374	184,674	129,139	—	445,553
Realization of deferred credits	—	—	(75,000)	—	—
Issuance of shares in connection with settlement agreement with AMP Incorporated (now Tyco Electronics)	1,500,000	—	—	—	—
Deferred rent	—	—	—	—	6,765
<b>Changes in operating assets and liabilities:</b>					
Accounts receivable	(46,925)	(621,499)	668,424	520,314	(7,614)
Unbilled receivables	(210,743)	(268,216)	611,037	670,180	52,145
Other current assets	(173,610)	(239,274)	161,505	179,131	(16,818)
Accounts payable	213,801	404,491	(632,778)	(639,821)	(86,159)
Accrued expenses	116,433	708,022	(121,840)	(444,582)	(16,273)
Unearned revenues	263,678	(246,890)	(2,383)	279,191	(14,405)
Other current liabilities	(87,841)	—	57,803	—	(24,420)
Net cash used in operating activities	(2,414,649)	(1,873,487)	(5,071,630)	(429,025)	(1,594,138)
<b>Cash flows from investing activities:</b>					
Purchases of certificates of deposit	(725,329)	(58,050,287)	(62,677,400)	(13,461,161)	(29,123,293)
Maturities of certificates of deposit	710,000	33,573,254	87,397,606	24,312,108	—
Purchases of equipment	(80,445)	(435,488)	(330,047)	(138,640)	(15,836)
Payments of patent costs	(79,415)	(125,414)	(57,396)	(17,304)	(18,432)
Investments in joint ventures and other noncurrent assets	—	(78,399)	(30,747)	(173)	(19,469)
Net cash (used in) provided by investing activities	(175,189)	(25,116,334)	24,302,016	10,694,830	(29,177,030)
<b>Cash flows from financing activities:</b>					
Sale of common stock, net of issuance costs	38,307,192	—	—	—	—
Proceeds from exercise of stock options	—	233,650	122,703	24,446	7,700
Cash provided by financing activities	38,307,192	233,650	122,703	24,446	7,700
<b>Effect of exchange rate changes on cash and cash equivalents</b>					
Net increase (decrease) in cash and cash equivalents	1,586,716	1,500,740	(980,694)	(1,594,337)	336,798
Cash and cash equivalents, beginning of period	37,304,070	(25,255,431)	18,372,395	8,695,914	(30,426,670)
Cash and cash equivalents, end of period	\$ 38,840,245	13,584,814	31,957,209	22,280,728	1,530,539
<b>Supplemental disclosure of noncash investing and financing activities:</b>					
Issuance of shares in connection with amounts received in prior years	\$ —	—	50,000	—	—
Issuance of shares to consultant in connection with offering on the AIM market	\$ 378,000	—	—	—	—

See accompanying notes to consolidated financial statements.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements  
 (Information as of July 31, 2006 and for the Three Months Ended  
 July 31, 2005 and 2006 is unaudited)

(1) Background

(a) Organization

Ocean Power Technologies, Inc. (the Company) was incorporated on April 19, 1984 in the State of New Jersey and commenced active operations in 1994. The Company develops and is commercializing proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. The Company markets and sells its products in the United States and internationally.

(b) Restatement

Subsequent to the issuance of its consolidated financial statements for the years ended April 30, 2005 and 2004, the Company determined that the presentation in the statements of cash flows of the effect of exchange rate changes on cash balances held in foreign currencies was incorrect. Pursuant to Statement of Financial Accounting Standards (SFAS) No. 95, *Statement of Cash Flows*, the statement of cash flows should report the effect of exchange rate changes on cash balances held in foreign currencies as a separate part of the reconciliation of the change in cash and cash equivalents during the period. Previously, the effect was included in the net cash used in operating activities. In addition, the Company determined that the year ended April 30, 2004 supplemental disclosure of noncash financing activities for the issuance of shares to a consultant was incorrect. As a result, the accompanying consolidated statements of cash flows for the years ended April 30, 2005 and 2004 have been restated from the amounts previously reported. These matters had no impact on the consolidated balance sheet as of April 30, 2005 or the consolidated statements of operations or consolidated statements of stockholders' equity and comprehensive loss for the years ended April 30, 2004 or 2005. The impact of these matters on the previously issued consolidated statements of cash flows is as follows –

	As previously reported	Adjustment	As restated
<b>For the year ended April 30, 2004</b>			
Net cash used in operating activities	\$ (829,304)	\$ (1,585,345)	\$ (2,414,649)
Effect of exchange rate changes on cash and cash equivalents	\$ 1,371	\$ 1,585,345	\$ 1,586,716
Supplemental disclosure of noncash investing and financing activities – issuance of shares to consultant in connection with offering on the AIM market	\$ 178,350	\$ 199,650	\$ 378,000
<b>For the year ended April 30, 2005</b>			
Net cash used in operating activities	\$ (366,342)	\$ (1,507,145)	\$ (1,873,487)
Effect of exchange rate changes on cash and cash equivalents	\$ (6,405)	\$ 1,507,145	\$ 1,500,740

(2) Summary of Significant Accounting Policies

(a) Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its majority owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

In addition, the Company evaluates its relationships with other entities to identify whether they are variable interest entities as defined by Financial Accounting Standards Board (FASB) Interpretation No. 46(R), *Consolidation of Variable Interest Entities* (FIN 46R), and to assess whether it is the primary beneficiary of such entities. If the determination is made that the Company is the primary beneficiary, then that entity is included in the consolidated financial statements in accordance with FIN 46R.

(b) Unaudited Financial Information

The accompanying interim consolidated balance sheet at July 31, 2006, the consolidated statements of operations and cash flows for the three months ended July 31, 2005 and 2006 and the consolidated statement

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements (Continued)

of stockholders' equity and comprehensive loss for the three months ended July 31, 2006 are unaudited. These unaudited interim consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles. In the opinion of the Company's management, the unaudited interim consolidated financial statements have been prepared on the same basis as the audited financial statements and include all adjustments, consisting only of normal recurring adjustments, necessary for the fair presentation of the Company's consolidated balance sheet at July 31, 2006, and its results of operations and cash flows for the three months ended July 31, 2005 and 2006. The results of operations for the three months ended July 31, 2006 are not necessarily indicative of the results to be expected for the year ending April 30, 2007.

(c) *Use of Estimates*

The preparation of the consolidated financial statements requires management of the Company to make a number of estimates and assumptions relating to the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Significant items subject to such estimates and assumptions include the recoverability of the carrying amount of property and equipment and patents; valuation allowances for receivables and deferred income tax assets; and percentage of completion of customer contracts for purposes of revenue recognition. Actual results could differ from those estimates.

(d) *Revenue Recognition*

The Company recognizes revenue on government and commercial contracts under the percentage-of-completion method. The percentage of completion is determined by relating the costs incurred to date to the estimated total costs. The cumulative effects resulting from revisions of estimated total contract costs and revenues are recorded in the period in which the facts requiring revision become known. Upon anticipating a loss on a contract, the Company recognizes the full amount of the anticipated loss in the current period. During the year ended April 30, 2005, the Company recorded a provision of \$21,000 related to an anticipated loss on a contract. Reserves related to loss contracts in the amounts of approximately \$806,000, \$785,000 and \$785,000 are included in accrued expenses in the accompanying consolidated balance sheets as of April 30, 2005 and 2006 and July 31, 2006, respectively.

Unbilled receivables represent expenditures on contracts, plus applicable profit margin, not yet billed. Unbilled receivables are normally billed and collected within one year. Billings made on contracts are recorded as a reduction of unbilled receivables, and to the extent that such billings exceed costs incurred plus applicable profit margin, they are recorded as unearned revenues.

(e) *Cash Equivalents*

Cash equivalents consist of investments in short-term financial instruments with maturities of three months or less from the date of purchase.

(f) *Property and Equipment*

Property and equipment is stated at cost, less accumulated depreciation and amortization. Depreciation and amortization is calculated using the straight-line method over the estimated useful lives (three to seven years) of the assets. Leasehold improvements are amortized using the straight-line method over the shorter of the estimated useful life of the asset or the remaining lease term. Expenses for maintenance and repairs are charged to operations as incurred. Depreciation and amortization expense was \$33,762, \$112,070 and \$213,374 for the years ended April 30, 2004, 2005 and 2006, respectively, and \$47,233 and \$61,125 for the three-month periods ended July 31, 2005 and 2006, respectively.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements (Continued)

(g) **Foreign Exchange Gains and Losses**

The Company has invested in certain certificates of deposit and has maintained cash accounts that are denominated in British pound sterling, Euros and Australian dollars. Such certificates of deposit and cash accounts had a balance of approximately \$21,788,000, \$16,724,000 and \$16,812,000 as of April 30, 2005 and 2006 and July 31, 2006, respectively. Such positions may result in realized and unrealized foreign exchange gains or losses from exchange rate fluctuations, which are included in foreign exchange gain (loss) on the accompanying consolidated statements of operations.

(h) **Patents**

External costs related to the filing of patents, including legal and filing fees, are capitalized. Amortization is calculated using the straight-line method over the life of the patents (17 years). Expenses for the development of technology are charged to operations as incurred. Amortization expense was \$8,243, \$28,914 and \$19,758 for the years ended April 30, 2004, 2005 and 2006, respectively, and \$5,159 and \$4,546 for the three months ended July 31, 2005 and 2006, respectively. Amortization expense for the next five fiscal years related to amounts capitalized for patents as of April 30, 2006 is estimated to be approximately \$20,000 per year.

(i) **Long-Lived Assets**

In accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, long-lived assets, such as property and equipment, and purchased intangible assets subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of the asset exceeds its estimated future cash flows, then an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. Assets to be disposed of would be separately presented in the consolidated balance sheet and reported at the lower of the carrying amount or fair value less costs to sell, and are no longer depreciated. The assets and liabilities of a disposal group classified as held for sale would be presented separately in the appropriate asset and liability sections of the consolidated balance sheet. The Company reviewed its long-lived assets for impairment in accordance with SFAS No. 144 and determined that no impairment charge was necessary for the years ended April 30, 2004, 2005 or 2006 or the three months ended July 31, 2005 or 2006.

(j) **Concentration of Credit Risk**

Financial instruments that potentially subject the Company to concentration of credit risk consist principally of cash balances, bank certificates of deposit and trade receivables. The Company invests its excess cash in highly liquid investments (principally short-term bank deposits) and does not believe that it is exposed to any significant risks related to its cash accounts or certificates of deposit.

## OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements (Continued)

The table below shows the percentage of the Company's revenue derived from significant customers for the periods indicated:

Customer	Years Ended April 30,			Three Months Ended July 31,	
	2004	2005	2006	2005	2006
US Navy	95%	57%	61%	12%	63%
New Jersey Board of Public Utilities	1%	7%	5%	13%	—
Iberdrola and Total	—	4%	9%	8%	12%
Lockheed Martin	4%	32%	22%	67%	—
US Department of Interior for Department of Homeland Security	—	—	3%	—	13%

The loss of, or a significant reduction in revenues from, any of these customers could significantly impact the Company's financial position or results of operations. The Company does not require collateral from its customers.

**(k) Net Loss per Common Share**

Basic and diluted net loss per share for all periods presented is computed by dividing net loss by the weighted average number of shares of common stock outstanding during the period. Due to the Company's net losses, potentially dilutive securities, consisting of outstanding stock options, were excluded from the diluted loss per share calculation due to their anti-dilutive effect.

In computing diluted net loss per share, 10,325,035, 11,162,877, 12,050,357, 12,128,794 and 13,868,391 options to purchase shares of common stock were excluded from the computations for the years ended April 30, 2004, 2005 and 2006, and the three months ended July 31, 2005 and 2006, respectively.

**OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**

**(l) Stock-Based Compensation**

Prior to May 1, 2006, the Company applied the intrinsic-value-based method of accounting prescribed by Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations including FASB Interpretation No. 44, *Accounting for Certain Transactions Involving Stock Compensation*, to account for its fixed plan stock options. Under this method, compensation expense was recorded only if on the date of grant the market price of the underlying stock exceeded the exercise price. SFAS No. 123, *Accounting for Stock-Based Compensation*, and SFAS No. 148, *Accounting for Stock-Based Compensation — Transition and Disclosure*, established accounting and disclosure requirements using a fair-value-based method of accounting for stock-based employee compensation plans. As permitted by existing accounting standards, for periods through the year ended April 30, 2006, the Company elected to continue to apply the intrinsic-value-based method of accounting described above, and adopted only the disclosure requirements of SFAS No. 123, as amended. The following table illustrates the effect on net loss if the fair-value-based method had been applied to all outstanding and unvested awards in the periods presented:

	Year Ended April 30,			Three Months Ended
	2004	2005	2006	July 31, 2005
Net loss, as reported	\$ (2,849,476)	(428,634)	(7,078,911)	(2,645,920)
Add stock-based employee compensation expense included in reported net loss	171,542	131,500	44,000	—
Deduct total stock-based employee compensation expense determined under fair-value-based method for all awards	(2,310,000)	(1,367,000)	(680,000)	(168,000)
Pro forma net loss	\$ (4,987,934)	(1,664,134)	(7,714,911)	(2,813,920)
Basic and diluted net loss per share, as reported	\$ (0.07)	(0.01)	(0.14)	(0.05)
Basic and diluted net loss per share, pro forma	\$ (0.12)	(0.03)	(0.15)	(0.05)

In accordance with SFAS No. 123, as amended by SFAS No. 148, the fair value of option grants is estimated on the date of grant using the Black-Scholes option pricing model for pro forma disclosure purposes with the following weighted-average assumptions used for grants: dividend yield of 0%; risk-free interest rate of 3.4%, 4%, 4.9% and 4% in the years ended April 30, 2004, 2005 and 2006 and the three months ended July 31, 2005, respectively; an expected option life of 10 years, 8.9 years, 9.3 years and 9.4 years in the years ended April 30, 2004, 2005 and 2006 and the three months ended July 31, 2005, respectively; and volatility of 85.6%, 80.8%, 72% and 80.8% in the years ended April 30, 2004, 2005 and 2006 and the three months ended July 31, 2005, respectively.

On May 1, 2006, the Company adopted the provisions of SFAS No. 123 (revised 2004), *Share-Based Payment* (SFAS No. 123R), which requires that the costs resulting from all share-based payment transactions be recognized in the consolidated financial statements at their fair values. The Company adopted SFAS No. 123R using the modified prospective application method under which the provisions of SFAS No. 123R apply to new awards and to awards modified, repurchased, or canceled after the adoption date. Additionally, compensation cost for the portion of the awards for which the requisite service had not been rendered that were outstanding as of May 1, 2006 will be recognized in the consolidated statements of operations over the remaining service period after such date based on the award's original estimate of fair value. The aggregate share-based compensation expense recorded in the consolidated statements of operations for the three months ended July 31, 2006 under SFAS No. 123R was approximately \$446,000. The Company would have recorded no share-based compensation expense for the three months ended July 31, 2006 if it had

## OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements (Continued)

continued to account for share-based compensation under APB Opinion No. 25. For the three months ended July 31, 2006, this additional share-based compensation increased the net loss by approximately \$446,000 and increased basic and diluted loss per share by approximately \$0.01.

**Valuation Assumptions for Options Granted During the Three Months Ended July 31, 2006**

The fair value of each stock option granted during the three months ended July 31, 2006 was estimated at the date of grant using the Black-Scholes option pricing model, assuming no dividends and using the weighted average valuation assumptions noted in the following table. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant. The expected life (estimated period of time outstanding) of the stock options granted was estimated by the "simplified" method as prescribed by the Securities and Exchange Commission's Staff Accounting Bulletin No. 107, *Share-Based Payment*. Expected volatility was based on historical volatility for a peer group of companies for a period equal to the stock option's expected life, and calculated on a daily basis.

Risk-free interest rate	5.0%
Expected dividend yield	0.0%
Expected life	5.5 years
Expected volatility	72.0%

The above assumptions were used to determine the weighted average per share fair value of \$0.89 for stock options granted during the three months ended July 31, 2006.

**(m) Accounting for Income Taxes**

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

**(n) Accumulated Other Comprehensive Loss**

The functional currency for the Company's foreign operations is the applicable local currency. The translation from the applicable foreign currencies to U.S. dollars is performed for balance sheet accounts using the exchange rates in effect at the balance sheet date and for revenue and expense accounts using an average exchange rate during the period. The unrealized gains or losses resulting from such translation are included in accumulated other comprehensive loss within stockholders' equity.

**(o) Recent Accounting Pronouncements**

In June 2005, the FASB issued SFAS No. 154, *Accounting Changes and Error Corrections*, which requires entities that voluntarily make a change in accounting principle to apply that change retrospectively to prior periods' financial statements, unless this would be impracticable. SFAS No. 154 supersedes APB Opinion No. 20, *Accounting Changes*, which previously required that most voluntary changes in accounting principles be recognized by including the cumulative effect of changing to the new accounting principle in the current period's net income or loss. SFAS No. 154 also makes a distinction between "retrospective application" of an accounting principle and the "restatement" of financial statements to reflect the correction of an error. Another significant change in practice under SFAS No. 154 will be that if an entity changes its method of depreciation, amortization or depletion of long-lived, non-financial assets, the change must be accounted for as a change in accounting estimate effected by a change in accounting principle. Under APB Opinion No. 20, such a change would have been reported as a change in accounting principle. SFAS No. 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. Adoption is not expected to have a material effect on the Company's financial position or results of operations.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements (Continued)

In July 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, or FIN 48. FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with SFAS No. 109, *Accounting for Income Taxes*. FIN 48 prescribes a recognition and measurement method for tax positions taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosures and transitions. FIN 48 is effective for fiscal years beginning after December 15, 2006. The Company is currently analyzing the effects of FIN 48, but does not expect FIN 48 to have a material effect on its financial position or results of operations.

In September 2006, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements*, or SAB 108. SAB 108 provides guidance on how prior year misstatements should be taken into consideration when quantifying misstatements in current year financial statements for purposes of determining whether the current year's financial statements are materially misstated. SAB 108 becomes effective during the Company's 2007 fiscal year. The Company does not expect the adoption of SAB 108 to have a material impact on its consolidated financial statements.

(p) **Reclassifications**

Certain amounts in the prior years' consolidated financial statements have been reclassified to conform to the current year presentation.

(3) **Certificates of Deposit**

Certificates of deposit with maturities in excess of 90 days from purchase are summarized as follows:

	April 30,		July 31,
	2005	2006	2006
4.75% due May 26, 2005	\$ 11,194,039	—	—
2.08% due July 11, 2005	469,789	—	—
2.90% due July 18, 2005	8,038,548	—	—
4.73% due July 18, 2005	5,499,986	—	—
3.92% due August 11, 2006	—	482,156	482,156
4.48% due August 21, 2006	—	—	6,145,266
4.46% due August 24, 2006	—	—	5,074,713
4.97% due September 20, 2006	—	—	6,368,193
4.48% due September 21, 2006	—	—	4,496,611
4.65% due October 19, 2006	—	—	7,038,510
	<u>\$ 25,202,362</u>	<u>482,156</u>	<u>29,605,449</u>

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements (Continued)

(4) Property and Equipment

The components of property and equipment are as follows:

	April 30,		July 31,
	2005	2006	2006
Computers and software	\$ 260,698	402,037	412,134
Equipment	335,238	452,448	458,303
Office furniture and equipment	206,766	233,178	233,337
Leasehold improvements	39,358	59,358	59,358
	842,060	1,147,021	1,163,132
Less accumulated depreciation	(414,447)	(602,736)	(662,988)
	\$ 427,613	544,285	500,144

(5) Accrued Expenses

Included in accrued expenses at April 30, 2005 and 2006 and July 31, 2006 were contract reserves of approximately \$806,000, \$785,000 and \$785,000, respectively, accrued bonuses of approximately \$308,000, \$353,000 and \$23,000, respectively, and accrued vacation expense of approximately \$71,000, \$84,000 and \$104,000, respectively.

(6) Related-Party Transactions

The Company is obligated to pay royalties to G.W. Taylor, a founding stockholder of the Company; M.Y. Epstein; and the estate of J.R. Burns (stockholders of the Company) related to U.S. patent 4404490 entitled, "Power Generation from Waves Near the Surface of Bodies of Water." Royalty payments are limited to \$925,000 in the aggregate, based on revenues related to certain piezoelectric-technology, if any, on the basis of 6% of future licenses sold and 4% of future product sales and development contracts. Through July 31, 2006, approximately \$200,000 of royalties had been earned. During the years ended April 30, 2004, 2005 and 2006 and the three-month periods ended July 31, 2005 and 2006, no royalties were earned pursuant to these agreements, and no future royalties are expected to be earned. As of April 30, 2005 and 2006 and July 31, 2006, approximately \$26,000 was included in other current liabilities related to these agreements.

In August 1999, the Company entered into a consulting agreement with an individual for marketing services at a rate of \$600 per day of services provided. The individual became a member of the board of directors in June 2006. Under this consulting agreement, the Company expensed approximately \$47,000, \$51,000 and \$53,000 during the years ended April 30, 2004, 2005 and 2006, respectively and \$13,000 and \$13,000 for the three-month periods ended July 31, 2005 and 2006, respectively.

Also see Note 8 for an additional related-party transaction.

(7) Debt

In the year ended April 30, 2000, the Company received an award of \$250,000 from the State of New Jersey Commission on Science and Technology for the development of a wave power system that was deployed off the coast of New Jersey. Under the terms of this award, the Company must repay the amount funded, without interest, by January 15, 2012. The amounts to be repaid each year are determined as a percentage of revenues (as defined in the loan agreement) the Company receives that year from its customer contracts that meet criteria specified in the loan agreement, with any remaining amount due on January 15, 2012. Based upon the terms of the award, the Company has repaid approximately \$4,000 and is required to repay an additional approximately \$12,000 as of April 30, 2006. The total repayment amount of approximately

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements (Continued)

\$16,000 reduced the long-term debt balance, and the current payment required was recorded in accrued expenses in the accompanying consolidated balance sheet as of April 30, 2006.

**Conversion of Debt and Preferred Stock**

On October 14, 1999, a group comprised of three members of the Company's senior management acting as individuals (the Group) purchased from AMP Incorporated (AMP) the 3,211,000 shares of Series A Preferred Stock owned by AMP, and a convertible promissory note issued by the Company to AMP in 1996. The convertible promissory note had a face amount of \$1,684,000 plus unpaid interest of approximately \$536,000. On October 14, 1999, the Group converted the Series A Preferred Stock, plus the promissory note and accrued interest, into a total of 4,607,056 shares of the Company's common stock in accordance with the terms of those instruments. Also on October 14, 1999, AMP agreed to release all liens on the assets of the Company and to convey to the Company the remaining \$320,000 of principal of the convertible promissory note. In consideration, the Company agreed to pay a commission of 3% on sales by the Company through October 14, 2009 of certain piezoelectric products utilizing certain circuitry, the development of which was funded, in part, by AMP's previous investment in the Company. In addition, the Company agreed to make additional payments to AMP, subject to certain limitations, if prior to October 14, 2004 the Company entered into any of the following transactions: liquidation or dissolution, sale of all or substantially all of its assets, an initial public offering or a merger or other business combination. The maximum total potential payments under all these circumstances, including commissions, was \$3,500,000. These future payments were contingent and were not estimable at the time of the agreement.

Following its offering and listing on the AIM market of the London Stock Exchange on October 31, 2003, the Company completed its payment obligations under these agreements. A total of \$3,500,000 was paid to AMP, now Tyco Electronics, through the issuance of 705,882 shares of the Company's common stock, valued at \$1,500,000, and payment of \$2,000,000 in cash. Such amounts are included in other income (expense) in the consolidated statement of operations for the year ended April 30, 2004.

**(8) Deferred Credits**

During the year ended April 30, 2003, the Company entered into an agreement under which the Company received a payment of \$75,000, which was included in deferred credits until the earning process was completed. During the year ended April 30, 2006, the earning process was completed, and the nonrefundable payment of \$75,000 has been included in other income in the accompanying consolidated statement of operations for the year ended April 30, 2006.

During the year ended April 30, 2001, in connection with the sale of common stock to an investor, the Company received \$600,000 from the investor in exchange for an option to purchase up to 500,000 metric tons of carbon emissions credits generated by the Company during the years 2008 through 2012, at a 30% discount from the then-prevailing market rate. This amount has been recorded in deferred credits in the accompanying consolidated balance sheets as of April 30, 2005 and 2006 and July 31, 2006. If by December 31, 2012 the Company does not become entitled under applicable laws to the full amount of emission credits covered by the option, the Company is obligated to return the option fee of \$600,000, less the aggregate discount on any emission credits sold to the investor prior to such date. If the Company receives emission credits under applicable laws and fails to sell to the investor the credits up to the full amount of emission credits covered by the option, the investor is entitled to liquidated damages equal to 30% of the aggregate market value of the shortfall in emission credits (subject to a limit on the market price of emission credits).

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements (Continued)

**(9) Common Stock**

On October 31, 2003, the Company completed an offering on the AIM market of the London Stock Exchange by issuing 20,000,000 shares of its common stock for a purchase price of 1.25 pound sterling, or \$2.13, per share (the Offering), resulting in net proceeds to the Company of \$38,307,192.

During the year ended April 30, 2004, the Company issued 49,791 shares of common stock to vendors for services rendered, and recorded a charge of \$92,350 in the accompanying consolidated statement of operations, based on the estimated fair market value of the shares. In addition, the Company issued 178,172 shares of common stock to a financial consultant for services rendered in connection with the Offering, and recorded a charge of \$378,000 to additional paid-in capital related to the issuance of those shares.

During the year ended April 30, 2003, the Company sold 37,500 shares of common stock to an investor at a price of \$1.33 per share, which was subject to adjustment based on the pricing of future financings, if any, during calendar year 2003. Based on the price at which the Company's common shares were sold at the time of the Offering, this adjustment, in the form of a reduction of 13,971 shares issued, was resolved and recorded in the year ended April 30, 2005.

During the year ended April 30, 1998, under an agreement with a group of investors, the Company received \$50,000 as an advance payment related to a potential future transaction, which was recorded in accrued expenses. During the year ended April 30, 2006, the Company repaid this amount by issuing 27,322 shares of common stock, in accordance with the terms of the agreement.

**(10) Preferred Stock**

In September 2003, and in connection with the Offering, the Company's stockholders authorized 5,000,000 shares of undesignated preferred stock with a par value of \$0.001 per share. At April 30, 2005 and 2006 and July 31, 2006, no shares of preferred stock had been issued.

**(11) Stock Options**

Prior to August 2001, the Company maintained qualified and nonqualified stock option plans. The Company has reserved 5,101,550 shares of common stock for issuance under these plans. There are no options available for future grant under these plans as of April 30, 2006.

In August 2001, the Company approved the 2001 Stock Plan, which provides for the grant of incentive stock options and nonqualified stock options. A total of 10,000,000 shares are authorized for issuance under the 2001 Stock Plan. As of April 30, 2006, the Company had issued 6,948,807 shares and had 3,051,193 shares of common stock reserved for issuance under the 2001 Stock Plan. Members of the board of directors who are not full-time employees receive an annual option grant to acquire 25,000 shares. The options are granted after the annual meeting of shareholders for the year then ended. Vesting of stock options is determined by the board of directors. The contractual term of these stock options is five years.

**OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements (Continued)**

Transactions under these option plans are as follows:

	Shares Under Option	Weighted Average Exercise Price	Weighted Average Fair Value
Outstanding May 1, 2003 (exercisable 6,871,500)	8,419,000		
Forfeited/Expired	(136,000)	1.87	
Exercised	—		
Granted	2,042,035	1.74	1.36
Outstanding April 30, 2004 (exercisable 8,809,941)	10,325,035	1.39	
Forfeited/Expired	(464,242)	1.50	
Exercised	(361,166)	0.65	
Granted	1,663,250	1.65	1.39
Outstanding April 30, 2005 (exercisable 9,321,380)	11,162,877	1.45	
Forfeited/Expired	(740,604)	1.68	
Exercised	(171,666)	0.71	
Granted	1,799,750	1.29	1.02
Outstanding April 30, 2006 (exercisable 9,883,626)	12,050,357	1.42	
Forfeited/Expired	(20,675)	1.48	
Exercised	(10,000)	0.77	
Granted	1,848,709	1.38	0.89
Outstanding July 31, 2006 (exercisable 10,164,599)	<u>13,868,391</u>	1.41	

The total intrinsic value of options exercised during the three months ended July 31, 2006 was approximately \$5,700. The total intrinsic value of outstanding and exercisable options as of July 31, 2006 was approximately \$3,500,000 and \$2,900,000, respectively. As of July 31, 2006, approximately 3,300,000 options were expected to vest, which had total intrinsic value of approximately \$600,000. As of July 31, 2006, there was approximately \$3,100,000 of total unrecognized compensation cost related to non-vested stock options granted under the plans. This cost is expected to be recognized over a weighted-average period of 4.1 years. The Company normally issues new shares to satisfy option exercises under these plans.

The following table summarizes information about stock options outstanding at April 30, 2006:

Range of Exercise Prices	Number Outstanding	Weighted Average Remaining Life	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
\$0.27 to \$0.77	3,213,345	4.3	\$ 0.69	3,115,803	\$ 0.69
\$0.85 to \$1.67	3,271,647	6.5	1.33	1,801,533	1.39
\$1.70 to \$2.24	5,565,365	5.1	1.89	4,966,290	1.90
	<u>12,050,357</u>			<u>9,883,626</u>	

Certain stock options granted during the years ended April 30, 2005 and 2006 were granted to employees with exercise prices less than the fair value of the underlying common stock on the date of grant. Additionally, certain options were granted to consultants. The Company has charged compensation expense of \$311,024, \$184,674 and \$129,139 related to these option grants, which has been included in selling, general, and administrative costs in the accompanying consolidated statements of operations for the years ended April 30, 2004, 2005 and 2006, respectively.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements (Continued)

(12) Income Taxes

The tax effects of temporary differences that give rise to significant portions of the Company's deferred tax assets and deferred tax liabilities are presented below.

	April 30,		July 31,
	2005	2006	2006
<b>Deferred tax assets:</b>			
Federal net operating loss carryforwards	\$ 4,588,000	6,638,000	6,812,000
Foreign net operating loss carryforwards	915,000	1,210,000	1,327,000
Research and development tax credits	295,000	505,000	505,000
Stock compensation	1,426,000	1,478,000	1,633,000
Unrealized foreign exchange loss	103,000	—	52,000
Accrued expenses	322,000	314,000	314,000
Gross deferred tax assets	<u>7,649,000</u>	<u>10,145,000</u>	<u>10,643,000</u>
<b>Deferred tax liabilities:</b>			
Property and equipment	(31,000)	(31,000)	(31,000)
Unrealized foreign exchange gain	—	(60,000)	—
Gross deferred tax liabilities	<u>(31,000)</u>	<u>(91,000)</u>	<u>(31,000)</u>
Deferred tax assets valuation allowance	<u>(7,618,000)</u>	<u>(10,054,000)</u>	<u>(10,612,000)</u>
Net deferred tax assets	<u>\$ —</u>	<u>—</u>	<u>—</u>

Income tax benefit was \$118,119, \$29,335 and \$143,963 for the years ended April 30, 2004, 2005 and 2006, respectively. The effective income tax rate differed from the percentages computed by applying the U.S. Federal income tax rate of 34% to loss before income taxes as a result of the following:

	Years Ended April 30,		
	2004	2005	2006
Computed "expected" tax benefit	(34)%	(34)%	(34)%
Increase (reduction) in income taxes resulting from:			
State income taxes, net of federal benefit	(6)	(6)	(6)
Federal research and development tax credits	—	(6)	(2)
Sale of state loss carryforwards and tax credits	(4)	(6)	(2)
Non-deductible expenses	1	9	1
Increase in valuation allowance	<u>39</u>	<u>37</u>	<u>41</u>
	<u>(4)%</u>	<u>(6)%</u>	<u>(2)%</u>

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. As of April 30, 2005 and 2006 and July 31, 2006, based upon the level of historical taxable losses, valuation allowances of \$7,618,000, \$10,054,000 and \$10,612,000, respectively, were recorded in accordance with the provisions of SFAS No. 109.

As of April 30, 2006, the Company had net operating loss carryforwards for Federal income tax purposes of approximately \$19,500,000, which begin to expire in 2009. The Company also had federal research and development credit carryforwards of approximately \$505,000, which begin to expire in 2012. The Tax Reform

## OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

## Notes to Consolidated Financial Statements (Continued)

Act of 1986 contains provisions that limit the utilization of net operating loss and tax credit carryforwards if there has been an ownership change, as defined. Such an ownership change, as described in Section 382 of the Internal Revenue Code, may limit the Company's ability to utilize its net operating loss and tax credit carryforwards on a yearly basis. Foreign loss before income taxes was \$249,329, \$527,974 and \$982,934 for the years ended April 30, 2004, 2005 and 2006, respectively. As of April 30, 2006, foreign net operating loss carryforwards were approximately \$4,000,000. These losses can be carried forward indefinitely, but the Company's ability to utilize these carryforwards may be limited in the event of an ownership change.

During the years ended April 30, 2004, 2005 and 2006, the Company sold a portion of its New Jersey state net operating loss carryforwards and research and development credits to a company for net proceeds of \$118,119, \$29,335 and \$143,963, respectively, resulting in the recognition of income tax benefits in the accompanying consolidated statements of operations.

**(13) Commitments and Contingencies****(a) Operating Lease Commitments**

The Company leases office, laboratory and manufacturing space in Pennington, New Jersey and office space in Warwick, United Kingdom under operating leases that expire on various dates through 2013. Rent expense under operating leases was \$136,450, \$154,731 and \$295,089 for the years ended April 30, 2004, 2005 and 2006, respectively, and \$68,509 and \$86,842 for the three-month periods ended July 31, 2005 and 2006, respectively. Future minimum lease payments under operating leases as of April 30, 2006 are:

Year ending April 30:	
2007	\$ 233,094
2008	228,722
2009	206,859
2010	206,859
2011	206,859
Thereafter	413,719
	<u>\$ 1,496,112</u>

**(b) Litigation**

The Company is involved from time to time in certain legal actions arising in the ordinary course of business. Management believes that the outcome of such actions will not have a material adverse effect on the Company's financial position or results of operations.

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OCEAN POWER TECHNOLOGIES, INC

Through and including \_\_\_\_\_, 2006 (25 days after the date of this prospectus), all dealers that buy, sell or trade our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments and subscriptions.

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**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 13. Other Expenses of Issuance and Distribution**

The following table indicates the expenses to be incurred in connection with the offering described in this Registration Statement, other than underwriting discounts and commissions, all of which will be paid by the Registrant. All amounts are estimated except the SEC registration fee and the National Association of Securities Dealers Inc. filing fee.

	<u>Amount</u>
Securities and Exchange Commission registration fee	\$ 10,700
National Association of Securities Dealers Inc. filing fee	10,500
Nasdaq Stock Market listing fee	*
Accountants' fees and expenses	*
Legal fees and expenses	*
Blue Sky fees and expenses	*
Transfer Agent's fees and expenses	*
Printing and engraving expenses	*
Miscellaneous	*
Total expenses	<u>\$</u> *

\* To be filed by amendment.

**Item 14. Indemnification of Directors and Officers**

Section 102 of the General Corporation Law of the State of Delaware permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. The Registrant's certificate of incorporation provides that no director of the Registrant shall be personally liable to it or its stockholders for monetary damages for any breach of fiduciary duty as director, notwithstanding any provision of law imposing such liability, except to the extent that the General Corporation Law of the State of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the General Corporation Law of the State of Delaware provides that a corporation has the power to indemnify a director, officer, employee, or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he is or is threatened to be made a party by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

The Registrant's certificate of incorporation provides that the Registrant will indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or

proceeding (other than an action by or in the right of the Registrant) by reason of the fact that he or she is or was, or has agreed to become, a director or officer of the Registrant, or is or was serving, or has agreed to serve, at the Registrant's request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding and any appeal therefrom, if such Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the Registrant's best interests, and, with respect to any criminal action or proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful. The Registrant's certificate of incorporation provides that the Registrant will indemnify any Indemnitee who was or is a party to an action or suit by or in the right of the Registrant to procure a judgment in our favor by reason of the fact that the Indemnitee is or was, or has agreed to become, a director or officer of the Registrant, or is or was serving, or has agreed to serve, at the Registrant's request as a director, officer, partner, employee or trustee or, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, and any appeal therefrom, if the Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Registrant, except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the Registrant, unless a court determines that, despite such adjudication but in view of all of the circumstances, he or she is entitled to indemnification of such expenses. Notwithstanding the foregoing, to the extent that any Indemnitee has been successful, on the merits or otherwise, he or she will be indemnified by the Registrant against all expenses (including attorneys' fees) actually and reasonably incurred in connection therewith. Expenses must be advanced to an Indemnitee under certain circumstances.

The Registrant maintains a general liability insurance policy that covers certain liabilities of the Registrant's directors and officers arising out of claims based on acts or omissions in their capacities as directors or officers.

In any underwriting agreement the Registrant enters into in connection with the sale of common stock being registered hereby, the underwriters will agree to indemnify, under certain conditions, the Registrant, its directors, its officers and persons who control the Registrant within the meaning of the Securities Act of 1933, as amended, against certain liabilities.

**Item 15. Recent Sales of Unregistered Securities**

Set forth below is information regarding shares of common stock issued, and options granted, by the Registrant within the past three years. Also included is the consideration, if any, received by the Registrant for such shares and options and information relating to the section of the Securities Act, or rule of the SEC, under which exemption from registration was claimed. The share numbers below reflect the \_\_\_\_\_ to 1 reverse stock split of the Registrant's common stock, which will become effective prior to this offering.

1. On October 31, 2003, the Registrant sold \_\_\_\_\_ shares of the Registrant's common stock for aggregate gross proceeds of \$42.5 million. These shares of common stock were listed on the AIM market of the London Stock Exchange. These shares were offered and sold by the Registrant to Evolution Beeson Gregory Limited.
2. From the period beginning October 1, 2003 through October 17, 2006, the Registrant granted stock options under its stock option plans for an aggregate of \_\_\_\_\_ shares of common stock (net of exercises, expirations and cancellations) at exercise prices ranging from \$ \_\_\_\_\_ to \$ \_\_\_\_\_ per share. Options to purchase \_\_\_\_\_ shares of common stock granted under the Registrant's stock option plans have been exercised for an aggregate purchase price of \$ \_\_\_\_\_ million.
3. From the period beginning October 1, 2003 through October 17, 2006, the Registrant granted stock options outside its stock option plans for an aggregate of \_\_\_\_\_ shares of common stock (net of exercises,

expirations and cancellations) at exercise prices ranging from      to      per share. Options to purchase      shares of common stock have been exercised for an aggregate purchase of \$      million.

4. During the year ended April 30, 2004, the Registrant issued      shares of common stock to vendors for services rendered. In addition, the Registrant issued      shares of common stock to a financial consultant for services rendered in connection with its offering on the AIM market of the London stock exchange.

No general solicitation was made in the United States by either the Registrant or any person acting on the Registrant's behalf; the securities sold are subject to transfer restrictions; and certificates for the shares contain appropriate legends stating that such securities have not been registered under the Securities Act and may not be offered or sold absent registration or pursuant to an exemption therefrom. The securities described in paragraph 1 of Item 15 were issued in transactions that were exempt from registration pursuant to Section 4(2) of the Securities Act or Regulation S promulgated thereunder with respect to the securities offered and sold outside the United States to investors who were neither citizens nor residents of the United States.

The issuances of stock options and the shares of common stock issuable upon the exercise of the options as described in paragraphs 2 and 3 of Item 15 were issued pursuant to written compensatory plans or arrangements with the Registrant's employees, directors and consultants, in reliance on the exemption provided by Section 3(b) of the Securities Act and Rule 701 promulgated thereunder. All recipients either received adequate information about the Registrant or had access, through employment or other relationships, to such information.

**Item 16.      Exhibits**

The exhibits to the registration statement are listed in the Exhibit Index to this registration statement and are incorporated by reference herein.

**Item 17.      Undertakings**

(a) The undersigned Registrant hereby undertakes to provide to the underwriters, at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

(b) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(c) The undersigned Registrant hereby undertakes that:

- (1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of the registration statement as of the time it was declared effective.
- (2) For purposes of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

**SIGNATURES**

Pursuant to the requirements of the Securities Act, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the Town of Pennington, New Jersey on the 9<sup>th</sup> day of November, 2006.

OCEAN POWER TECHNOLOGIES, INC.

By: /s/ GEORGE W. TAYLOR  
Dr. George W. Taylor  
Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Dr. George W. Taylor and Charles F. Dunleavy, and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and any subsequent registration statements pursuant to Rule 462 of the Securities Act and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that each of said attorney-in-fact or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ GEORGE W. TAYLOR</u> George W. Taylor	Director, Chief Executive Officer (Principal Executive Officer)	November 9, 2006
<u>/s/ CHARLES F. DUNLEAVY</u> Charles F. Dunleavy	Director, Chief Financial Officer, Senior Vice President, Treasurer and Secretary (Principal Financial Officer and Principal Accounting Officer)	November 9, 2006
<u>/s/ ERIC A. ASH</u> Eric A. Ash	Director	November 9, 2006
<u>/s/ THOMAS J. MEANEY</u> Thomas J. Meaney	Director	November 9, 2006
<u>/s/ SEYMOUR S. PRESTON</u> Seymour S. Preston III	Director	November 9, 2006

## EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
1.1*	Form of Underwriting Agreement
3.1	Certificate of Incorporation of the Registrant, as amended
3.2*	Form of Restated Certificate of Incorporation of the Registrant to be effective prior to the offering
3.3	Bylaws of the Registrant
3.4*	Form of Amended and Restated Bylaws of the Registrant, to be effective prior to the closing of the offering
4.1*	Specimen certificate of common stock
5.1*	Opinion of Wilmer Cutler Pickering Hale and Dorr LLP
10.1+	Engineering, Procurement and Construction of a Wave Energy Power Plant at "Punta del Pescador" (Santoña, Spain), dated July 27, 2006, between Iberdrola Energias Marinas de Cantabria, S.A. and Ocean Powers Technologies Limited
10.2+	Contract Number N00014-05-C-0384, dated September 20, 2005, between the Office of Naval Research, U.S. Navy and Ocean Power Technologies, Inc.
10.3	Contract Number N00014-02-C-0053, dated February 8, 2002, between the Office of Naval Research, U.S. Navy and Ocean Power Technologies Inc., as modified.
10.4	Option Agreement for Purchase of Emissions Credits, dated November 24, 2000 between Ocean Power Technologies, Inc. and its affiliates and Woodside Sustainable Energy Solutions Pty. Ltd.
10.5	1994 Stock Option Plan
10.6	Incentive Stock Option Plan
10.7	2001 Stock Plan
10.8*	2006 Stock Incentive Plan
10.9	Amended and Restated Voting and Right of First Refusal Agreement, dated April 18, 2005, between Ocean Power Technologies, Inc., George W. Taylor and JoAnne E. Burns
10.10	Agreement to Refinance, dated November 14, 1993 between Joseph R. Burns, Michael Y. Epstein, George W. Taylor and Ocean Powers Technologies, Inc.
10.11	Employment Agreement, dated October 23, 2003, between Charles F. Dunleavy and Ocean Power Technologies, Inc.
10.12	Employment Agreement, dated October 23, 2003, between George W. Taylor and Ocean Power Technologies, Inc.
10.13	Consultant Agreement, dated August 1, 1999, between Thomas J. Meaney and Ocean Power Technologies, Inc.
10.14	Employment Agreement, dated September 9, 2004, between Mark R. Draper and Ocean Power Technologies Ltd.
10.15	Employment Agreement, dated September 30, 2005, between John A. Baylouny and Ocean Power Technologies, Inc.
10.16	Lease Agreement, dated August 30, 2005 between Ocean Power Technologies, Inc. and Reed Road Industrial Park LLC #1, as amended on January 27, 2006.
10.17	Lease, dated December 4, 2004, between University of Warwick Science Park Innovation Centre Limited and Ocean Power Technologies Ltd.
16.1	Letter from Deloitte and Touche LLP
21.1	Subsidiaries of the Registrant
23.1	Consent of KPMG LLP
23.2	Consent of Deloitte and Touche LLP
23.3*	Consent of Wilmer Cutler Pickering Hale and Dorr LLP (included in Exhibit 5.1).
24.1	Powers of Attorney (included on signature page).

\* To be filed by amendment.

+ Confidential treatment requested as to certain portions, which portions have been omitted and filed separately with the Securities and Exchange Commission.

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
OCEAN POWER TECHNOLOGIES, INC.

Pursuant to Section 14A:9-5 of the New Jersey Business Corporation Act (the "Act"), the undersigned corporation hereby executes this Amended and Restated Certificate of Incorporation.

FIRST: The name of the corporation is Ocean Power Technologies, Inc. (the "Corporation").

SECOND: The purpose or purposes for which the Corporation is organized is to engage in any lawful activity within the purposes for which corporations may be organized under Title 14A of the Act.

THIRD: The total number of shares of all classes of stock which the Corporation shall have authority to issue is one hundred ten million (110,000,000) shares, consisting of (i) one hundred five million (105,000,000) shares of Common Stock, \$0.001 par value per share ("Common Stock"), and (ii) five million (5,000,000) shares of Preferred Stock, \$0.001 par value per share ("Preferred Stock").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK.

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series.

2. Voting. The holders of the Common Stock are entitled to one vote for each share held at all meetings of shareholders (and written actions in lieu of meetings). There shall be no cumulative voting.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend or other rights of any then outstanding Preferred Stock.

4. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the

Corporation available for distribution to its shareholders, subject to any preferential or other rights of any then outstanding Preferred Stock and any rights of creditors.

**B. PREFERRED STOCK.**

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation as hereinafter provided. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by resolution or resolutions providing for the issue of the shares thereof, to determine and fix the number of shares of such series and such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the Act. Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law. Except as otherwise provided in this Amended and Restated Certificate of Incorporation, no vote of the holders of the Preferred Stock or Common Stock shall be a prerequisite to the designation or issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of this Certificate of Incorporation, the right to have such vote being expressly waived by all present and future holders of the capital stock of the Corporation.

FOURTH: Each share of Common Stock (the "Old Common Stock") of the Corporation (without par value) issued and outstanding as of the date this Amended and Restated Certificate of Incorporation becomes effective (the "Effective Date") is, without any action on the part of the holder thereof, hereby reclassified and changed into 1.5 fully paid and nonassessable shares of Common Stock, \$0.001 par value, of the Corporation (the "New Common Stock," and also referred to herein as the Common Stock) and each holder of record of a certificate or certificates (the "Old Certificate") for one or more shares of Old Common Stock of the Corporation as of the close of business on the Effective Date shall be entitled to receive, as soon as practicable, upon surrender of such certificate, a certificate or certificates (the "New Certificates") representing 1.5 shares of New Common Stock, for each share of Old Common Stock, represented by the certificate of such holder, and any fractional shares resulting will be rounded down to the next whole share. From and after the Effective Date, Old Certificates shall represent only the right to receive New Certificates (and, where applicable, cash in lieu of fractional shares, as provided below) pursuant to the provisions hereof. No certificates or scrip representing fractional share interests in New Common Stock will be issued, and no such fractional share interest will entitle the holder thereof to vote, or to any rights of a shareholder of the Corporation. In lieu of any such fractional shares of New Common Stock, each shareholder

with a fractional share will be entitled to receive, upon surrender of Old Certificates to the Corporation for cancellation, an amount in cash equal to the product of (i) the fair market value of one share of New Common Stock on the Effective Date, as determined by the Board of Directors of the Corporation and (ii) such fraction. If more than one Old Certificate shall be surrendered at one time for the account of the same shareholder, the number of full shares of New Common Stock for which New Certificates shall be issued shall be computed on the basis of the aggregate number of shares represented by the Old Certificates so surrendered. In the event that the Corporation determines that a holder of Old Certificates has not tendered all of his, her or its certificates for exchange, the Corporation shall carry forward any fractional share until all certificates of that holder have been presented for exchange. The Old Certificates surrendered for exchange shall be properly endorsed and otherwise in proper form for transfer, and the person or persons requesting such exchange shall affix any requisite stock transfer tax stamps to the Old Certificates surrendered, or provide funds for their purchase, or establish to the satisfaction of the Corporation that such taxes are not payable. From and after the Effective Date, the amount of capital represented by the shares of the New Common Stock into which and for which the shares of the Old Common Stock are combined under the terms hereof shall be an amount equal to the product of the number of issued and outstanding shares of New Common Stock and the \$0.001 par value of each such share.

FIFTH: The address of the Corporation's current registered office is 1590 Reed Road, Pennington, New Jersey 08534 and the name of its current registered agent at such address is George W. Taylor.

SIXTH: The number of directors constituting the current Board of Directors is four. The names and addresses of each of such directors is as follows.

Name ----	Address -----
Dr. George W. Taylor	c/o Ocean Power Technologies, Inc. 1590 Reed Road Pennington, New Jersey 08534
Charles F. Dunleavy	c/o Ocean Power Technologies, Inc. 1590 Reed Road Pennington, New Jersey 08534
Sir Eric Ash	c/o Ocean Power Technologies, Inc. 1590 Reed Road Pennington, New Jersey 08534
Seymour Preston III	c/o Ocean Power Technologies, Inc. 1590 Reed Road Pennington, New Jersey 08534

SEVENTH: The following provisions are included for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its Board of Directors and shareholders:

- (i) The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the By-laws of the Corporation, subject to any limitation thereof contained in the By-laws. The shareholders also shall have the power to adopt, amend or repeal the By-laws of the Corporation; provided, however, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Amended and Restated Certificate of Incorporation, the affirmative vote of the holders of at least sixty six and two-thirds percent (66 2/3%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the By-laws of the Corporation.
- (ii) Upon the consummation of an initial public offering of securities of the Corporation (a) pursuant to an effective registration statement filed by the Corporation under the Securities Act of 1933, as amended, or (b) pursuant to a listing of shares of Common Stock through admission to the Alternative Investment Market operated by the London Stock Exchange plc, shareholders of the Corporation may not take any action by written consent in lieu of a meeting.
- (iii) Special meetings of shareholders may be called at any time only by the President, the Chief Executive Officer, (if any), the Chairman of the Board of Directors of the Corporation (if any) or a majority of the Board of Directors of the Corporation. Business transacted at any special meeting of shareholders shall be limited to matters relating to the purpose or purposes set forth in the notice of such special meeting.
- (iv) The Board of Directors of the Corporation, when evaluating any offer of another party (a) to make a tender or exchange offer for any equity security of the Corporation, or (b) to effect a business combination, shall, in connection with the exercise of its judgment in determining what is in the best interests of the Corporation as a whole, be authorized to give due consideration to any such factors as the Board of Directors of the Corporation determines to be relevant, including, without limitation:
  - (1) the interests of the Corporation's shareholders, including the possibility that these interests might be best served by the continued independence of the Corporation;
  - (2) whether the proposed transaction might violate federal, state or applicable foreign laws;
  - (3) not only the consideration being offered in the proposed transaction, in relation to the then current market price for the outstanding capital stock

of the Corporation, but also to the market price for the capital stock of the Corporation over a period of years, the estimated price that might be achieved in a negotiated sale of the Corporation as a whole or in part or through orderly liquidation, the premiums over market price for the securities of other corporations in similar transactions, current political, economic and other factors bearing on securities prices and the Corporation's financial condition and future prospects; and

- (4) the social, legal and economic effects upon employees, suppliers, customers, creditors and others having similar relationships with the Corporation, upon the communities in which the Corporation conducts its business and upon the economy of the state, region and nation.

In connection with any such evaluation, the Board of Directors of the Corporation is authorized to conduct such investigations and engage in such legal proceedings as the Board of Directors of the Corporation may determine.

- (v) In addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Amended and Restated Certificate of Incorporation, the affirmative vote of the holders of at least sixty six and two-thirds percent (66 2/3%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend any provision of Articles SEVENTH or EIGHTH of this Amended and Restated Certificate of Incorporation.

EIGHTH: No director or officer shall be personally liable to the Corporation or its shareholders for damages for breach of any duty owed to the Corporation or its shareholders, except that this provision shall not relieve a director or officer from liability for any breach of duty based on an act or omission (a) in breach of such person's duty of loyalty to the Corporation or its shareholders, (b) not in good faith or involving a knowing violation of law, or (c) resulting in receipt by such person of an improper personal benefit. No amendment to, expiration of or repeal of this Article shall have any effect on the liability or alleged liability of any director or officer of the Corporation for or with respect to any acts or omissions of such director or officer occurring prior to such amendment, expiration or repeal.

\*\* \* \* \* \*

IN WITNESS WHEREOF, the undersigned has signed this Amended and Restated Certificate of Incorporation on behalf of the Corporation this 23rd day of October, 2003.

By: /s/ George W. Taylor

-----  
Name: George W. Taylor  
Title: President

SECOND AMENDED AND RESTATED  
BY-LAWS OF  
OCEAN POWER TECHNOLOGIES, INC.  
DATED: OCTOBER 6, 2003

SECOND AMENDED AND RESTATED BY-LAWS

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SECOND AMENDED AND RESTATED

BY-LAWS

OF

OCEAN POWER TECHNOLOGIES, INC.

ARTICLE I.

OFFICES

1.01 Registered Office: The registered office of the Corporation shall be at 1590 Reed Road, Suite 1, Building A, Pennington, New Jersey 08534. The Board of Directors may change the registered office from time to time.

1.02 Other Offices: The Corporation may have such other offices either within or without the State of New Jersey as the Board of Directors may designate or as the business of the Corporation may require from time to time.

ARTICLE II.

SEAL

2.01 Seal: The corporate seal shall be in the form adopted by the Board of Directors and may be altered by them from time to time.

ARTICLE III.

SHAREHOLDERS' MEETINGS

3.01 Place: All meetings of the shareholders shall be held at the registered office of the Corporation or at such other place or places, either within or without the State of New Jersey, as may from time to time be selected by the Board of Directors.

3.02 Annual Meetings: The annual meeting of shareholders shall be held on such date and at such time as determined from time to time by resolution of the Board of Directors. At that meeting the shareholders shall elect, by a plurality vote, a Board of Directors, and transact such other business as may properly come before the meeting.

3.03 Special Meeting: Special meetings of the shareholders, for any purpose or purposes, unless otherwise required by statute or by the Certificate of Incorporation, may only be called by the (a) Chief Executive Officer (if any), (b) President, (c) Chairman of the Board of Directors (if any), or (d) order of a majority of the Board of Directors. Such written request shall state the purpose or purposes of the proposed meeting. Business transacted at a special meeting shall be confined to the purpose or purposes stated in the notice calling such meeting.

3.04 Notice of Shareholders' Meetings: Written notice of the time, place and purpose or purposes of every meeting of shareholders shall be given not less than ten (10) or more than sixty (60) days before the date of the meeting, either personally or by mail (to the last address appearing on the books of the Corporation), to each shareholder of record entitled to vote at the meeting and to each shareholder otherwise entitled to notice by law, unless a greater period of notice is required by statute in a particular case.

When a meeting is adjourned to another time or place, it shall not be necessary to give notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken and at the adjourned meeting only such business is transacted as might have been transacted at the original meeting. However, if after the adjournment the Board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record on the new record date entitled to notice.

3.05 Waiver of Notice: Notice of a meeting need not be given to any shareholder who signs a waiver of such notice, in person or by proxy, whether before or after the meeting. The attendance of any shareholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by that shareholder.

Whenever shareholders are authorized to take any action after the lapse of a prescribed period of time, the action may be taken without such lapse if such requirement is waived in writing, in person or by proxy, before or after the taking of such action, by every shareholder entitled to vote thereon as of the date of the taking of such action.

#### 3.06 Action by Shareholders Without Meeting:

(1) Any action required or permitted to be taken at a meeting of shareholders by statute or the Certificate of Incorporation or By-laws of the Corporation, may be taken without a meeting if all the shareholders entitled to vote thereon consent thereto in writing, except that in the case of any action to be taken pursuant to Chapter 10 (concerning mergers, etc.) of the Business Corporation Act (the "Act"), such action may be taken without a meeting only if all shareholders entitled to vote consent thereto in writing and the Corporation provides to all other shareholders the advance notification required by paragraph (2)(b) of this section. Notwithstanding the provisions of this Section 3.06, immediately following the consummation of the earlier of: (a) an initial public offering under the Securities Act of 1933, as amended (the "Securities Act"), by the Corporation of any of its capital stock; or (b) the listing of the Company's Common Stock pursuant to admission of such securities for trading on the Alternative Investment Market operated by the London Stock Exchange, shareholders of the Corporation may not take any action by written consent in lieu of a meeting. Notwithstanding any other provision of law, the Certificate of Incorporation or these By-laws, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least sixty six and two-thirds percent (66 2/3%) of the voting power of all the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of Directors, voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with, this Section 3.06.

(2) Except as otherwise provided in the Certificate of Incorporation and subject to the provisions of this Section 3.06, any action required or permitted to be taken at a meeting of shareholders by the Act, the Certificate of incorporation, or By-laws, other than the annual election of Directors, may be taken without a meeting, without prior notice and without a vote, upon the written consent of shareholders who would have been entitled to cast the minimum number of votes which would be necessary to authorize such action at a meeting at which all shareholders entitled to vote thereon were present and voting.

(a) If any shareholder shall have the right to dissent from a proposed action, pursuant to Chapter 11 of the Act, the Board shall fix a date on which written consents are to be tabulated; in any other case, it may fix a date for tabulation. If no date is fixed, consents may be tabulated as they are received. No consent shall be counted which is received more than sixty (60) days after the date of the Board action authorizing the solicitation of consents or, in a case in which consents, or proxies for consents, are solicited from all shareholders who would have been entitled to vote at a meeting called to take such action, more than sixty (60) days after the date of mailing of solicitation of consents, or proxies for consents.

(b) Except as provided in paragraph (2)(c), the Corporation, upon receipt and tabulation of the requisite number of written consents, shall promptly notify all non-consenting shareholders, who would have been entitled to notice of a meeting to vote upon such action, of the action consented to, the proposed effective date of such action, and any conditions precedent to such action. Such notification shall be given at least twenty (20) days in advance of the proposed effective date of such action in the case of any action taken pursuant to Chapter 10 of the Act, and at least ten (10) days in advance in the case of any other action.

(c) The Corporation need not provide the notification required to be given by paragraph (2)(b) if it

(i) solicits written consents or proxies for consents from all shareholders who would have been entitled to vote at a meeting called to take such action, and at the same time gives notice of the proposed action to all other shareholders who would have been entitled to notice of a meeting called to vote upon such action;

(ii) advises all shareholders, if any, who are entitled to dissent from the proposed action, as provided in Chapter 11 of the Act, of their right to do so and to be paid the fair value of their shares; and

(iii) fixes a date for tabulation of consents not less than twenty (20) days, in the case of any proposed action to be taken pursuant to Chapter 10 of the Act, or not less than ten (10) days, in the case of any other proposed action, and not more than sixty (60) days after the date of mailing of solicitations of consents or proxies for consents.

(d) Any consent obtained pursuant to paragraph (2)(c) may be revoked at any time prior to the day fixed for tabulation of consents. Any other consent may be revoked at any time prior to the day on which the proposed action could be taken upon compliance with paragraph (2)(b). The revocation must be in writing and be received by the Corporation.

(3) Whenever action is taken pursuant to subsection (1) or (2), the written consents of the shareholders consenting thereto or the written report of inspectors appointed to tabulate such consents shall be filed with the minutes or proceedings of shareholders.

In case the Corporation is involved in a merger, consolidation or other type of acquisition or disposition regulated by Chapters 10 and 11 of the Act, the pertinent provisions of the statute should be referred to and strictly complied with.

### 3.07 Fixing Record Date:

(1) The Board may fix, in advance, a date as the record date for determining the Corporation's shareholders with regard to any corporate action or event and, in particular, for determining the shareholders who are entitled to:

- (a) notice of or to vote at any meeting of shareholders or any adjournment thereof;
- (b) give a written consent to any action without a meeting; or
- (c) receive payment of any dividend or allotment of any right.

The record date may in no case be more than sixty (60) days prior to the shareholders' meeting or other corporate action or agent to which it relates. The record date for a shareholders' meeting may not be less than ten (10) days before the date of the meeting. The record date to determine shareholders to give a written consent may not be more than sixty (60) days before the date fixed for tabulation of the consents or, if no date has been fixed for tabulation, more than sixty (60) days before the last day on which consents received may be counted.

(2) If no record date is fixed,

(a) the record date for a shareholders' meeting shall be the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day next preceding the day on which the meeting is held;

(b) the record date for determining shareholders for any other purpose shall be at the close of business on the day on which the resolution of the Board relating thereto is adopted; and

(c) the record date for determining shareholders entitled to consent to corporate action in writing without a meeting, when no prior action of the Board of Directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of New Jersey, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of shareholders are recorded.

(3) When a determination of shareholders of record for a shareholders' meeting has been made as provided in this section, such determination shall apply to any

adjournment thereof, unless the Board fixes a new record date under this section for the adjourned meeting.

3.08 Voting Lists: The officer or agent having charge of the stock transfer books for shares of the Corporation shall make a complete list of shareholders entitled to vote at a shareholders' meeting or any adjournment thereof. A list required by this section may consist of cards arranged alphabetically or any equipment which permits the visual display of the information required. Such list shall be arranged alphabetically within each class, series or group of shareholders maintained by the Corporation for convenience of reference, with the address of, and the number of shares held by, each shareholder; be produced (or available by means of a visual display) at the time and place of the meeting; be subject to the inspection of any shareholder for reasonable periods during the meeting; and be prima facie evidence of the identity of the shareholders entitled to examine such list or to vote at any meeting.

If the requirements of this section have not been complied with, the meeting shall, on the demand of any shareholder in person or by proxy, be adjourned until the requirements are complied with. Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting prior to the making of any such demand.

3.09 Quorum: Unless otherwise provided in the Certificate of Incorporation or by statute, the presence of holders of shares (in person, or by proxy) entitled to cast a majority of the votes at a meeting shall constitute a quorum at such meeting. The shareholders present in person or by proxy at a duly organized meeting may continue to do business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum. Less than a quorum may adjourn.

Whenever the holders of any class or series of shares are entitled to vote separately on a specified item of business, the provisions of this section shall apply in determining the presence of a quorum of such class or series for the transaction of such specified item of business.

3.10 Voting: Each holder of shares with voting rights shall be entitled to one vote for each such share registered in his/her name, except as otherwise provided in the Certificate of Incorporation. Whenever any action, other than the election of Directors, is to be taken by vote of the shareholders, it shall be authorized by a majority of the votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon, unless a greater plurality is required by statute or by the Certificate of Incorporation.

Every shareholder entitled to vote at a meeting of shareholders or to express consent without a meeting may authorize another person or persons to act for him/her by proxy. Every proxy shall be executed in writing by the shareholder or his/her agent, except that a proxy may be given by a shareholder or his/her agent by telegram cable, telephonic transmission or other means of electronic communication, so long as that telegram, cable, telephonic transmission or other means of electronic communication either sets forth or is submitted with information from which it can be determined that the proxy was authorized by a shareholder or its agent. No proxy shall be valid for more than eleven (11) months unless a longer time is expressly provided therein. Unless it is coupled with an interest, a proxy shall be revocable at will. A proxy shall not be revoked by the death or incapacity of the shareholder but such proxy shall continue in

force until revoked by the personal representative or guardian of the shareholder. The presence at any meeting of any shareholder who has given a proxy shall not revoke such proxy unless the shareholder shall file written notice of such revocation with the Secretary of the meeting prior to the voting of such proxy.

3.11 Election of Directors: At each election of Directors every shareholder entitled to vote at such election shall have the right to vote the number of shares owned by him for as many persons as there are Directors to be elected and for whose election he has a right to vote. Directors shall be elected by a plurality of the votes cast at the election, except as otherwise provided by the Certificate of Incorporation.

Elections of Directors need not be by ballot unless a shareholder demands election by ballot at the election and before the voting begins.

3.12 Inspectors of Election: The Board may, in advance of any shareholders' meeting, or of the tabulation of written consents of shareholders without a meeting, appoint one or more inspectors to act at the meeting or any adjournment thereof or to tabulate such consents and make a written report thereof. If inspectors to act at any meeting of shareholders are not so appointed or shall fail to qualify, the person presiding at a shareholders' meeting may, and on the request of any shareholder entitled to vote thereat shall, make such appointment.

Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability. No person shall be elected a Director in an election for which he has served as an inspector.

### 3.13 Conduct of Meetings:

(1) The Chief Executive Officer of the Corporation, and in the Chief Executive Officer's absence, the President of the Corporation, shall preside at all meetings of shareholders. In the absence of the Chief Executive Officer and the President, by a chairperson designated by the Board of Directors, or in the absence of such designation, by a chairperson chosen by the simple majority vote of the shareholders present at the meeting.

(2) The Secretary of the Corporation shall act as secretary of all meetings of shareholders; in the Secretary's absence, the chairperson presiding at any such meeting shall appoint a person to act as secretary of the meeting.

(3) The Board of Directors of the Corporation may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of shareholders of the Corporation as it shall deem appropriate including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of shareholders and proxyholders not physically present at a meeting as permitted by law. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chairperson of any meeting of shareholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed

by the chairperson of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to shareholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairperson of the meeting, meetings of shareholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(4) The chairperson of the meeting shall announce at the meeting when the polls for each matter to be voted upon at the meeting will be opened and closed. If no announcement is made, the polls shall be deemed to have opened when the meeting is convened and closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted.

(5) In advance of any meeting of shareholders, the Board of Directors, the Chairperson of the Board, the Chief Executive Officer or the President shall appoint one or more inspectors or election to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is present, ready and willing to act at a meeting of shareholders, the chairperson of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the corporation. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law.

#### ARTICLE IV.

##### DIRECTORS

4.01 Number of Directors: The number of Directors shall be one or such greater number (but not more than seven) as shall be set by the vote of a majority of the Board of Directors then authorized to hold office. A Director shall be at least eighteen (18) years of age and need not be a United States citizen or resident of this State or a shareholder in the Corporation. Each Director shall be elected by the shareholders, at the annual meeting of shareholders of the Corporation, and shall be elected for the term of one (1) year, and until his successor shall be elected and shall qualify.

4.02 Term of Directors: The Directors named in the Certificate of Incorporation shall hold office until the first annual meeting of shareholders after the filing thereof, and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect Directors to hold office until the next succeeding annual meeting. Each Director shall hold office for the term for which he/she is elected and until a successor shall have been elected and qualified.

4.03 Resignation or Removal: Except as otherwise provided in the Certificate of Incorporation, any Director may resign at any time by giving written notice to the Corporation. Such resignation shall be effective upon receipt thereof by the Corporation or at such subsequent time as shall be specified in the notice of resignation.

Except as otherwise provided in the Certificate of Incorporation, the Board of Directors may remove any Director for cause and may suspend any Director from acting as Director of the Corporation pending a final determination that cause exists for removal. Any or all the Directors of the Corporation may be removed for cause or without cause by the shareholders by the affirmative vote of the majority of all shares then entitled to vote for the election of the Directors.

4.04 Quorum of Board of Directors and Committees; Action of Directors Without a Meeting:

(1) The participation of Directors with a majority of the votes of the entire Board of Directors, or of any Committee thereof shall constitute a quorum for the transaction of business.

(2) Any action required or permitted to be taken pursuant to authorization voted at a meeting of the Board of Directors, or any Committee thereof, may be taken without a meeting if, prior or subsequent to such action, all members of the Board or such Committee, as the case may be, consent thereto in writing and such written consents are filed with the minutes of the proceedings of the Board or Committee.

4.05 Place of Board of Directors Meeting: Meetings of the Board of Directors may be held either within or without the State of New Jersey, at such times and places as the Board of Directors shall determine. Except as provided in the Certificate of Incorporation, any or all Directors may participate in a meeting of the Board of Directors, or a committee of the Board of Directors, by means of conference telephone or by any means of communication by which all persons participating in such meeting are able to hear each other.

4.06 Annual Meeting: An annual meeting of the newly elected Board of Directors shall be held immediately following the annual meeting of shareholders (or immediately following any adjournment thereof) at the place of such annual meeting of shareholders, for the organization of such Board of Directors and for the transaction of any other business as may conveniently and properly be brought before such meeting.

4.07 Meetings of the Board of Directors:

(1) Regular meetings of the Board of Directors may be held with or without notice. Special meetings of the Board of Directors shall be held upon notice to the Directors and may be called by the Chief Executive Officer, the President upon at least one (1) day's notice to each Director either personally or by mail, wire, or telephone; special meetings shall be called by the Chief Executive Officer, the President or Secretary in a like manner upon written request of one or more Directors. Notice of any meeting need not be given to any Director who signs a written waiver of notice, whether before or after the meeting. The attendance of any Director at a meeting, without protesting prior to the conclusion of the meeting, the lack of notice of such meeting shall constitute an effective waiver of notice by that Director. Neither the business to be

transacted at, nor the purpose of any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

(2) Where appropriate communication facilities are reasonably available, any or all Directors shall have the right to participate in all or any part of a meeting of the Board of Directors, or any Committee thereof, by means of conference telephone or any means of communication by which all persons participating in the meeting are able to hear each other.

4.08 Adjournment: A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of the adjournment shall be given to all Directors who were absent at the time of the adjournment. Notice of an adjourned meeting need not be given to any Directors who were present at the time of the adjournment only if the time and place are fixed at the meeting adjourning and if the period of adjournment does not exceed ten (10) days in any one adjournment.

4.09 Powers of Directors: The Board of Directors shall manage or direct the management of the business and affairs of the Corporation. In addition to the powers and authorities expressly conferred upon them by these By-laws, the Board may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by these By-laws directed or required to be exercised or done by the shareholders.

4.10 Compensation of Directors: The Board of Directors, by the affirmative vote of a majority of Directors in office and irrespective of any personal interest of any of them, shall have authority to establish reasonable compensation of Directors for services to the Corporation as Directors, officers or otherwise. Directors may also be reimbursed by the Corporation for all reasonable expenses incurred in traveling to and from the place of each meeting of the Board of Directors or any such committee.

4.11 Executive Committee/Other Committees: The Board of Directors, by resolution adopted by a majority of the entire Board, may appoint from among its members an executive committee and one or more other committees, each of which shall have one or more members. Each such committee shall have and may exercise all the authority delegated to it by the Board, except that no such committee shall make, alter or repeal any By-law of the Corporation; elect or appoint any Director, or remove any officer or Director; submit to shareholders any action that requires shareholders' approval; or amend or repeal any resolution theretofore adopted by the Board which by its terms is amendable or repealable only by the Board.

Actions taken at a meeting of any such committee shall be reported to the Board at its next meeting following such committee meeting; except that, when the meeting of the Board is held within two (2) days after the committee meeting, such report shall, if not made at the first meeting, be made to the Board at its second meeting following such committee meeting.

#### ARTICLE V.

##### OFFICERS

5.01 Officers: The officers of the Corporation shall consist of a President, a Secretary, and a Treasurer, and, if desired, a Chief Executive Officer, a Chairman of the Board of Directors,

one or more Vice Presidents, and such other officers as the Board deems appropriate. The officers may be elected by the Board of Directors at any annual, regular or special meeting of the Board of Directors and shall serve at the pleasure of the Board of Directors and until their successors are elected and have qualified, subject to earlier termination by removal or resignation. The Board may also choose such employees and agents as it shall deem necessary, who shall hold their offices for such terms and shall have such authority and shall perform such duties as from time to time shall be prescribed by the Board.

Unless otherwise provided by law, the Certificate of Incorporation or these By-laws, any two or more offices may be held by the same person but no officer shall execute, acknowledge, or verify any instrument in more than one capacity if such instrument is required by law or by these By-laws to be executed, acknowledged, or verified by two or more officers.

5.02 Salaries: The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

5.03 Resignation or Removal: Any officer may resign at any time by giving written notice to the Corporation. Any such resignation shall be effective upon receipt thereof by the Corporation or at such subsequent time as shall be specified in the notice of resignation.

Any officer elected or appointed by the Board of Directors may be removed by the Board with or without cause. An officer elected by the shareholders may be removed, with or without cause, only by vote of the shareholders but his authority to act as an officer may be suspended by the Board for cause.

5.04 Chief Executive Officer: The Chief Executive Officer, if one has been appointed, shall be the chief executive officer of the Corporation; he/she shall preside at all meetings of the shareholders and Directors; he/she shall have general and active management of the business of the Corporation, shall see that all orders and resolutions of the Board are carried into effect, subject, however, to the right of the Directors to delegate any specific powers to any other officer or officers of the Corporation. He/she shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation. He/she shall be EX-OFFICIO a member of all committees, and shall have the general powers and duties of supervision and management usually vested in the office of Chief Executive Officer of the Corporation. He/she shall present a report of the condition of the business of the Corporation at each annual meeting of the shareholders and the Board of Directors.

5.05 President: The President shall be vested with all the powers and be required to perform all of the duties as is determined by the Board of Directors of the Corporation. In the event there is no Chief Executive Officer, the President shall be vested with all of the powers and be required to perform all of the duties of the Chief Executive Officer as specified in Section 5.04 above.

5.06 Vice President: The Vice President, if one has been appointed, shall be vested with all the powers and be required to perform all the duties of the President in his/her absence or refusal to act. He/she shall also exercise such powers and perform such duties as may be properly delegated by the Chief Executive Officer, President or the Board of Directors.

5.07 Chairman of the Board: The Chairman of the Board, if one has been appointed, shall exercise such powers and perform such duties as shall be provided in the resolution proposing that a Chairman of the Board be elected.

5.08 Secretary: The Secretary shall keep full minutes of all meetings of the shareholders and Directors; he/she shall be EX-OFFICIO Secretary, of the Board of Directors; he/she shall attend all sessions of the Board, shall act as clerk thereof and record all votes and the minutes of all proceedings in a book to be kept for that purpose; and shall perform like duties for the standing committees when required. He/she shall give or cause to be given, notices of all meetings of the shareholders of the Corporation and the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision he/she shall be.

5.09 Treasurer: The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation, in such depositories as may be designated by the Board of Directors. He/she shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the Chief Executive Officer (if any), the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his/her transactions as Treasurer and of the financial condition of the Corporation, and shall submit a full financial report at the annual meeting of the shareholders.

5.10 Assistant Secretary or Assistant Treasurer: Any Assistant Secretary or Assistant Treasurer, if one has been appointed, shall be vested with all the powers and be required to perform all the duties of the Secretary or Treasurer, respectively, in his/her absence or refusal to act or when so directed by the Secretary or Treasurer, respectively. He/she shall also exercise such powers and perform such duties as may be properly delegated by the Chief Executive Officer, the President or the Board of Directors.

#### ARTICLE VI.

##### VACANCIES

6.01 Directors: Any directorship not filled at the annual meeting, any vacancy, however caused, occurring in the Board, and newly created directorships resulting from an increase in the authorized number of Directors, may be filled by the affirmative vote of a majority of the remaining Directors even though less than a quorum of the Board, or by a sole remaining Director. A Director so elected by the Board shall hold office until his successor shall have been elected and qualified. If, for any reason, the Corporation shall at any time have no Directors then in office, any shareholder may call a special meeting of shareholders for the election of Directors and, over his/her signature, shall give notice of such meeting in accordance with these By-laws.

6.02 Officers: Any vacancy occurring among the officers, however caused, shall be filled by the Board of Directors.

ARTICLE VII.

SHARE CERTIFICATES AND TRANSFERS

7.01 Certificates: The share certificates of the Corporation shall be in such form as the Board of Directors may from time to time prescribe and shall be numbered consecutively and registered in the transfer records of the Corporation as they are issued. When issued, they shall bear the holder's name, the number of shares, the date of issue, and shall be signed by the President of the Corporation. The Share certificates may also be countersigned by the Secretary of the Corporation and may be sealed with the corporate seal or a facsimile thereof. Any or all signatures upon a certificate may be a facsimile.

7.02 Uncertificated Shares: The Board of Directors may provide that some or all of the shares of any class or series shall be represented by uncertificated shares. Within a reasonable time after the issuance or transfer of uncertificated shares, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates as provided in Chapter 7 of the Act.

7.03 Transfer of Shares: Upon surrender to the Corporation or the transfer agent or registrar of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, and cancel the old certificate. Every such transfer shall be entered on the transfer book of the Corporation which shall be kept at its principal office or at the offices of a qualified transfer agent or registrar. The Board of Directors may also make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of the share certificates. The Corporation will not register (and will instruct its transfer agent or registrar not to register) any transfer of the Corporation's capital stock issued or sold by the Corporation or its shareholders pursuant to Regulation S promulgated under the Securities Act, not made in accordance with the provisions of Regulation S or pursuant to an available exemption from registration under the Securities Act.

7.04 Loss of Certificates: In the event that a share certificate shall be lost, destroyed or mutilated, a new certificate may be issued therefor upon such terms and indemnity to the Corporation as the Board of Directors may prescribe.

ARTICLE VIII.

BOOKS AND ACCOUNTS

8.01 Records: The Corporation shall keep books and records of account and minutes of the proceedings of the shareholders, Board of Directors and executive committee, if any. Such books, records and minutes may be kept outside this State. The Corporation shall keep at its principal office, its registered office, or at the office of its transfer agent, a record or records containing the names and addresses of all shareholders, the number, class and series of shares held by each and the dates when they respectively became the owners of record thereof. Any of the foregoing books, minutes or records may be in written form or in any other form capable of being converted into readable form within a reasonable time.

8.02 Inspection: Any person who shall have been a shareholder of record of the Corporation for at least six (6) months immediately preceding his demand, or any person holding, or so authorized in writing by the holders of, at least five percent (5%) of the outstanding shares of any class or series, upon at least five (5) days' written demand shall have the right for any proper purpose to examine in person or by agent or attorney, during usual business hours, the minutes of the proceedings of the shareholders and record of shareholders and to make extracts therefrom at the places where the same are kept.

#### ARTICLE IX.

##### MISCELLANEOUS PROVISIONS

9.01 Monetary Disbursements: All checks or demands for money and notes of the Corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.

9.02 Fiscal Year: The Board of Directors shall be authorized to choose the initial fiscal year of the Corporation, and to change that fiscal year from time to time.

9.03 Dividends: The Board of Directors may declare and pay dividends upon the outstanding shares of the Corporation from time to time and to such extent as they deem advisable, in the manner and upon the terms and conditions provided by statute and the Certificate of Incorporation.

9.04 Reserve: Before payment of any dividend there may be set aside such sum or sums as the Directors, from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Directors shall think conducive to the interests of the Corporation, and the Directors may abolish any such reserve in the manner in which it was created.

9.05 Giving Notice: Whenever written notice is required to be given to any person, it may be given to such person, either personally or by sending a copy thereof through the mail. If notice is given by mail, the notice shall be deemed to be given when deposited in the mail addressed to the person to whom it is directed at his last address as it appears on the records of the Corporation, with postage pre-paid thereon. Such notice shall specify the place, day and hour of the meeting and, in the case of a shareholders' meeting, the general nature of the business to be transacted.

In computing the period of time for the giving of any notice required or permitted by statute, or by the Certificate of Incorporation or these By-laws or any resolution of Directors or shareholders, the day on which the notice is given shall be excluded, and the day on which the matter noticed is to occur shall be included.

9.06 Disallowed Compensation: Any payments made to an officer or employee of the Corporation as salary, commission, bonus, interest or rent, which shall be disallowed in whole or in part as a deductible expense by the Internal Revenue Service, shall be reimbursed by such officer or employee to the Corporation to the full extent of such disallowance. It shall be the

duty of the Directors, as a Board, to enforce payment of each such amount disallowed. In lieu of payment by the officer or employee, subject to the determination of the Directors, proportionate amounts may be withheld from his future compensation payments until the amount owed to the Corporation has been recovered.

#### ARTICLE X.

##### AMENDMENTS

10.01 Amendments: Unless otherwise provided in the Corporation's Certificate of Incorporation or these By-laws, the Board of Directors shall have the power to make, alter and repeal these By-laws, but By-laws adopted by the Board may be amended or repealed, and new By-laws may be made, by the shareholders; provided, however, that in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by the Certificate of Incorporation, the affirmative vote of the holders of at least sixty six and two-thirds percent (66 2/3%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of Directors, voting together as a single class, shall be required to amend or repeal Article XI.

#### ARTICLE XI.

##### INDEMNIFICATION AND INSURANCE

11.01 Indemnification: Every person who was or is a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or a person of whom he is the legal representative is or was a Director or officer of the Corporation or is or was serving at the request of the Corporation or for its benefit as a Director or officer of another Corporation, or as a representative in another enterprise, shall be indemnified and held harmless to the fullest extent permissible under and pursuant to any procedure specified in the Act, as amended from time to time, against all expenses, liabilities and losses (including attorneys' fees, judgments, fines and amounts paid or to be paid in settlement) reasonably incurred or suffered by him in connection therewith.

11.02 Advances: Any person claiming indemnification within the scope of Section 11.01 shall be entitled to advances from the Corporation for payment of the expense of defending actions against such person in the manner and to the full extent permissible under the laws of the State of New Jersey, as in effect at the time of such indemnification.

11.03 Procedure: Any indemnification under Section 11.01 or advance under Section 11.02 may be made by the Corporation only as authorized in the specific case upon the determination that indemnification is proper under the circumstances. Such determination shall be made (a) by the Board of Directors or a committee thereof, acting by a majority vote of a quorum consisting of Directors who were not parties to or otherwise involved in the proceeding, (b) if such a quorum is not obtainable, or, even if obtainable and such quorum of the Board of Directors or committee by a majority vote of the disinterested Directors so directs, by independent legal counsel designated by the Board of Directors in a written opinion, or (c) by the shareholders.

11.04 Other Rights: The indemnification provided by these By-laws shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any insurance or other agreement, vote of shareholders or disinterested Directors, or otherwise both as to actions in their official capacity and as to actions in another capacity while holding an office, and shall continue as to a person who has ceased to be a corporate agent and shall inure to the benefit of the legal representative of such a person.

11.05 Insurance: The Board of Directors may cause the Corporation to purchase and maintain insurance on behalf of any person who is or was a Director or officer of the Corporation or is or was serving at the request of the Corporation as a Director or officer of another Corporation, or as its representative in a partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred in any such capacity or arising out of such status, whether or not the Corporation would have the power to indemnify such person.

#### ARTICLE XII.

##### BENEFICIAL OWNERSHIP NOTICES AND REQUIREMENTS FOR NON-US PERSONS

12.01 Ownership Notice: If any shareholder of the Corporation who is not a US person (as defined under Regulation S promulgated under the Securities Act) or any other person appearing to have an interest, economic or otherwise, in shares held by such shareholder, has been duly served with a written notice from the Corporation demanding information concerning the beneficial ownership and voting rights and powers of shares of the Corporation held by such shareholder (the "Ownership Notice") and is in default for a period of fourteen (14) days from the date of service of such notice in supplying to the Corporation the information thereby required or, in purported compliance with such a notice, has made a statement which is false or inadequate in a material respect, then (unless a majority of the Board of Directors otherwise determines) in respect of:

(1) the shares of capital stock in the share register of the Corporation which comprises or includes the shares in relation to which the default occurred (all or the relevant number as appropriate of such shares being the "Default Shares", which definition shall include any further shares of capital stock which are issued in respect of such shares); and

(2) any other shares of capital stock of the Corporation held by such shareholder;

the shareholder shall not (for so long as the default continues) nor shall any transferee to whom any of such shares are transferred (other than an Approved Transfer (as defined below) or pursuant to Article 12.02(1) below) be entitled to attend or vote either personally or by proxy at a shareholders' meeting of the Corporation or to exercise any other rights conferred by share ownership in relation to shareholders' meetings.

12.02 Direction Notice: Where the Default Shares represent 1% or more of the issued and outstanding shares of a particular class of capital stock, the Board of Directors may in their absolute discretion by notice (a "Direction Notice") to such shareholder direct that:

(1) any dividend or part thereof or other money which would otherwise be payable in respect of the Default Shares shall be retained by the Corporation without any liability to pay interest thereon when such dividend or other money is finally paid to the shareholders and such shareholder shall not be entitled to elect to receive shares in lieu of dividend; and/or

(2) no transfer of any of the shares held by such shareholder shall be transferred unless the transfer is approved by the Board of Directors in its sole discretion (an, "Approved Transfer") or:

(a) the shareholder is not itself, himself or herself in default as regards to supplying the information required by the Ownership Notice; and

(b) the transfer relates only to a part of the shareholders' holdings of shares of the Corporation and, when presented for transfer, is accompanied by a representation certificate from the shareholder in a form satisfactory to the Board of Directors to enable the Board of Directors to be satisfied that none of the shares which are the subject of the transfer are Default Shares;

Any Direction Notice may treat shares of a shareholder in certificated and uncertificated form as separate holdings and either apply only to the former or to the latter or make different provision for the former and the latter. Upon the giving of a Direction Notice its terms shall apply accordingly.

12.03 Delivery of Direction Notice: The Corporation shall send to each other person appearing to the Corporation to have an interest, economic or otherwise, in the shares which are the subject of any Direction Notice, a copy of the notice, but the failure or omission by the Corporation to do so shall not invalidate such notice.

12.04 Effect of Direction Notice: As provided for herein, any Direction Notice shall be in effect in accordance with its terms for so long as the default set forth in the Direction Notice continues and shall cease to be in effect thereafter upon the Board of Directors so determining (such determination to be made within a period of one week of the default being duly remedied with written notice thereof being given forthwith to the shareholder). The Board of Directors may at any time give notice canceling a Direction Notice. Any Direction Notice shall cease to have effect in relation to any shares which are transferred by such shareholder by means of an Approved Transfer or in accordance with Article 12.02(1) above.

Confidential Materials omitted and filed separately with the Securities and Exchange Commission. Asterisks denote omissions.

ENGINEERING, PROCUREMENT AND CONSTRUCTION OF A WAVE ENERGY  
POWER PLANT

AT

"PUNTA DEL PESCADOR"

(SANTONA, SPAIN)

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Agreement for the Engineering, Procurement and Construction of a Wave Energy Power Plant

Made and entered into in Madrid on July 27, 2006.

BETWEEN

OF THE ONE PART,

IBERDROLA ENERGIAS MARINAS DE CANTABRIA, S.A., with registered offices in Santander, Cantabria, calle Amos de Escalante, number 6, 2 B, represented by Mr. Roberto Legaz Poignon with Spanish Identification Document number 72013299-T and Mr. Rafael de Icaza de La Sota with Spanish Identification Document number 16.035.858-M, in their capacity as Directors, as accredited by means of the deed of incorporation of the company signed on this date before the Notary of Madrid Mr. Miguel Ruiz-Gallardon Garcia de la Rasilla (the "CLIENT").

AND, OF THE OTHER PART,

OCEAN POWER TECHNOLOGIES LIMITED, a company incorporated in England and Wales Company No. 5225532) with its registered office at Warwick Innovation Centre, Gallows Hill, Warwick CV34 6UW, United Kingdom, represented by Mr. Mark Draper, with UK Passport number 029929083, in his capacity as Director of the company (the "CONTRACTOR").

The CLIENT and the CONTRACTOR shall hereinafter be referred to collectively as the "PARTIES", and individually as "PARTY".

WHEREAS

I. Whereas, IBERNOVA, OPT, SODERCAN and IDAE have entered in an agreement dated on July 2nd, 2004 in respect of a power plant harnessing Wave Energy in Cantabria at "Punta del Pescador", near Santona, Spain (the "SANTONA WAVE ENERGY AGREEMENT"). Through this agreement, the parties thereto wanted to assess the facility and the formalities as well as to confirm the viability of the project at the site ("PHASE 1") and set the rules for executing such a project of its viability and profitability were confirmed.

- II. Whereas, TOTAL which was interested in participating in the Santana Wave Energy Agreement has joined the Santana Wave Energy Agreement by signing its modification on June 17th, 2005.
- III. Whereas, in January 2006 the Parties have agreed that Phase 1 had been completed.
- IV. Whereas, Phase 2A of the Santana Wave Energy Project consists of the construction of a pilot plant of an initial power of one (01) 40 kw PB40ES PowerBuoy, its mooring system, the underwater substation and submarine cable both with capacity for energy evacuation of this PowerBuoy(TM) and other nine (9) 150kw PB150 PowerBuoys(TM) and all other ancillary equipment and services required to provide a complete installation of the PowerBuoy(TM) 1 x 40KW PB40ES as defined in Annex I.
- V. Whereas, the CLIENT resolved to sign this agreement with the CONTRACTOR, given that the latter declares to have the necessary skill, knowledge and experience for the required works to be executed in Phase 2A.

In virtue of the aforesaid, the Parties hereby execute this agreement for the Engineering, Procurement and Construction of a Wave Energy Power Plant (the "AGREEMENT"), which will be governed by the following,

#### CLAUSES

##### 1. DEFINITIONS

- 1.1 For purposes of this Agreement, the following terms shall have the meaning set forth beside each of them (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

AGREEMENT	Means this agreement together with all of its Annexes.
AGREED PRICE	Means the compensation due by the CLIENT to the CONTRACTOR for the entire and satisfactory execution of the Works determined pursuant to Clause 18 of this Agreement that shall be paid to the CONTRACTOR according to the Schedule of

Milestones.

BUSINESS DAY	Means any day that is not a Saturday, Sunday or holiday (whether a national, regional or local holiday) in Madrid and Cantabria.
CALENDAR	Means the timeline for execution of the Works contained in Annex II.
CERTIFICATE OF COMPLETION OF COMMISSIONING	Means the certificate issued by the Contractor's Representative which accredits that the Commissioning Period is finalized and the Plant is ready for Provisional Acceptance pursuant to Clause 9 of this Agreement.
CERTIFICATE OF COMPLETION OF INSTALLATION	Means the certificate issued by the Contractor's Representative which accredits that the Plant is ready for commissioning.
CLIENT'S REPRESENTATIVE	Means the representative of the Client as designated in Clause 26 of this agreement.
COMMISSIONING PERIOD	Period commencing upon issue of the Certificate of Completion of Installation and finished at the signature of the Provisional Acceptance Certificate.
CONTRACTOR'S REPRESENTATIVE	Means the person appointed by the CONTRACTOR in this Agreement under Clause 27.1, who acts on behalf of the CONTRACTOR.
DAY	Means a calendar day.
DEFINITIVE ACCEPTANCE CERTIFICATE	Document to be signed by the Client and the Contractor after conclusion of Testing Period in accordance with Clause 10. A draft of this document is included in Annex VII.
EQUIPMENT	Means the equipment and/or materials supplied by the

CONTRACTOR and falling within the scope of this Agreement, as defined in Clause 3 and the related Annexes.

EURIBOR

Means the interest rate applicable among the banks published in Brussels for the three months deposits in Euros as it is defined daily in the Telerate screen, page 248, 11:00 morning time (central Europe time), the second banking day previous to the beginning of every period in which the Automatic Paying System is operative in Trans European Real Time TARGET. This rate shall be increased, as the case may be, with any costs, surcharges, taxes, etc, as duly supported by documents, which are referred to in the EURIBOR definition.

FINAL COMMISSIONING PROTOCOL

Means the Commissioning Protocol delivered by the CONTRACTOR to the CLIENT at least one month prior to the scheduled date for commencement of the commissioning.

FORCE MAJEURE

Means any event or fact as described in Clause 24 of this Agreement.

IBERENOVA

Means Iberdrola Energias Renovables II S.A. Sociedad Unipersonal, a company incorporated and validly existent under the laws of Spain; registered with the Madrid Commercial Registry, at Section 8, Page 285710; Tax Identification Number (C.I.F.) A-83028035, with registered office at Madrid, Calle Tomas Redondo, number 1.

IDAE

Means Instituto para la Diversificacion y Ahorro de la Energia, S.A., public entity ascribed to the Ministry of

Industry, Tourism and Commerce through the General Secretary of Energy, with domicile in Madrid, at Calle Madera number 8 and CIF number Q 2820009 E.

INDEPENDENT EXPERT	Means the qualified specialist appointed by the School of Industrial Engineers of Madrid or the Institute of Mechanical Engineers or Electrical Engineers in London, U.K. upon request by either Party.
INSURANCE SCHEDULE	Means the required policies that the CONTRACTOR must take out and maintain under this Agreement.
INTELLECTUAL AND INDUSTRIAL PROPERTY	Means all (i) trademarks, trade names, Internet domain names, logos, symbols, all applications and registrations for the foregoing, and all goodwill associated therewith and symbolized thereby; (ii) patents, utility models, registrations, invention disclosures and applications therefore, including divisions, continuations, continuations-in-part and including renewals, extensions and reissues and all inventions and discoveries whether patentable or not; (iii) published and unpublished works of authorship, whether copyrightable or not (including databases and other compilations of information), Copyrights therein and thereto, and registrations and applications therefore, and all renewals, extensions, restorations and reversions thereof; and (iv) other industrial and intellectual property or proprietary rights; concerning the Plant and the PowerBuoy(TM) system.
KNOW HOW	Means all the information, trade secrets, documents, technical data, technical knowledge, including processes, schematics, business methods, formulae, drawings, prototypes, models, designs, quality control

systems, quality standards and specifications developed or acquired by the CONTRACTOR, presently or in the future, concerning the Plant and the PowerBuoy(TM) system, or its design, construction, commissioning, use, exploitation and assembling.

MAJOR DEFECTS	Means such defects that could affect the production of energy by the Plant and/or the safety of the Plant and/or of the people working therein.
MILESTONE	Means the relevant stages of progress of the Works as described under the Schedule of Milestones and Calendar.
MINOR DEFECTS	Means such material defects that are not Major Defects.
NOTICE OF APPROVAL	Means the document issued by the Client under Clause 19.2 (i) of this Agreement.
NOTICE OF COMPLETION	Means the communication sent by the Contractor to the Client under clause 19.2 (i) which accredits the completion of a Milestone.
NOTICE OF PENDING WORKS	Means the document issued by the Client under Clause 19.2(ii) of this Agreement.
OPT	Means Ocean Power Technologies, Inc., a company incorporated and validly existent under the laws of New Jersey, USA; with registered office at 1590 Reed Road, Pennington, NJ, USA.
ORDER FOR CHANGE	Means the document signed by both the Client and the Contractor for a given modification of the Works under clauses 11.1 or 11.2 of this Agreement.
PARTIES	Means the Client and the Contractor jointly.

PARTY	Means the Client or the Contractor, as the context may require.
PHASE 1	Means Phase 1 of the Santona Wave Energy Project as defined in Recital 1 of this Agreement in which the parties to the Project have studied and decided about the viability of the Project at the Site.
PHASE 2A	Means Phase 2A of the Santona Wave Energy Project as defined in Recital IV of this Agreement, consisting of the design, manufacture, factory tests, dispatch and unloading, ex works delivery, assembly and commissioning of the PowerBuoy(TM) 1 x 40kW PB40ES, its mooring system, the underwater substation and submarine cable both with capacity for energy evacuation of this PowerBuoy(TM) and other nine (9) 150kW PB150 PowerBuoys(TM) and all other ancillary equipment and services required to provide a complete installation of the PowerBuoy(TM) 1 x 40kW PB40ES. All as described in Annex 1.
PHASE 2B	Means Phase 2B of the Santona Wave Energy Project consisting of the design, manufacture, factory tests, dispatch and unloading, ex-works delivery, assembly and commissioning of the nine PowerBuoys(TM) 9 x 150kW PB150, their mooring systems, submarine cables and all other ancillary equipment and services required to provide a complete installation of the PowerBuoys(TM).
PLANT	Means the wave power pilot plant PowerBuoy(TM) 1 x 40kW PB40ES, its mooring system as well as the underwater substation and submarine cable (both with capacity for energy evacuation of this PowerBuoy(TM) and other nine (9) 150kW PB150 PowerBuoys(TM).

POWERBUOY(TM)	Means the Technology owned by the Contractor.
PRELIMINARY COMMISSIONING PROTOCOL	Means the Commissioning Protocol attached to the Agreement as Annex X.
PROVISIONAL ACCEPTANCE CERTIFICATE OR PAC	Document to be signed by the Client and the Contractor to put on record the satisfactory completion of the Commissioning Protocol, including all Minor Defects that the Contractor must remedy within the Testing Period. A draft of this Document is included in Annex VI.
SANTONA WAVE ENERGY AGREEMENT	Means the agreement signed on July 2, 2004 by OPT, IBERENOVA, SODERCAN, and IDAE, and modified on June 17, 2005 to include TOTAL as a party.
SANTONA WAVE ENERGY PROJECT OR SWEP	Means the pilot project consisting of a power plant harnessing wave energy with an initial installed capacity of 1.39 MW on the north coast of Spain based on the Technology.
SCHEDULE OF MILESTONES	Means the schedule describing the progress of the Works and the timeline for payment of the Agreed Price contained in Annex V.
SITE	Means the place where the Plant will be installed located at the coast opposite the "Punta del Pescador" lighthouse in Santona, in the Cantabrian region in Spain, as specified in Annex XIII.
SODERCAN	Means Sociedad para el Desarrollo Regional de Cantabria, S.A., a company incorporated and validly existent under the laws of Spain by virtue of its

incorporation deed granted on December 15, 1984 before the Notary of Santander, Mr. Jose Antonio Olascoega, with number 1271 of his public protocol; registered with the Cantabria Commercial Registry, at Volume 296, Book 101, Sheet 60 and Page S-1751; Tax Identification Number (C.I.F) A-3904457, with registered office at Santander, Avenida de Los Infantes, 32, "Quinta Labat".

SPV	Means the public limited company created by IBERENOVA, IDAE, OPT, SODERCAN and TOTAL for the construction and operation of the Santona Wave Project as agreed under the Santona Wave Energy Agreement.
SUBCONTRACTORS	All firms or individuals contracted by the CONTRACTOR to do part of the Works contemplated in this Agreement.
TAXES	Means any taxes, rates, special levies ("contribuciones especiales"), charges ("exacciones parafiscales") or any other encumbrance of tax nature, required by any administrative authority, including surcharges, interests and penalties.
TECHNICAL DOCUMENTATION	Means the documents, workshop plans, calculations and sketches listed in Annex IX of this Agreement.
TECHNOLOGY	Means the technology for electricity generation harnessing the energy produced by the waves called PowerBuoy(TM) system owned by the CONTRACTOR. In particular, it means all the Know How and Intellectual and Industrial Property related to the PowerBuoy(TM) system, including the moorings and the

underwater substation.

TESTING PERIOD	Means [**] including [**], plus any extensions made hereunder. Period commencing upon signature of the Provisional Acceptance and finishing at the signature of the Definitive Acceptance Certificate.
TIME FOR COMPLETION	Means the period of time for the Contractors' completing the assembly, installation and commissioning of the Plant according to this Agreement.
TOTAL	Means Total Eolica S.A., a company incorporated and validly existent under the laws of Spain; registered with the La Coruna Commercial Registry, at Section 8, Page 25547; Tax Identification Number (C.I.F) A-15745706, with registered office at Avenida Fernando de Casas Novoa, number 37, planta B, 3 degrees A.
WORKS	Means all actions, work and services for the supply, construction and commissioning of the Plant described in Clause 3 of this Agreement.

1.2 Other terms may be defined in other clauses of this Agreement.

## 2. OBJECT

2.1 The object of this Agreement is the supply, construction and commissioning of the Plant, including the design, manufacture, factory tests, transport, dispatch and unloading, ex works delivery, civil works, assembly and commissioning and all other ancillary equipment and services required to provide a complete installation of the Plant, all as included in Phase 2A of the Santana Wave Energy Project and detailed in Annex I.

2.2 The CONTRACTOR undertakes to apply all reasonable efforts to complete the supply, construction and commissioning of the Plant within the Time for Completion as may be

adjusted according to the terms of this Agreement and the Calendar contained in Annex II.

- 2.3 The design of the equipment included in Phase 2A that will be used for Phase 2B will endeavour to comply also with technical requirements of Phase 2B equipment.
- 2.4 The CONTRACTOR shall be responsible for transport of the Equipment to the Site and all related expenses, insurance and duties shall be for the account of the CONTRACTOR.
- 2.5 The Equipment supplied hereunder shall generally comply with the requirements set forth in Annex III.
- 2.6 In general, the Works shall be performed in accordance with the rules of good practice, with the utmost diligence, care and professionalism.

### 3. SCOPE

- 3.1 The CONTRACTOR shall perform the Works and shall deliver the Equipment according to the Technical Documentation detailed in Annex IX.
- 3.2 The Parties expressly declare that this is an Turnkey Contract, which means that the CONTRACTOR will carry out all and any actions or services that may be necessary (although not expressly mentioned in the Agreement) for completion of the Works to meet the terms of stipulated herein and those attached in Annex II, and all applicable standards, regulations and codes, shall be deemed included within the scope of this Agreement, even though they may not have been expressly mentioned in this Agreement or Annexes hereto. Anything without which the Plant would not be in adequate condition for normal operation shall be deemed necessary.
- 3.3 The terminal points of the Plant are the following:
  - Submarine cable: submarine cable at the entrance of the onshore substation or cable vault if required. Such onshore substation and/or cable vault to be supplied by the CLIENT, and no more than approximately [\*\*] meters from high water level at the beach.
  - SCADA System: up to and including the control panel, PLCs and monitor within the onshore substation.

#### 4. DOCUMENTATION

- 4.1 The CONTRACTOR shall deliver to the CLIENT the Technical Documentation listed in Annex IX, within the times and on the terms stipulated therein and according to this Clause.
- 4.2 Upon signing the Provisional Acceptance Certificate, the CONTRACTOR shall hand over the "as built" documents of the Equipment in accordance with Annex IX, and any other documentation as may be agreed between the Parties, all the documents generated during commissioning, including any modifications based on reasonable written comments made by the CLIENT and agreed by the CONTRACTOR on the Provisional Acceptance.
- 4.3 The CONTRACTOR shall keep at the disposal of the CLIENT a full set of the Technical Documentation by number, title, version and date of issue and all other documents required from the CONTRACTOR under this Agreement.
- 4.4 The CONTRACTOR shall bear all expenses related to the preparation of the Technical Documentation.
- 4.5 For the purposes of Clause 4.1 above, the CONTRACTOR shall deliver to the CLIENT a total of three (3) copies and a set on magnetic data carrier of the Technical Documentation, which shall be in Spanish or English. All technical translations shall be done by professional translators.
- 4.6 The CLIENT shall formally provide its approval or any reasonable comments to the Technical Documentation within [\*\*] days of receiving the documents. If the CLIENT fails to respond without a reasonable justification within this period it shall be responsible for any damages or delays arising therefrom for the CONTRACTOR, who shall pursue with the Works that do not require such approval. The time limit for introducing any modifications in response to formal comments that may arise shall be agreed between the Parties, but may under no circumstances be more than a further [\*\*] days. Approval, the insertion of modifications or lack of response shall not exempt the CONTRACTOR from its further obligations and liabilities under this Agreement.

#### 5. INDUSTRIAL INTELLECTUAL PROPERTY

- 5.1 The CONTRACTOR grants to the CLIENT, who accepts, free of charge, a non-exclusive and irrevocable license to use the Technology for (a) the construction and commissioning of the Plant by the CONTRACTOR; and (b) the future use and exploitation of the Plant subject to the terms of this Agreement. The CLIENT shall only use the Technology in connection with the Plant.
- 5.2 The CLIENT acknowledges and agrees that any and all rights to the Technology, whether copyrightable or patentable or not, are the exclusive property of the CONTRACTOR, or the CONTRACTOR has the right to use it and grant licenses, and this Agreement creates on the CLIENT no right on such Technology other than the license granted by this Agreement, and subject to the terms and restrictions contained hereunder.
- 5.3 The CONTRACTOR holds all Intellectual and Industrial Property over its own Technology.
- 5.4 The CLIENT, by virtue of this Agreement shall not acquire any rights over the trade marks, "know-how", business secrets, trade names, information, documentation or any other Intellectual and Industrial Property used or developed by the CONTRACTOR in relation to the Technology.
- 5.5 The CLIENT hereby assigns and agrees to assign to the CONTRACTOR entire right, title and interest in and to all inventions, improvements or discoveries (whether or not patentable) made, conceived or first reduced to practice by the CLIENT based on the Technology.
- 5.6 The owner of all Intellectual and Industrial Property and Know How over the Technology is and shall forever be the CONTRACTOR.
- 5.7 The CLIENT agrees to promptly disclose the inventions, improvements and discoveries specified hereinabove to the CONTRACTOR, and will assist in reasonable manner to obtain for the CONTRACTOR's own benefit patents thereon at the expense of CONTRACTOR. The CLIENT further agrees that the obligations and undertakings stated in this paragraph shall continue beyond the termination for any reason of this Agreement but if the CLIENT is called upon to render such assistance after such

termination, then it shall be entitled to a fair and reasonable fee in addition to reimbursement of any expenses incurred at the request of the CONTRACTOR.

## 6. INSPECTIONS AND TESTS

- 6.1 The CONTRACTOR shall allow the CLIENT to make such inspections, checks, tests and reports as the Client may consider necessary, during the manufacturing, assembly and testing phases, at the factories and workshops of both the Contractor and its suppliers and/or Subcontractors.
- 6.2 The CONTRACTOR will inform the CLIENT in writing with a prior notice of at least [\*\*] Business Days, of the dates and places for inspections and tests and, particularly, of those that the CLIENT specifically requested.
- 6.3 The CLIENT must inform the CONTRACTOR at least [\*\*] Business Days in advance of whether it will attend the inspections and tests. If the CLIENT is unable to attend, the Contractor will either proceed in his absence, or make reasonable effort to reschedule the test, in which case the CONTRACTOR may adjust the Calendar accordingly.
- 6.4 The CLIENT may establish minimum inspection requirements to check that the Equipment and/or Works conform to the applicable specifications to be agreed with the CONTRACTOR. Should the CLIENT confirm and the CONTRACTOR agree, during any inspection or test that the specifications or standards have not been met, the CLIENT may freely reject the Equipment and/or Work in question at no additional charge or expense and this shall not be deemed tantamount to acceptance by the CLIENT of any delay in the Time for Completion or alteration of the Agreed Price.
- 6.5 The inspections or tests by the CLIENT shall not release the CONTRACTOR from any of its obligations or liabilities under this Agreement nor shall they be deemed equivalent to acceptance of the Equipment thereof.
- 6.6 If any fault or defect is discovered during testing and/or inspection as contemplated in Clause 6.4, the CONTRACTOR shall be responsible for correcting the fault or defect prior to PAC.

6.7 The CONTRACTOR shall confirm that the manufacturers of the Equipment comply with all the requirements of the Agreement and conform to good practices in design, engineering and manufacture.

#### 7. ASSEMBLY AND INSTALLATION OF EQUIPMENT

7.1 Upon signature of this Agreement, the CONTRACTOR shall start each item of the Works according to the Calendar without the need for instruction from the CLIENT, except as outlined in Clause 7.2.

7.2 The Plant shall be installed at the Site once the CLIENT has given its written confirmation that the required permits and consents for installation have been obtained.

7.3 The CLIENT and the CONTRACTOR shall jointly inspect the Equipment immediately after its arrival to the dock at [\*\*] or other reasonable place and issue a certificate signed by both, specifying the apparent condition of the Equipment and any actions that may be necessary to repair or replace forthwith any part damaged or lost during transport that may be detected during such inspection.

7.4 Inspections by the CLIENT shall not release the CONTRACTOR from any of its obligations and liabilities hereunder nor shall they imply acceptance of the Plant.

7.5 As soon as the CONTRACTOR considers the assembly and installation of the Plant complete, according to the terms of this Agreement, it shall issue a Certificate of Completion of Installation indicating that the Plant is ready for Commissioning.

#### 8. COMMISSIONING OF THE PLANT

##### 8.1 PROTOCOL

During the commissioning of the Plant, the CLIENT shall appoint an overseer, who shall check the correct application of the Commissioning Protocols. The CONTRACTOR shall deliver the Final Commissioning Protocol to the CLIENT that must contain at least the tests detailed in Annex X, at least [\*\*] prior to the scheduled date of commencement commissioning.

The CLIENT may request the CONTRACTOR [\*\*], as may be [\*\*] and [\*\*]. Any [\*\*] that the CLIENT asks the CONTRACTOR [\*\*].

In Annex X is included a preliminary Commissioning Protocol.

Each of the actions included in the Commissioning Protocol carried out during commissioning shall be recorded in the protocol or corresponding procedure, dated and signed by the person effecting the action and the person responsible for commissioning.

If any fault, failure or Major Defects, as defined in this Agreement are detected in any of the Equipment, the CONTRACTOR shall be obliged to remedy the problem during the Commissioning Period.

## 8.2 COMMISSIONING PERIOD

The proper functioning of the Plant shall be checked during this Commissioning Period according to the Final Commissioning Protocol.

For finalising the Commissioning Period is required that the Plant will be in operation for [\*\*] producing energy measured at the electrical output from the PowerBuoy.

Once the Commissioning Period is finalised the CONTRACTOR shall issue a Certificate of Completion of Commissioning and shall notify the CLIENT indicating that the Plant is ready for Provisional Acceptance.

## 9. PROVISIONAL ACCEPTANCE

9.1 Upon termination of the Commissioning Period, the CONTRACTOR shall notify the CLIENT in writing, indicating:

- a) A date proposed by the CONTRACTOR for a joint visit with the CLIENT. The proposed date shall be at least [\*\*] Business Days after the date of notification. If the proposed date is not convenient for the CLIENT, it may be postponed to a later date no more than [\*\*] Business Days after the latest date indicated in the initial proposal.
- b) The confirmation that the Commissioning Period has finalised satisfactorily.
- c) The confirmation of delivery of all Technical Documentation under Clause 4.

- 9.2 The Equipment, temporary installations and materials left over from the Works shall be removed by the CONTRACTOR after completing assembly, leaving the Site totally free and clear, as a prerequisite for signing of the corresponding PAC of the Plant.
- 9.3 During the joint visit, the Parties shall inspect the state of the Equipment and complete a check list, indicating any defects and/or irregularities detected and any pending Works. The CONTRACTOR shall remedy within the following [\*\*] weeks at least those [\*\*], after which the CLIENT and the CONTRACTOR shall proceed to do a new visit and complete a new check list with the [\*\*] so the CLIENT could sign the PAC of the Plant and attach to it the list of pending matters.
- 9.4 If the Parties do not reach an agreement as to the existence and/or remedy of [\*\*] and consequent obligation of issue of the PAC, any of them may entrust their divergence to an Independent Expert, who will decide on [\*\*] days from its engagement and whose decision shall be final and binding for both Parties.
- 9.5 The Independent Expert will not be required and the PAC should be issued, if the competent authority from the industry regional department of Cantabria issues the definite start-up certificate to operate the Plant (acta de puesta en marcha definitiva).
- 9.6 The [\*\*] of the Equipment shall be listed as [\*\*] within the times agreed upon signing the PAC. If the [\*\*] within the agreed times, the CLIENT may [\*\*] itself or commission a third party to do so, for the [\*\*] and without releasing the latter from its responsibilities.
- 9.7 If, for reasons beyond the control of the CONTRACTOR, it is not possible to effect the commissioning of the Plant, the Parties shall agree on how to proceed to obtain the PAC without jeopardizing the interests of the CLIENT. In any case, provided it is signed, the PAC would contain the corresponding reservations and the CONTRACTOR would undertake to do whatever has been established for the Commissioning Period as soon as the impeding obstacles have disappeared. This document shall indicate the effective date of beginning of the Testing Period for the purposes of the Definitive Acceptance of the Plant.
- 9.8 Upon signing the Provisional Acceptance Certificate ownership of the Plant and the Equipment object of this Agreement shall be transferred to the CLIENT. The

CONTRACTOR shall bear the risks of loss of or damage to the Plant and the Equipment up to the effective transfer of ownership, without prejudice to the other guarantees and liabilities of the CONTRACTOR hereunder. The Contractor will be responsible for the care and preservation of the Plant until its Provisional Acceptance.

#### 10. DEFINITIVE ACCEPTANCE

10.1. Definitive Acceptance for the Plant shall be issued after the end of the Testing Period, provided that the pending [\*\*] indicated in the PAC and any others detected during the Testing Period have been remedied and provided that the CONTRACTOR delivers the information required under Clauses 21.4 and 21.5 to confirm the fulfillment of the guaranteed values included therein.

10.2. If the Parties do not reach an agreement as to the fulfillment of the above criteria and consequent obligation of issue of the DAC, any of them may entrust their divergence to an Independent Expert, who will decide on [\*\*] days from its engagement and whose decision shall be final and binding for both Parties.

10.3. The CONTRACTOR shall deliver to the CLIENT an updated version of Annex XIV based on real data collected during the Testing Period. The CONTRACTOR shall deliver such information within [\*\*] days following the Definitive Acceptance for the Plant.

#### 11. MODIFICATIONS OF THE WORKS

##### 11.1. MODIFICATIONS AT THE CLIENT'S REQUEST

11.1.1. The CLIENT may request the CONTRACTOR to undertake any type of changes or modifications of the Works subject to this clause.

11.1.2. Within the period of [\*\*] Business Days of the reception of the CLIENT's request, the CONTRACTOR should prepare and provide the CLIENT with the following information:

- a) A description of the necessary tasks in order to undertake the requested modifications;
- b) The time period for its execution;

- c) The impact of these modifications, where appropriate, on the Calendar and the completion of the Milestone(s);
- d) The consequent adjustment to the Agreed Price that will be required, if any.

11.1.3. Once both Parties agree in writing on all the above items, they will formalize the corresponding Order for Change that will be executed by the CONTRACTOR according to its terms.

11.1.4. When the CLIENT asks the CONTRACTOR for a change or modification of the Works and if the Parties do not reach an agreement as to any of the items of the Order for Change, any of them may entrust their divergence to an Independent Expert, who will decide on [\*\*] days from its engagement and whose decision shall be final and binding for both Parties.

11.1.5. For the avoidance of doubt the Parties hereby acknowledge and accept that the changes or modifications to the Works shall not imply a reduction of more than [\*\*]% of the scope of the Works as detailed in Annex I.

#### 11.2. MODIFICATIONS AT THE CONTRACTOR'S REQUEST

11.2.1. The CONTRACTOR may request the CLIENT to undertake any type of changes or modifications of the Works subject to this clause.

11.2.2. For such purposes, the CONTRACTOR will send the CLIENT a change proposal that will contain the items described in clause 11.1.2 a) to d) as well as an explanation of the need or convenience of the requested modification.

11.2.3. Once both Parties agree in writing on all the above items, they will formalize the corresponding Order for Change that will be executed by the CONTRACTOR according to its terms.

11.2.4. Should the change or modification requested not be approved by the CLIENT, the Works will be executed as initially foreseen according to this Agreement. The lack of written agreement in a [\*\*] days term will be considered as a rejection of the modification requested by the CONTRACTOR.

#### 12. CALENDAR AND TIME FOR COMPLETION

#### 12.1 TIME FOR COMPLETION

The CONTRACTOR estimates that the assembly, installation and commissioning of the Plant shall be completed within the Time for Completion according to the Calendar.

Any changes to the Calendar that affect the Time for Completion must be approved in writing by both the CONTRACTOR and the CLIENT, except as otherwise provided under this Agreement.

The Parties accept and agreed that the Time for Completion is an estimation prepared on the assumption that each Milestone will be performed at a given date and time of the year, and that any delays in the performance of Works, Force Majeure, obtaining of licences or supply of Equipment shall have an impact on the following stages of the Calendar and on the whole Time for Completion which may be more proportional to referred delay.

#### 12.2 MONTHLY PROGRESS REPORTS

The CONTRACTOR shall submit monthly progress reports covering all aspects of the Works. The scope of this report is described in Annex IV hereto.

#### 12.3 MONITORING AND CONTROL MEETINGS

The CONTRACTOR's Representative shall hold weekly meetings with the CLIENT's Representative (or the engineer appointed by the CLIENT to oversee the Works done by the CONTRACTOR) to monitor and control the progress of the Works. These meetings may be attended by the representatives of other suppliers or Subcontractors. The CLIENT's Representative may attend accompanied by a specialist, acting as the CLIENT's advisor. The CONTRACTOR's and CLIENT's Representatives may agree that such weekly meetings may be held by telephone.

#### 13. TEMPORARY SUSPENSION OF WORK

##### 13.1 SUSPENSION BY THE CLIENT

The CLIENT may [\*\*] order the CONTRACTOR to suspend all or part of the Works. Any such orders shall be made in writing, indicating the part of the Works that is to be suspended, the effective date of suspension and the expected date for resuming Works. If the CLIENT orders the suspension of the Works on the grounds of non-fulfillment by the CONTRACTOR of its obligations under this Agreement, the latter shall not be entitled to any increase in the Agreed

Price, nor shall the Time for Completion be increased, and the CLIENT shall be entitled to financial compensation for the expenses incurred as a result of this situation, subject to documentary evidence of those expenses and the CLIENT shall be obliged to act diligently in order to minimize such costs. If the CLIENT order suspension of the Works without it being due to non-fulfillment by the CONTRACTOR of its obligations under this Agreement, the CLIENT shall reimburse the CONTRACTOR for any expenses incurred as a result of the suspension, subject to documentary evidence thereof, and the CONTRACTOR shall be obliged to act diligently in order to minimize such costs and the Time for Completion shall be extended in accordance with the duration of the suspension.

If the suspension required by the CLIENT lasts for more than four months, the CONTRACTOR may request the CLIENT's permission to proceed. Such request is made by written notice. If the permission is not granted within thirty (30) days, the CONTRACTOR may by further written notice to the CLIENT terminate the Agreement.

### 13.2 SUSPENSION BY COURT OR ADMINISTRATIVE AUTHORITY

In the event of suspension, halting or total or partial cessation of the Work on the Plant ordered by any judicial or administrative authority, or by either of the Parties following instructions from any judicial or administrative authority, the consequences of the delay, in financial terms and in the Calendar and the Time for Completion, shall be borne by the Party responsible for the obligation whose non-fulfillment or incorrect fulfillment gave rise to the court or administrative action. If this suspension, halting or cessation is not founded on the actions or omissions of either Party, the Completion Period shall be extended by a period of time equal to the duration of the situation or such longer time as may be reasonable in the circumstances and the Parties shall agree on a fair solution regarding the effects on the contractual obligations of each Party during the suspension. The CONTRACTOR undertakes to act diligently to protect and maintain the Works if it has commenced, to avoid any loss or damage.

If the suspension ordered by any court or administrative authority is founded on actions for which both Parties are responsible, the costs incurred thereby shall be borne by both Parties in equal proportions.

If the suspension ordered by any judicial or administrative authority, or by either of the Parties following instruction from any judicial or administrative authority, is prolonged for more than 4 months either Party may terminate this Agreement.

### 13.3 SUSPENSION BY THE CONTRACTOR

The CONTRACTOR may totally or partially suspend the Works when the CLIENT is in delay of its payment obligations under this Agreement and does not cure such delay within the thirty (30) days following written demand from the CONTRACTOR for such purpose. The CONTRACTOR undertakes to act diligently to protect and maintain the Works if it has commenced, to avoid any loss or damage.

If any given suspension lasts for more than 60 (sixty) days, the CONTRACTOR may terminate this Agreement by written notice to the CLIENT.

### 13.4 RECOMMENCEMENT OF WORK

When the CONTRACTOR receives instructions to resume the Works on the Plant after any suspension contemplated in the preceding paragraphs, the CONTRACTOR shall examine the Work affected by the suspension, remedying any defect or loss produced during the suspension and informing the CLIENT thereof upon recommencement of the Works. The costs that the CONTRACTOR incurs from examining and remedying the Works will be added to the Agreed Price save if suspension was due to non fulfillment by the CONTRACTOR or if the suspension is ordered by court or administrative authority and the CONTRACTOR is deemed responsible for this suspension.

## 14. OTHER OBLIGATIONS OF THE CONTRACTOR

### 14.1 CONTRACTOR'S MANPOWER

The Contractor should employ necessary, sufficient and suitable personnel for the execution of the Works, and will be liable for the performance of such personnel with regard to the work. Any personnel hired by the Contractor and, where appropriate, by its Subcontractors, should have sufficient qualifications, preparation and experience for the execution of the Works object of this Agreement. The Contractor will be in charge of hiring all labour and their payment.

There shall be no employment relationship whatsoever between the CONTRACTOR's employees and the CLIENT. The CLIENT shall not be liable, not even collaterally, for the

employer's obligations of the CONTRACTOR, which shall be solely answerable to any public authority, courts and its employees.

Consequently, the CONTRACTOR shall be exclusively liable for all the legal requirements concerning these employees. In particular, all and any contributions payable for its employees in strict compliance of the applicable laws and regulations in Spain, compensation for accidents and other charges established in the prevailing labour laws shall be payable by the CONTRACTOR.

The CONTRACTOR undertakes to prove, on the simple request by the CLIENT that it complies strictly at all times with the prevailing labour and social security laws and regulations.

The CONTRACTOR shall be obliged to provide, for its own account, all the means, tools and instruments required for the Works.

The CONTRACTOR's Representative shall be responsible for the discipline, organization, management, oversight and control of the CONTRACTOR's employees, as well as for the oversight of the suppliers and Subcontractors and shall see that the Works are done in adequate technical and safety conditions, informing the CLIENT's representative of any irregularities or incidents that may occur.

#### 14.2 HEALTH AND SAFETY

The CONTRACTOR shall comply with all prevailing administrative provisions regarding health and safety during performance of the Works. The CONTRACTOR shall see that its employees heed the prevailing legal provisions on health and safety at work. The CONTRACTOR shall be exclusively liable for any fines or other penalties that may be imposed for infringement of health and safety legal provisions affecting the Works.

The expenses relating to the foregoing (fees, insurance and third-party liability) shall be for the account of the CONTRACTOR, except those relating to consultants, which shall be payable by the CLIENT.

If the CONTRACTOR is forced to replace any of the persons with legal functions on this matter, it shall give the CLIENT prior notice, indicating the reasons for such replacement, the curriculum of the proposed substitute and legal authorization to perform the corresponding duties, and the CLIENT shall authorize such substitution, if appropriate, within no more than [\*\*] days.

The Agreed Price set herein shall under no circumstances be raised by virtue of the equipment, ancillary means, materials and working hours of the employees of the CONTRACTOR or its Subcontractors, as the case may be, needed to secure strict fulfillment of the Health and Safety Plan.

The CONTRACTOR shall send the CLIENT a copy of the health and safety plan for installation of the Equipment and provide to the CLIENT the information on the compliance with the labour risks prevention, in particular on who will perform the legal functions on labour risks prevention and health and safety, [\*\*] before commencement of the installation of the Equipment.

The CLIENT may at any time carry out the inspections that it considers necessary in order to check that the CONTRACTOR is complying with health and safety requirements. The CLIENT will also have the ability to request the CONTRACTOR to stop the Works if they are being carried out in dangerous and unhealthy conditions that are in violation of the laws and regulations in force until such problems are resolved.

The CONTRACTOR assumes full and total responsibility for the safety and health of its workers and of the Subcontractors it may engage.

The CONTRACTOR shall maintain, at its own expense, all marking lights, fences and safety measures considered necessary at the Site.

#### 14.3 TRAINING

The CONTRACTOR shall provide the option to the CLIENT of adequate training in the operation of the Equipment, for up to [\*\*] people named by the CLIENT, at a total cost of EUR. (E[\*\*]) in addition to the Agreed Price. These people shall have to sign a confidentiality commitment in similar terms to the ones contained in Clause 29 as condition to receiving any such training. The training programme, dates and place shall be agreed with the CLIENT.

#### 14.4 COMPLIANCE WITH THE LAW

The CONTRACTOR shall comply with and require all persons, firms or companies directly or indirectly employed or contracted by the CONTRACTOR for the Works to comply with and strictly abide by the laws applicable to the execution of the Works.

In pursuance of the Tax Act, no. 58/2003 of 17 December, s. 43.1.f), the CONTRACTOR undertakes to provide the CLIENT with a specific certificate indicating that it is up to date with

the payment of its tax obligations, issued in the terms and in accordance with the requirements stipulated therein and in the corresponding statutory instruments.

#### 14.5 ENVIRONMENTAL PROTECTION

The CONTRACTOR shall be responsible throughout the Works for continuous cleaning of the roads, platforms and surrounding area of the Plant and the periodical removal of any debris left over from installation of the Equipment.

The CONTRACTOR shall comply with the Environmental Impact Declaration or equivalent assessment issued by Spanish authorities, if applicable, as well as with the Environmental Supervision Plan ("Plan de Vigilancia Ambiental") throughout the duration of the Works. The CONTRACTOR shall be responsible for paying any fines that may be levied by the competent authorities when breaching obligations in this regard. The CONTRACTOR shall be liable towards the CLIENT for all damages caused to the environment by the CONTRACTOR and/or its Subcontractors during the performance of the Works. It shall also be liable for removing from the Site all toxic and hazard substances and waste generated by the CONTRACTOR and its Subcontractors during the Works.

#### 14.6 EQUIPMENT AND MATERIALS

The CONTRACTOR shall provide all the Equipment necessary to complete the Works as described in Annex 1. All the Equipment shall, when brought on to the Site, be exclusively used for the execution of the Works.

The CONTRACTOR shall be responsible for the care and security of the Equipment until the transfer of ownership according to Clause 9.8.

All Equipments to be used in the Works shall be of the respective character, quality or kind, and in any event shall be merchantable, new and of first class being consistent with good utility practice. In addition, all such Equipments shall be free from defects for their intended purposes.

#### 14.7 REPLACEMENTS PARTS AND CONSUMABLES

The Contractor shall provide all parts, consumables, equipment and tools which are necessary for the commissioning of the Plant during the Commencement Period.

15. REGULATIONS AND OFFICIAL PROVISIONS CONCERNING EQUIPMENT, LICENCES AND PERMITS.

- 15.1 The Equipment shall conform to the Regulations and Official Provisions in force when commissioning of the Plant is completed, including the design, building, mounting and installation of said Equipment, although the Agreed Price shall be adjusted to take account of any changes in legislation becoming effective between the date of signature of this Agreement and the date of completion of such commissioning.
- 15.2 On request by the CLIENT, the CONTRACTOR shall send the appropriate documents and certificates indicating conformity of the Equipment with such regulations and official provisions.
- 15.3 The CONTRACTOR shall provide such information as may be necessary for the CLIENT to prepare the required documents to obtain licences, permissions and authorizations required to build and operate the Plant, which shall be applied for by the CLIENT. The CLIENT shall file in the necessary applications in a well-ordered and diligent manner, without incurring unreasonable delays.
- 15.4 The CLIENT shall obtain and pay the costs, including all guarantees and bonds that may be required for, of all permissions, licences, registrations at public registries required from any local, regional and/or State authority for installation and operation on the Site of the Plant.
- 15.5 All guarantees and bonds required by those public authorities or any other official body in connection with the industrial plan of the CONTRACTOR shall be for the account of the CLIENT.

16. INSURANCE

16.1 CONTRACTOR'S INSURANCE

The CONTRACTOR shall take out and keep in full force and effect the insurance cover specified below, as such coverage may reasonably be obtained in the insurance marketplace, contracted with Insurers and authorized to operate in Spain under applicable law, presenting the Insurance Certificates (together with the relevant insurance contracts/policies) within one (1) month of commencing the Works under this Agreement.

A) LIABILITY INSURANCE

General operating liability insurance, covering damage to property and persons and consequential damage caused to third parties through performance of the Work.

The cover shall be complete, including:

- a. General Liability,
- b. Employers Liability (Patronal Liability),
- c. Marine Liability (including damages to vessels and others),

with a combined ceiling of no less than E5,000,000 per loss.

B) CONTRACTORS'/INSTALLERS' ALL RISKS INSURANCE

On receiving notification to begin the Works the CONTRACTOR shall take out and keep in full force and effect a CONTRACTORS'/Installers' All Risks policy naming, as Additional Assured, the CLIENT and covering all the Works and Equipment relating to the Agreement (including provisional buildings and temporary site offices not included therein), and building equipment, tools, implements, parts and temporary storage.

The coverage shall be taken out against "All Risks" of physical damage and losses, and including the cost of mounting and dismounting, caused by events not expressly excluded in the policy terms. Assessment and settlement shall be at Replacement-as-New Value, fully covering the total cost of the Supply and including also, but by no means limited to, the following supplementary cover:

- Perils of Nature (flooding, storm, etc.);
- Clearing and Cleaning expenses;
- Extraordinary Expenses (overtime and extra costs of repairs and urgent remittances);
- Temporary storage;
- Strikes, riots and civil commotions (SRCC);
- Pre-existing Assets;
- Waiver of early cancellation;

- This policy shall be kept in force with the same cover from the time of notice to begin the Works or such other date as may be agreed between THE CLIENT and THE CONTRACTOR, up to the PAC of the Plant.

The CONTRACTOR shall see that its Subcontractors keep insurance policies in force with the same terms of cover and subrogation as those required of the CONTRACTOR hereunder. The Subcontractors' policies shall include a waiver of the rights of subrogation in any claims against the CLIENT.

C) CARGO INSURANCE

The CONTRACTOR shall take out and keep in full force and effect as from receiving notice to begin the Works or such other date as may be agreed between the CLIENT and the CONTRACTOR, up to the date of the PAC, an All Risks Cargo Insurance (Institute Cargo Clauses (A) and Institute Strike Clauses) to cover any losses or damages produced after leaving the original installations, during transit and intermediate stops and up to arrival at the destination, including loading and unloading. The sum insured shall be equal to and not in excess of the cost of the supplies, including the cost of freight and insurance.

D) OTHER INSURANCE

- (i) Industrial Accidents. Such industrial accident insurance or social security cover, including disability or invalidity for work, as may be necessary under the applicable labour laws or agreements between the CONTRACTOR and its employees.
- (ii) Motor Vehicle Road Insurance. Insurance of motor vehicles, including both own and/or rented vehicles, in pursuance of the applicable legislation.
- (iii) Other mandatory insurance.

16.2 INSURANCE DOCUMENTS

All insurance contracts required under Clause 16.1 shall include the following:

- (a) Waiver of Insurer's/Reinsurer's recourse of subrogation, if available, against the CLIENT, Financial Institution (if any), Contractors and Subcontractors, and their

Agents, Employees or Executives for their respective interests  
(Contractors Installers All risk and Cargo Insurance).

- (b) All insurance required of the CONTRACTOR shall be considered primary in the absence of any other insurance, and shall act first, not contributing jointly with other insurance or self-insurance contracts that the CLIENT may have.
- (c) The stipulation that, when there are numerous assured, any invalidating actions causing loss of the right to compensation produced through the action or omission of any one of them shall not jeopardize the right to compensation of the remaining Assured.
- (d) All the policies shall contain a clause stipulating that they may only be cancelled, not renewed, invalidated or substantially modified after giving the CLIENT at least thirty (30) days' notice.

All deductibles applicable to the insurance required of the CONTRACTOR shall be for the account of the CONTRACTOR.

The CONTRACTOR shall provide to the CLIENT the certificates or the copies of the insurance policies taken by the CONTRACTOR in accordance with the requirements above.

The required coverages hereunder shall in no way affect, or are they intended as a limitation of CONTRACTOR's liability with respect to its performance of the Work under this Agreement.

#### 17. SUBCONTRACTING

17.1. The CONTRACTOR may subcontract part of the Works hereunder to any of the firms and companies listed in Annex XI hereto, promptly notifying the CLIENT. Should the CONTRACTOR wish to modify the existing list or contract a Major Subcontractor not included therein (for the purposes of this Agreement a Major Subcontractor shall be a supplier, whose work contents or total value exceeds E[\*\*]), it shall submit a written request to the CLIENT for written approval; the CLIENT reserves the right to turn down the choice of any Major Subcontractor for a justified reason that it must communicate to the CONTRACTOR within the [\*\*] days following its request. If the CLIENT does not indicate its objection within [\*\*] days, the CONTRACTOR may proceed as indicated in its original notification.

Under no circumstances may the CONTRACTOR subcontract the tasks of testing and commissioning or the Works management.

- 17.2. In the event of Subcontracting as indicated above, the CONTRACTOR undertakes to include a clause in the contracts it signs with its Subcontractors whereby they will waive any action against the CLIENT deriving from this Agreement or the Subcontracting Contract, or any subrogation in claims of the CONTRACTOR against the CLIENT.
  - 17.3. In any case, the CONTRACTOR shall be responsible in the terms of Art. 1596 and 1597 of the Civil Code for the performance of the Works by the Subcontractors and their employees.
  - 17.4. Subcontracting shall not release the CONTRACTOR from any obligation or liability to the CLIENT hereunder. The CONTRACTOR shall always be liable for the performance of this Agreement.
  - 17.5. Thus, notwithstanding any Subcontracting, THE CONTRACTOR shall be fully answerable to THE CLIENT for all work, services, materials, designs, documents and for the actions, defaults and negligence of each Subcontractor and its agents or employees, as if they had been performed or committed by the CONTRACTOR or its agents or employees. Nor shall the inclusion of a Subcontractor on the list set out in Annex XI or the approval of a Subcontractor by the CLIENT, or the Subcontracting made by the CONTRACTOR release the latter from any liability hereunder.
  - 17.6. For the purposes contemplated in the Tax Act 58/2003 of 17 December, s. 43.1.f), the CONTRACTOR undertakes to submit to the CLIENT a specific certificate indicating that the Subcontractors are up to date with the payment of their tax obligations, issued on the terms and with the requisites stipulated therein and in the corresponding statutory instruments.
18. CONTRACT PRICE
- 18.1. The Agreed Price to be paid by the CLIENT to the CONTRACTOR for the Works as detailed in Annex II, there including all the parts, Equipments and Materials is Two Million and Six Hundred Sixty Two Thousand Five Hundred Eighty Three Euros (E2.662.583,00), excluding Value Added Tax (VAT).

18.2. The Agreed Price also includes all national and local taxes, duties, whatsoever customs expenses, etc. relating to the Plant, except for Value Added Tax (VAT), or such other tax as may substitute VAT in the future, which shall be supported by the CLIENT.

18.3. The breakdown of the Agreed Price is the following:

	COST (E)	% of Total
	-----	-----
1 PowerBuoy PB40ES	[**]	[**]
1 Underwater Substation	[**]	[**]
1 Mooring system	[**]	[**]
SCADA System	[**]	[**]
Submarine cable and electrical connections	[**]	[**]
Deployment cost	[**]	[**]
PowerBuoy 1 xPB40	[**]	[**]
Underwater substation	[**]	[**]
Submarine cable	[**]	[**]
Mooring system	[**]	[**]
Taxes/Import Duties	[**]	[**]
Letters of Credit	[**]	[**]
Site Survey work	[**]	[**]
ADCP (Acoustic Doppler Current Profiler)	[**]	[**]
Insurance costs	[**]	[**]
TOTAL	2.662.583,00	100%

18.4. The Parties agree and accept that the Agreed Price was calculated on the basis of an estimation of the [\*\*]. The Parties further agree that [\*\*] will be supplied as required for the Works [\*\*].

18.5. In the event of any [\*\*], the Parties agree as follows:

- (i) The [\*\*] shall bear any and all [\*\*] duly supported and in written documents, up to a maximum amount of [\*\*] euros (E[\*\*]).
- (ii) The [\*\*] shall bear any and all [\*\*] in excess of [\*\*] euros (E[\*\*]), provided that if any of the concepts individually included in the table above [\*\*] in excess of [\*\*]% of the above indicated prices the CONTRACTOR will require CLIENT's prior written approval before the purchase of the Equipment, contracting the services or incurring in any expense not contemplated in the initial budget. The CONTRACTOR will give the CLIENT all the necessary information to support the reasons of the [\*\*]. If the CLIENT does not give its approval to such [\*\*], the CONTRACTOR may (a) [\*\*] and pursue the works, (b) look for other supplier to purchase the relevant Equipment or contracting the services or (c) terminate the Agreement.

18.6 In the event the costs do not reach the Agreed Price, the [\*\*] will pay [\*\*]. It will be agreed between the Parties how the money [\*\*].

18.7 In order to enable the CLIENT to control the cost and expenses incurred by the CONTRACTOR regarding the different concepts of the table above the CONTRACTOR shall report the [\*\*], to the CLIENT, on a monthly basis by delivery of the relevant documents supporting those [\*\*] as well as [\*\*]. This monthly report will include also the [\*\*].

18.8 Except for the [\*\*] that will be constructed [\*\*], the CONTRACTOR shall aim to purchase all the equipment to [\*\*] or whose price was not competitive or whose quality was not acceptable. In this case the CONTRACTOR will require the Client written approval before the purchase of the Equipment. The CONTRACTOR will give the Client all necessary information to support the reasons of the subcontractor selection. The CONTRACTOR will keep the CLIENT informed about its contacts with [\*\*] and the CLIENT will collaborate with the CONTRACTOR [\*\*] and conditions so to allow the development of the Works according to the Calendar.

19. TERMS OF PAYMENT AND BILLING

### 19.1 SCHEDULE OF MILESTONE

The CONTRACTOR shall invoice the Agreed Price according to the Schedule of Milestones that is attached hereto as Annex V. All payments shall be made at [\*\*] days invoice date, by cheque or bank transfer.

### 19.2 COMPLETION OF MILESTONE

Once the CONTRACTOR considers that a Milestone has been completed, it will inform the CLIENT in writing (the "NOTICE OF COMPLETION"). Such notification must be accompanied by the required elements to document completion of the Milestone according to Annex V.

The CLIENT will have [\*\*] Business Days from the date of Notice of Completion to inspect the Works and confirm that the Milestone has been duly completed, in which term it must serve the CONTRACTOR with one of the following notices:

- (i) Notice of Approval: The CLIENT will confirm that the Milestone has been duly completed;
- (ii) Notice of Pending Works: The CLIENT will inform the CONTRACTOR of what actions to achieve the Milestone must be taken by the CONTRACTOR in order for the relevant Notice of Approval to be issued.

Failure of the CLIENT to send written notice as detailed in (i) or (ii) above within the [\*\*] Business Days following the Notice of Completion by the Contractor will be deemed to be a Notice of Approval for all purposes under this Agreement.

### 19.3 INVOICING

The CONTRACTOR shall send the relevant invoice to the CLIENT once a Notice of Approval has been issued (or once a Notice of Approval is deemed to have been issued according to Clause 19.2).

## 20. PERFORMANCE BOND/LETTER OF CREDIT

20.1 The CONTRACTOR shall deliver to the CLIENT a letter or credit of first requirement issued by a top ranking bank [\*\*] against the payment of that same amount by the CLIENT to secure the performance of the Works (the "PERFORMANCE BOND"), as attached in Annex VIII. This Performance Bond shall be valid and effective without any

obligation by the Client to return it until the earlier of (i) date of signature of the PAC and payment of any liabilities deriving from this Agreement or (ii) the termination of this Agreement according to Clause 30.

- 20.2 The CONTRACTOR shall grant a letter of credit of the first requirement issued by a top ranking bank [\*\*] against payment of the same amount upon performance of Milestone number 2. This letter of credit shall secure the supply of the equipment covered by that Milestone and shall be valid and effective until the earlier of (i) delivery of the respective equipment or (ii) termination of the Agreement.
- 20.3 The CONTRACTOR shall grant a letter of credit of the first requirement issued by a top ranking bank [\*\*] against payment of the same amount upon performance of Milestone number 3. This letter of credit shall secure the supply of the equipment covered by that Milestone and shall be valid and effective until the earlier of (i) delivery of the respective equipment or (ii) termination of the Agreement.
- 20.4 The CONTRACTOR shall grant a letter of credit of the first requirement issued by a top ranking bank [\*\*] against payment of the same amount upon performance of Milestone number 4. This letter of credit shall secure the supply of the equipment covered by that Milestone and shall be valid and effective until the earlier of (i) delivery of the respective equipment or (ii) termination of the Agreement.
- 20.5 The CONTRACTOR shall grant a letter of credit of the first requirement issued by a top ranking bank [\*\*] against payment of the same amount upon performance of Milestone number 6. This letter of credit shall secure the supply of the equipment covered by that Milestone and shall be valid and effective until the earlier of (i) delivery of the respective equipment or (ii) termination of the Agreement.
- 20.6 In the event of total or partial enforcement of the Performance Bond, the CONTRACTOR shall restore the Performance Bond to its original value within no more than [\*\*] calendar days after such enforcement. Otherwise, without prejudice to any other actions that may correspond to it by law, the CLIENT shall be entitled to suspend any payment it may have pending hereunder or any contracts made by virtue hereof.

## 21. WARRANTIES

The CONTRACTOR offers the following guarantees effective as from the PAC of the Plant:

The remedies set forth in this Clause 21 are the sole and exclusive remedy of the CLIENT with respect to the breach of the stipulated guarantees.

#### 21.1 OWNERSHIP GUARANTEE

The CONTRACTOR represents and warrants that at the date of signature of the PAC:

- (i) the Equipment comprising the Plant is fully and exclusively owned by the CONTRACTOR;
- (ii) the Equipment comprising the Plant is transferred to the CLIENT according to this Agreement free from charges, encumbrances, constraints on transfer or third-party rights; and
- (iii) the CONTRACTOR is authorised to transfer their full and exclusive ownership to the CLIENT.

This ownership guarantee shall be valid and enforceable against third party claims throughout the limitation period established in the applicable law.

In the event of default, invalidity or uncertainty of these guarantees, the CONTRACTOR shall defend the validity of the sale of the Equipment and hold the CLIENT harmless from damages of whatsoever nature, including costs and expenses.

If there is any lien or encumbrance on any of the Equipment and it is not imputable to the CLIENT, the CONTRACTOR must, as soon as possible, replace or cancel that attachment, lien or encumbrance at its cost.

The CONTRACTOR represents and warrants to the CLIENT that all creations, plans, drawings, specifications, documents, procedures, methods, products or inventions supplied, prepared or made by the CONTRACTOR hereunder and the use of any of them does not infringe any third-party rights. In the event of any claim or action by a third party alleging infringement of any intellectual or industrial property right, the CLIENT must notify the CONTRACTOR promptly and the CONTRACTOR will carry out all the negotiations to settle the claim. At the request of the CONTRACTOR, the CLIENT will provide all reasonable assistance to the CONTRACTOR against the claim of the third party. In such case, the CONTRACTOR shall hold the CLIENT harmless from all damages (including costs and expenses) that may be produced and shall obtain

for the CLIENT the right to use, or continue using, the Equipment. Delayed performance of the Works due to this clause shall not release the CONTRACTOR from any liabilities for delays or entitle it to raise the Agreed Price.

#### 21.2 QUALITY GUARANTEE

The CONTRACTOR guarantees that the components of the Equipment comprising the Plant shall comply with the standards required for normal operation of the Plant during the term of the O&M Agreement.

If there is a breach of this Guarantee, the CONTRACTOR shall have to repair or replace, [\*\*] any such component on its account, [\*\*], if required, after the achievement of [\*\*] that shall be borne by the CLIENT.

#### 21.3 REPAIR AND REPLACEMENT GUARANTEE

The CONTRACTOR shall, during a period of [\*\*] beginning with [\*\*], except for the [\*\*] for which the Parties will endeavour to obtain a [\*\*] guarantee in which case the CONTRACTOR shall grant an equivalent guarantee to the CLIENT, repair or replace, [\*\*] all failures or defects in the Equipment comprising the Plant elements found to have a faulty design, quality or operation as soon as possible without any cost to the CLIENT. The cost of materials, labour and, in general, all expenses incurred in total repair shall be for the account of the CONTRACTOR, except the cost of retrieval from the Site and redeployment of defective items, if required, after the achievement of [\*\*] that shall be borne by the CLIENT.

If the CONTRACTOR does not repair or replace in a reasonable period of time, the CLIENT shall notify the CONTRACTOR, indicating a reasonable deadline for making the repair or replacement. If the CONTRACTOR continues not fulfilling its obligation after that time, the CLIENT shall be entitled to carry out the repair for the account of the CONTRACTOR, which will be responsible for the direct damage caused by this delay.

Correct and adequate repair by the CLIENT in the above circumstances shall not release the CONTRACTOR from all its liabilities.

#### 21.4 POWER OUTPUT GUARANTEE

The CONTRACTOR guarantees fulfillment of a Power Output of at least [\*\*]% of that predicted (according to the Theoretical Power Table contained in table 1 of Annex XIV) during the Testing

Period given the measured energy levels. Wave energy levels will be collected and recorded for at least [\*\*]% of the Testing Period by the dedicated [\*\*] unit at or near the Site, or, if the [\*\*] fails to collect the required data for the project, by extrapolating data from publicly available sources (e.g. RPE 2914, 2915, or Bilbao buoy), the latter being subject to approval by the CLIENT. PowerBuoy output levels will be recorded for at least [\*\*]% of the Testing Period by the [\*\*]. PowerBuoy output power, as measured with the meter equipment. The proposed meter equipment with its auxiliary transformers would have accuracy compliant with the [\*\*] and have bi-directional measurement capability with Ethernet communications. A [\*\*] or equivalent meter shall be installed at the low tension wire at the output from the PowerBuoy, will be compared against the predicted level which is calculated using the collected wave energy levels and the Theoretical Power Table contained in table 1 of Annex XIV.

In the event of breach of this guarantee that results in the delay of the [\*\*] beyond the date included in Clause 30, the remedies set forth in Clause 30 shall apply.

#### 21.5 ENERGY PRODUCTION GUARANTEE

The CONTRACTOR guarantees fulfillment of an Energy Production of at least [\*\*]% of that predicted according to the Theoretical Power Table contained in table 1 of Annex XIV using the [\*\*] in the method described in Clause 21.4.

In the event of breach of this guarantee that results in the delay of the [\*\*] beyond the date included in Clause 30, the remedies set forth in Clause 30 shall apply.

#### 21.6 SPARE PARTS GUARANTEE

The CONTRACTOR guarantees the existence of spare parts [\*\*] for any component of the Equipment and undertakes to offer the CLIENT their availability for supply during the term of the Testing Period until [\*\*] is achieved or this Agreement is terminated.

#### 21.7 LIMITATIONS ON GUARANTEES

The CONTRACTOR does not guarantee the consequences arising from the CLIENT's failure to observe the instructions contained in the operating and maintenance manuals, unless it is the CONTRACTOR that is responsible for the operation and maintenance of the Plant, nor does it guarantee the consequences of normal wear and tear or corrosion, from external phenomena, from abnormal or negligent use, nor those arising from any repairs or modifications made

without prior approval of the CONTRACTOR, except when they have been made by virtue of default by the CONTRACTOR of its obligation to repair within the times established in Clause 21.3.

## 22. CLIENT'S OBLIGATIONS

The CLIENT shall, without prejudice to the other obligations stipulated in this Agreement, comply with the obligations established in this Clause.

### 22.1 ACCESS TO THE SITE AND PERMITS

The CLIENT shall ensure that the CONTRACTOR has full, unconditional and free access to and within the Site, allowing the CONTRACTOR undisturbed and unhindered access to each part of the Plant, at all times and without prior notice, and obtaining all permissions and licenses that might be required, in due time, for the purpose of fulfilling the CONTRACTOR's obligations under this Agreement.

The CLIENT shall apply for all permits, consents and licenses required to install and operate the Plant as listed in Annex XII. The CLIENT shall apply simultaneously for the granting of an authorisation by the coastal authority for the occupation of the necessary coastal public domain for temporary testing (the "TEMPORARY PERMIT") as well as for all permits needed for electricity production (including but not limited to the authorisations of installation and operation of the Plant (including connection facilities) and the coastal concession to occupy the necessary public domain in a long term basis with fixed -not moveable- infrastructures) for Phase 2 A and 2 B (the "FULL PERMIT").

### 22.2 INFORMATION

The CLIENT shall facilitate, in terms envisaged in this Contract, any information and documentation necessary for the undertaking of the various activities and shall notify any situation the CLIENT knows that could alter the normal execution of the Agreement.

### 22.3 OTHER CLIENT OBLIGATIONS

The CLIENT shall be responsible for the following (either directly or by causing the performance by the relevant parties to the Santona Wave Energy Agreement):

- a) Procurement and installation of the cable vault and onshore cable to connect the cable vault to the onshore substation, if required.
- b) Procurement and installation (and payment) of the onshore substation equipment including termination of onshore cable from the cable vault to onshore substation.
- c) Grid connection from onshore substation to the local utility grid.
- d) Land purchase costs and/or any wayleave or easement payments.
- e) Upgrade of the onshore [\*\*] transmission line to make it suitable for a 1.39 MW generation facility.
- f) All site connections for electric ties, telephone and [\*\*].
- g) Expeditious approval of major Subcontractors according to Clause 17.

### 23. LIABILITY

- 23.1 Each Party shall be liable for those direct damages that it causes to the other Party as a consequence of default of its obligations under this Agreement. The Parties expressly agree that the so-called indirect losses or indirect damages, including loss of profit, loss of production and consequential loss, shall not be enforceable.
- 23.2 In any event, the CONTRACTOR's liability to the CLIENT under this Agreement shall be limited to a maximum amount equal to the Agreed Price and the CLIENT's liability to the CONTRACTOR under this Agreement shall be limited to a maximum amount equal to the Agreed Price increased by interest at EURIBOR at 3 months plus 2%.
- 23.3 The CONTRACTOR shall hold the CLIENT harmless from all and any claims that may derive from default by the CONTRACTOR of its obligations under this Agreement regarding occupational hazard prevention or the environment, taxes or safety and hygiene.
- 23.4 The CONTRACTOR shall be solely liable for fulfillment of all legal obligations, concerning employment, social security, safety and hygiene at work, occupational hazard prevention to its employees and Subcontractors.
- 23.5 The Parties likewise agree that any compensation that one of the Parties receives as beneficiary from any insurance policy, will be deducted from the corresponding claim for

damages or, in case such a compensation maintains the Party in question harmless regarding the damages suffered, it will prevent such Party from claiming damages.

#### 24. FORCE MAJEURE

24.1 The Parties shall be released from their obligations hereunder when performance is made impossible or unreasonably cumbersome due to an event or fact external to the Parties, unforeseeable and unavoidable and beyond their control ("Acts of God or Force Majeure"), provided that: (i) the Acts of God or Force Majeure are not entirely or partially the result of a default, omission or negligence by the Party claiming exoneration, or, in the case of the CONTRACTOR, by one of its Subcontractors; (ii) the Party claiming exoneration shall notify the other Party of the act of God or force majeure as soon as possible; and (iii) the Party claiming exoneration continuously makes every reasonable endeavour to minimise the effects of that cause of force majeure, keeping any delay in the Works and limiting damages to the Plant to a minimum. For the purpose of this Contract, Acts of God or Force Majeure shall be deemed to include the following situations, in addition to those contemplated in the Spanish Civil Code, Art. 1105:

- a) Those natural phenomena with catastrophic effects (for example, earthquakes, heavy storms, tidal waves, floods (whether large or small), volcanic eruptions, movements of the earth, coastal storms and the like, or Torrential rain, snow or ice making access to the Site impossible or very difficult.
- b) Riot, civil commotion, strikes, lockouts or other industrial disputes, save when only the employees of the CONTRACTOR or its Subcontractor are affected.
- c) Landslide, flooding, fire, electric discharge, charge induced by electric discharge, explosions.
- d) Revolt, or popular uprising, acts of war, Actions or omissions by the government or governmental agency (national, autonomous or local) or public authorities or their representatives.
- e) Acts of terrorism or sabotage.

24.2 In the event of delay caused by force majeure, the deadlines stipulated in the Calendar shall be extended for a time equal to the duration of the cause of force majeure, or if it is

not possible to restore normal circumstances immediately upon cessation of the cause of force majeure, for whatever time may be reasonably necessary, as previously agreed between the Parties, which shall be obliged to fulfill all other obligations not affected by the circumstance in question. The costs incurred in repair, replacement or adjustment of elements damaged through causes of force majeure shall be borne by the Party bearing the risk of the elements in question at the time of the force majeure. Either Party may terminate this Agreement if Works are suspended for acts of God or force majeure for an uninterrupted period of more than six (6) months. All Works completed shall be settled upon termination by the Contract.

#### 25. CHANGES IN LEGISLATION

25.1 If any binding legislation is passed or amended after execution of this Contract and up to Commissioning of the Plant, the CONTRACTOR shall make the necessary technical changes at each of the affected Equipment and Materials at a competitive price, as agreed with the CLIENT. This modification of the Agreed Price and Calendar shall only be required if (i) the changes in question require substantial modifications to the design or performance of the Works; and (ii) the CONTRACTOR has notified the CLIENT of the existence of the change and sent a quote within [\*\*] months following entry into force of the legal provision containing said change.

25.2 The Parties agree that a reduction in the number of working hours shall under no circumstances be considered a change in legislation for the purposes of this Agreement, in which case the CONTRACTOR shall assign such manpower to the works as may be necessary to fulfil the agreement within the Agreed Price and Time for Completion.

#### 26. CLIENT'S AND CONTRACTOR'S REPRESENTATIVES. NOTICES

26.1 Mrs. Cristina Heredero Bueno is named representative of the CLIENT.

26.2 Mr. Mark Draper is named representative of the CONTRACTOR.

26.3 The CONTRACTOR's representative shall coordinate the tasks of the overall project, being responsible, among others, for the following:

a) Acting as liaison with the CLIENT's representative.

- b) Checking the validity of the documentation delivered to the CLIENT, to ensure fulfillment of the objectives pursued under the Contract.
- c) Sending the CLIENT all contractual communications and monthly reports on performance of the Works as from the date of signature of this Agreement.

26.4 The CLIENT's representative shall be responsible, among others, for the following:

- a) Acting as liaison with the CONTRACTOR's representative transmitting the CLIENT's instructions and receiving notification from the CONTRACTOR.
- b) Monitoring and checking the correct development and execution of the Works.

26.5 The Parties indicate the following addresses and contracts for all Notices to be made hereunder:

THE CONTRACTOR	THE CLIENT
Address: Warwick Innovation Centre	Address: Tomas Redondo, 1 28033
Gallows Hill, Warwick	Madrid, Spain
CV34 6 UW, UK	
Telephone: +44 1926 623371	Telephone: +34 91 784 2598
Fax: +44 1926 408190	Fax: +34 91 784 3704
Contact: Mark Draper	Contact: Cristina Heredero Bueno

26.6 All notices and other communications between the representatives shall be made in writing by a means allowing evidence of receipt. This notwithstanding, notification by fax or e-mail shall be considered validly made provided the other Party acknowledges receipt. In the event of unforeseen circumstances during performance of the Agreement, the CLIENT shall be informed within no more than twenty-four (24) hours, firstly by telephone and subsequently by any of the above-mentioned means.

## 27. ORGANISATION

Within [\*\*] days after the date of signature of this Agreement, the CONTRACTOR shall submit to the CLIENT for approval an organisation chart indicating the name of individuals responsible for the Works. The number, field of expertise and professional qualifications of these people shall be adequate for performance of this Agreement.

After approval of this organisation, no changes may be made to the project manager, the site manager or the accident prevention officer without written authorisation from the CLIENT, such authorization cannot be unreasonably withheld. Should it become obvious that the existing organisation is not adequate or sufficient to guarantee fulfilment of its obligations, the CONTRACTOR shall, upon indication by the CLIENT, address the problem and if necessary make any changes in its organisation.

The organisation shall be headed by the person nominated by the CONTRACTOR's Representative as its representative for dealings with the CLIENT throughout the duration of the work.

## 28. ASSIGNMENT

28.1 No Party may assign its rights and obligations hereunder to a third party, without prior written authorisation from the other Party. This authorisation shall not be necessary, mere notification being sufficient, for transfers within its group of companies, as defined in the Commercial Code Art. 42.

28.2 The CLIENT may assign all or part of its rights hereunder to any financial institution without written authorisation from the CONTRACTOR, as surety for payment of the financing obtained by the CLIENT, on one occasion or by virtue of several successive contracts.

## 29. TAXES AND EXPENSES

### 29.1 EXPENSES

Each Party shall pay the costs and expenses (including fees of agents, representatives, advisers) incurred in the preparation, negotiation and fulfillment of this Contract.

### 29.2 TAXES

29.2.1 The [\*\*] undertakes to pay all taxes, rates, surcharges, contributions, excise tax, customs duties and, in general, all and any state or local direct or indirect tax levied under the Spanish tax laws on the manufacture, supply, service, sale, installation or whatsoever other services provided by the CONTRACTOR hereunder. The [\*\*] shall also pay all taxes, rates, duties and, in general, all and any tax or expense deriving from the importing of goods or services made directly with the CONTRACTOR for inclusion in its Supply.

29.2.2 The [\*\*] undertakes to pay the VAT, or whatsoever other indirect tax of a similar nature that may be established to substitute VAT during the effective term of this contract, levied on the deliveries of goods and provision of services by the CONTRACTOR to the CLIENT as a result of the Works contemplated herein. The [\*\*] shall also pay all taxes, charges, rate, encumbrances or royalties incurred in connection with the authorisations, permissions or licences to be obtained by the CLIENT and the Taxes on building, installation and Works.

29.2.3 With a view to optimising the tax charge levied on the deliveries of goods and services hereunder, each Party undertakes to provide the other, in due time and form, with any documents that may be necessary or recommendable to guarantee the best rating of the payments to be made. In particular, with regard to the provision of services, for the possible application of double taxation agreements on income tax, a certificate will be required, issued by the tax authorities in the corresponding country, confirming the residence of the provider of the service for tax purposes.

### 30. CONFIDENTIALITY

30.1 Either Party must obtain written approval from the other Party before publishing notices, announcements or photographs of whatsoever nature concerning the Works or the Plant object of this Agreement, except where disclosures are required by law, regulation, stock exchange rules or the like. Such authorisation should not be unreasonably withheld.

30.2 The Parties undertake to maintain the utmost confidentiality in respect of, the negotiations among them prior to and during the effective period hereof, the documents exchanged in connection with those negotiations and any information whatsoever received as a result thereof.

30.3 All Technology, Technical Documentation, commercial terms of this Agreement, technical information, trade secrets or Know-How revealed hereunder, and their very existence (hereinafter "CONFIDENTIAL INFORMATION") shall be kept strictly confidential and shall not be disclosed by the receiving Party, unless with the prior written consent of the Party to which it belongs, which consent shall not be withheld if disclosure is required under applicable law.

- 30.4 The Confidential Information shall be treated confidentially by the Parties and shall not be disclosed by the party receiving it or put to any use other than that contemplated herein without the prior consent of the Party to which it belongs. In this regard, the CLIENT hereby agree that unless CONTRACTOR has granted written permission, it will not build, or have any third party build, either directly or indirectly through a company controlled thereby, any wave power stations that are based on the Technology. This obligation will be in force during [\*\*] years from the date hereof unless the CONTRACTOR or its successors or assignees (i) cease doing business on a permanent basis, as a result of bankruptcy, liquidation, close-up or other causes or (ii) are restrained for any other reasons to authorise the use of such Technology.
- 30.5 In relation to the above-mentioned obligations, the Parties undertake to, in particular, adopt such measures as may be necessary to prevent third parties from gaining unauthorised access to the Confidential Information and to limit access to the Confidential Information to authorised employees who need it to be able to fulfill the Agreement, binding such employees to the same confidentiality obligations.
- 30.6 This confidentiality obligation shall not be applicable to any information accessible to the public other than through default of the confidentiality obligation by the receiving Party; or that has been published prior to the date of this Agreement; or that the receiving Party already had and which is not subject to any confidentiality agreement between the Parties, provided that the other Party has been duly informed at the time of its communication; or that is received through third parties without restrictions and does not imply default of the Agreement; or that is independently developed by the receiving Party.
- 30.7 The Parties agree that any company of the group of companies of each of the Parties, and any employee and consultant of such companies, will be considered as third party for the purposes of the confidentiality obligations above-stated. Therefore, disclosure of the Confidential Information to third parties before-mentioned will require the approval of the CONTRACTOR.

30.8 Upon termination of this Agreement, the CLIENT will exercise reasonable efforts to return all Confidential Information received in tangible form and all copies thereof to the CONTRACTOR, except for the Technical Documentation.

### 31. TERMINATION OF THE CONTRACT

#### 31.1 TERMINATION BY THE CLIENT:

The CLIENT may terminate this Agreement if:

- (i) The CONTRACTOR interrupts the execution of the Works, without a justified cause for a term greater than one hundred eighty (180) days.

In this event, the CLIENT will grant the CONTRACTOR a term of thirty (30) days for remedying the breach of the Agreement. If the CONTRACTOR does not remedy the relevant breach within the thirty (30) days term, the CLIENT shall be entitled to terminate the Agreement by written notice to the CONTRACTOR and to enforce the Performance Bond provided by the CONTRACTOR.

- (ii) The Definitive Acceptance of the Plant is not achieved on December 31, 2009 for reasons attributable to the CONTRACTOR. The Parties agree that if there is a delay in the licensing of the Plant in relation to the foreseen dates (Works License is forecast to be obtained on August 1, 2007) for the obtaining of the permits as contained in the Calendar, this date shall be delayed in accordance.

In this event, the CLIENT shall be entitled to terminate the Agreement by written notice to the CONTRACTOR and the CONTRACTOR shall not be entitled to the payment of the non achieved Milestones. The CLIENT shall immediately return the Performance Bond provided by the CONTRACTOR.

- (iii) In addition to the above any of the Parties may terminate this Agreement upon a very serious and repeated breach by the other Party of a major obligation of this Agreement that was notified to the defaulting Party and was not remedied within 30 days from the above mentioned notification.

#### 31.2 TERMINATION BY THE CONTRACTOR:

The CONTRACTOR may terminate this Agreement if:

- (i) The CLIENT delays any payments for a term greater than sixty (60) days after the date that a payment should have been made under this Agreement and the payment has been requested in writing to the CLIENT. In this event, the CONTRACTOR will grant the CLIENT a term of thirty (30) days for remedying the breach of the Agreement. If the CLIENT does not remedy the relevant breach within the thirty (30) days term, the CONTRACTOR shall be entitled to terminate the Agreement by written notice to the CLIENT without prejudice to its right to claim for interest any amounts due at EURIBOR at 3 months plus 2%.

For clarification purposes, if the CONTRACTOR has suspended the Agreement according to clause 13.3 and the suspension has lasted more than sixty (60) days, it may immediately terminate this Agreement by written notice to CLIENT and claim interest on the amounts due at EURIBOR at 3 months plus 2%.

- (ii) The Definitive Acceptance of the Plant is not achieved on December 31, 2009 for reasons attributable to the CLIENT.

In this event, the CONTRACTOR shall be entitled to terminate the Agreement by written notice to the CLIENT. The CLIENT must immediately return the Performance Bond provided by the CONTRACTOR.

- (iii) In addition to the above any of the Parties may terminate this Agreement upon a very serious and repeated breach by the other Party of a major obligation of this Agreement that was notified to the defaulting Party and was not remedied within 30 days from the above mentioned modification.

### 31.3 EFFECTS OF TERMINATION

Upon termination of this Agreement based on any of the foregoing causes, the CONTRACTOR shall transfer ownership of the Equipment delivered or installed to the CLIENT if that has not already occurred, together with their warranties from the suppliers, and the CLIENT must immediately pay the CONTRACTOR all invoices pending payment, as well as the value of the Works and Equipment supplied, delivered or installed prior to termination, not yet invoiced.

No further remedies, actions, penalties or damages shall be available to the Parties apart from the ones specified in this Clause for each cause for termination.

#### 31.4 SURVIVABILITY OF CONFIDENTIALITY

The confidentiality obligations will survive this Agreement in the event of termination according to clause 29.4.

#### 32. DISPUTES

32.1 Any disputes between the Parties in connection with this Contract and, in particular, concerning its interpretation, validity, compliance and termination (including the validity and compliance with this Clause) shall be submitted to arbitration, that shall be settled by a bench of three arbitrators following the rules about Conciliation and Arbitration of the International Chamber of Commerce.

32.2 The arbitration board will be nominated by the President of the International Chamber of Commerce.

32.3 The seat of arbitration shall be Madrid (Spain). The parties agree that the language of the arbitration, including oral hearings, written evidence and correspondence, shall be Spanish/English.

32.4 The arbitration award must be pronounced by the bench of arbitrators before six months from the moment the last of the arbitrators accepted his office. This time limit could only be extended by agreement between the parties notified to the arbitrators before the closing date.

32.5 The parties enter into a mutual engagement to serve the arbitral award as soon as it is notified to them.

32.6 This Contract shall be governed by the laws of Spain.

#### 33. CONTRACTUAL DOCUMENTS AND INTERPRETATION

33.1 The Parties by mutual agreement will attempt to resolve the questions and differences that arise from interpretation of this Contract and from performance of the activities subject hereto.

33.2 To resolve any differences that may arise between the body of this Contract and its Annexes, the body of this Contract will always prevail. The differences that may arise between documents comprising this Contract will be resolved giving priority to each of those documents in accordance with the following order of priority:

1. The body of the Contract;
2. The Annexes to the Contract

34 LANGUAGES

All documentation and correspondence that has to be prepared by the Parties will be drafted in English. Any documents required by the Spanish authorities shall be written in Spanish, unless accepted in English.

IN WITNESS WHEREOF, this Agreement is signed in two originals, both to the same effect, at the place and date first above mentioned.

/s/ Raphael de Iyata

[signed illegible]

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THE CLIENT

-----  
THE CONTRACTOR

ANNEX I  
SCOPE OF SUPPLY

ANNEX I  
SCOPE OF SUPPLY

EQUIPMENT AND SERVICES PROVIDED

1.0 BACKGROUND

The objective of the Santona Wave Energy Project (SWEP) is to install and operate a 1.39 MW pilot wave powered electrical generating system located off the northern coast of Spain. The SWEP project consists of several phases. Phase 1 (now complete) consisted of project scoping, planning and design. Phase 2A consists of design modification, fabrication, and installation of a 40 kW capacity PowerBuoy. Further phases will consist of design modification, construction, and installation of multiple, PB-150 PowerBuoys.

2.0 SCOPE

This document describes the scope of supply that will be provided by Ocean Power Technonologies, Ltd., (OPT) for Phase 2A of the SWEP Project. Key areas of work are summarized as follows:

Project Management

Site Work  
[\*\*]

Design Adaptation for Chosen Site  
[\*\*]

Material Procurement, Manufacture, Assembly and Test  
[\*\*]

Site Preparation  
[\*\*]

Installation  
[\*\*]

Commissioning

3.0 WORK DESCRIPTION

3.1 PROJECT MANAGEMENT

OPT shall provide project management for the complete project. Key responsibilities of the project management function are [\*\*]. The project management function shall also be responsible for the [\*\*].

3.2 SITE WORK

### 3.2.1 [\*\*]

A [\*\*] of the [\*\*] for the PB40ES shall be conducted. Additional detailed surveys shall be conducted to determine [\*\*] to the seabed.

### 3.2.2 [\*\*]

Necessary [\*\*] shall be conducted to [\*\*] in order to determine required [\*\*].

### 3.2.3 [\*\*]

An [\*\*] will be deployed at the site in order to measure the [\*\*] to the PowerBuoy system. OPT will carry-out [\*\*] of wave data from the [\*\*].

## 3.3 DESIGN ADAPTATION FOR CHOSEN SITE

### 3.3.1 [\*\*]

[\*\*]  
A final [\*\*] with locations of [\*\*] shall be prepared.

### 3.3.2 [\*\*]

#### 3.3.2.1 [\*\*]

The [\*\*] design shall be modified for the [\*\*] according to the [\*\*] and [\*\*] (see 3.2.1 and 3.2.2). [\*\*] at the [\*\*] conditions with appropriate [\*\*] shall be used for [\*\*] and [\*\*].

#### 3.3.2.2 [\*\*]

[\*\*] of the [\*\*] shall be produced containing any [\*\*].

#### 3.3.2.3 [\*\*]

[\*\*] of the [\*\*] shall be produced containing any [\*\*].

## 3.4 PROCUREMENT, MANUFACTURE, TRANSPORTATION, ASSEMBLY AND TEST

### 3.4.1 [\*\*]

[\*\*] shall be prepared and provided to [\*\*]. The selection of [\*\*] shall be evaluated on a number of factors including [\*\*]. For companies [\*\*] shall be considered in the [\*\*] comparison. [\*\*] for various elements of the project shall be [\*\*], and put [\*\*] with specific terms issued for [\*\*].

### 3.4.2 [\*\*]

OPT shall supply a [\*\*] PowerBuoy including the following equipment:

[\*\*]

#### 3.4.2.1 [\*\*]

OPT shall provide [\*\*], and [\*\*] for the [\*\*] to selected [\*\*]. OPT may elect to [\*\*].

The structure consists primarily of [\*\*]. The [\*\*] is a [\*\*]. The [\*\*] is [\*\*].

The [\*\*] section is made up of a [\*\*].

The [\*\*] is designed with [\*\*] for a three point mooring system, and a feature for termination of the [\*\*].

The entire buoy structure is painted with [\*\*].

[\*\*] of the fabrication and assembly process will be performed by a combination of [\*\*].

The [\*\*] work is expected to be carried out by building [\*\*], and these sections can [\*\*].

#### 3.4.2.2 [\*\*]

The [\*\*] Buoy contains [\*\*] that converts the linear motion of the [\*\*] into electrical power in the form of [\*\*]. A [\*\*] utilizing [\*\*] the linear motion of the float into rotary power. A [\*\*] transforms rotary mechanical power into electrical power. A series of [\*\*], and [\*\*] devices produces power [\*\*].

[\*\*] are mounted in the [\*\*] and connect to the [\*\*]. In addition to providing the mechanical connection to the [\*\*], the [\*\*].

[\*\*] direct the flow of [\*\*] from the [\*\*] to the [\*\*], and [\*\*] and [\*\*] and equipment over [\*\*] within specified levels.

[\*\*] are mechanically mounted and coupled to [\*\*] from the [\*\*], producing [\*\*].

Electrical power from the generator is [\*\*] by [\*\*]. The resulting [\*\*] is stored in [\*\*], and [\*\*].

[\*\*] will manufacture and supply the system components. [\*\*] will be subject to test and inspection as necessary [\*\*].

The [\*\*] and [\*\*] equipment is [\*\*] designed to be [\*\*] the [\*\*] buoy structure. This [\*\*] and [\*\*] assembly shall be [\*\*] for insertion into the buoy.

#### 3.4.3 [\*\*]

[\*\*] shall [\*\*] for the [\*\*] Buoy amenable to the specific seabed conditions. The system shall include:

[\*\*]

System [\*\*].

[\*\*] are installed to [\*\*]. These [\*\*] are built for the [\*\*] with appropriate [\*\*]. The [\*\*] buoy will be [\*\*] using [\*\*], each connected to an [\*\*]. The [\*\*] buoys shall be [\*\*].

[\*\*] shall be prepared and [\*\*] shall perform [\*\*] prior to [\*\*].

#### 3.4.4 [\*\*]

A [\*\*] System shall be supplied for the PowerBuoy System. The system incorporates the following items and features:

[\*\*]

OPT shall supply the [\*\*] system including the [\*\*] and [\*\*] to and from the [\*\*] and [\*\*] will build, test, install and commission the necessary [\*\*] and [\*\*]. Critical components will be subject [\*\*].

[\*\*] shall integrate the [\*\*] system with the [\*\*]. The [\*\*] system shall be tested with the [\*\*] system prior to [\*\*].

#### 3.4.5 [\*\*]

The [\*\*] is an [\*\*]. The [\*\*] consists of several major components:

[\*\*] will build, test, install and commission the necessary [\*\*] will furnish necessary [\*\*]. Critical components will be subject to [\*\*]. The [\*\*] shall be assembled and tested [\*\*].

#### 3.4.6 [\*\*]

The [\*\*] is a [\*\*] with the following features:

[\*\*]

The [\*\*] is also a [\*\*] with the following features:

[\*\*]

[\*\*] shall be [\*\*] based on their capabilities to meet [\*\*]. The [\*\*] shall be tested and inspected at the [\*\*] as necessary prior to the [\*\*].

The [\*\*] will be fabricated into an [\*\*].

#### 3.4.7 [\*\*]

A specific site shall be selected as a [\*\*]. This location will be in close proximity to the [\*\*], have proper facilities for final assembly work required, and located [\*\*].

[\*\*] will ship equipment for the [\*\*]. Several examples are as follows:

[\*\*]

#### 3.4.8 [\*\*]

The [\*\*] consists of [\*\*] including:

[\*\*]

The [\*\*] shall be assembled into a [\*\*] will be required as part of the assembly process. The [\*\*] will be accomplished with the use of equipment, such as [\*\*]. Afterwards, the buoy [\*\*] shall be [\*\*] tested. After [\*\*], the [\*\*] shall be [\*\*]. At this point, the equipment shall be declared [\*\*] Santona, Spain.

### 3.5 SITE PREPARATION

#### 3.5.1 [\*\*]

[\*\*] for equipment placement shall be [\*\*]. Any required [\*\*] such as [\*\*], and like equipment used for installation shall be completed by the [\*\*].

### 3.5.2 [\*\*]

Required [\*\*] shall occur during this phase and shall be carried out by the [\*\*].

### 3.5.3 [\*\*]

The [\*\*] shall be responsible to [\*\*] that are supplied by the [\*\*] and make the necessary [\*\*] between [\*\*].

### 3.6 [\*\*]

3.6.1 [\*\*] shall be prepared and given to [\*\*]. The selection of [\*\*] shall be evaluated on a number of factors including [\*\*] will have the necessary [\*\*] for various elements of the project shall be [\*\*], [\*\*] with [\*\*].

[\*\*] shall work with the [\*\*] to develop and review detailed [\*\*]. These plans shall include [\*\*], and/or [\*\*] shall observe and provide a quality control function during the [\*\*] during all phases. The [\*\*] will be accurately [\*\*] to have a detailed record of the [\*\*], during all [\*\*].

### 3.6.2 [\*\*]

The [\*\*] shall be [\*\*] according to the [\*\*] by the [\*\*]. The [\*\*] will commence with transport of the [\*\*] from the [\*\*]. The [\*\*] will be [\*\*], and [\*\*] shall be inspected according to the [\*\*]. Any prescribed system tests shall be carried out at that point.

### 3.6.3 [\*\*]

The [\*\*] shall be prepared for its [\*\*] by [\*\*]. The [\*\*] shall be appropriately prepared for an efficient [\*\*] in accordance with the [\*\*].

The [\*\*] shall be [\*\*] and secured by the [\*\*]. The [\*\*] of the route will be [\*\*] by the [\*\*]. The [\*\*] will be [\*\*]. The [\*\*] and [\*\*] values shall not be violated.

The [\*\*] shall be inspected for conformity to the requirements.

### 3.6.4 [\*\*]

The [\*\*] shall commence with [\*\*]. The [\*\*] shall install the [\*\*] according to the plans. Necessary inspections shall be made, and the [\*\*] shall certify work is performed to the requirements.

### 3.6.5 [\*\*]

After the [\*\*] system have been installed, the [\*\*] shall be deployed. The deployment will commence with [\*\*]. The [\*\*] shall be connected into the [\*\*] according to requirements. Inspections shall be made of the [\*\*] equipment.

### 3.6.6 [\*\*]

The [\*\*] shall be responsible for the [\*\*] with the exception of the [\*\*].

### 3.6.7 [\*\*]

[\*\*] personnel and a [\*\*] shall install the [\*\*], and make the necessary interface connections.

### 3.7 [\*\*]

A [\*\*] procedure developed [\*\*] shall be carried out [\*\*] and its [\*\*]. The [\*\*] process shall be carried out in steps. The [\*\*] unit then shall be brought [\*\*] using a [\*\*] ensuring safety to equipment and personnel. See Annex XII.

ANNEX II

SCHEDULE OF WORKS/CALENDAR

Confidential Materials omitted and filed separately with the Securities and Exchange Commission.

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Confidential Materials omitted and filed separately with the  
Securities and Exchange Commission.

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ANNEX IV  
MONTHLY REPORT CONTENTS

ANNEX IV  
MONTHLY REPORT CONTENTS

1. INTRODUCTION
2. MANAGEMENT, MONITORING AND CONTROL
  - 2.1 Equipment manufacture
  - 2.2 Storing of materials
  - 2.3 Mounting of Equipment
  - 2.4 Miscellaneous
3. ESTIMATED ACTIVITIES FOR NEXT MONTH
4. PROGRAMME
  - 4.1 Advanced
  - 4.2 Deviations
  - 4.3 Updates
5. [\*\*]
6. HEALTH AND SAFETY
7. QUALITY CONTROL
8. PHOTOGRAPHIC REPORT

ANNEX V

SCHEDULE OF MILESTONES

ANNEX V  
SCHEDULE OF MILESTONES

NO.	MILESTONE	FORECAST DATE	% OF CONTRACT PRICE	AMOUNT (KC)	EVIDENCE OF COMPLETION
1	[**]	[**]	[**]	[**]	[**]
2	[**]	[**]	[**]	[**]	[**]
3	[**]	[**]	[**]	[**]	[**]
4	[**]	[**]	[**]	[**]	[**]
5	[**]	[**]	[**]	[**]	[**]
6	[**]	[**]	[**]	[**]	[**]
7	[**]	[**]	[**]	[**]	[**]
8	[**]	[**]	[**]	[**]	[**]
9	[**]	[**]	[**]	[**]	[**]
10	[**]	[**]	[**]	[**]	[**]
11	[**]	[**]	[**]	[**]	[**]
12	[**]	[**]	[**]	[**]	[**]
13	[**]	[**]	[**]	[**]	[**]
14	[**]	[**]	[**]	[**]	[**]
15	[**]	[**]	[**]	[**]	[**]
16	[**]	[**]	[**]	[**]	[**]
17	[**]	[**]	[**]	[**]	[**]
	SUBTOTAL		100%	[**]	[**]

ANNEX VI

MODEL OF PROVISIONAL ACCEPTANCE CERTIFICATE

ANNEX VI  
MODEL OF PROVISIONAL ACCEPTANCE CERTIFICATE

(TITLE OF CONTRACT)

PLANT PROVISIONAL ACCEPTANCE CERTIFICATE

NOTIFICATION No. \_\_\_\_\_

DATE \_\_\_\_\_

As of \_\_\_\_\_(date), (THE SUPPLIER) delivers and \_\_\_\_\_, S.A. provisionally receives all the Equipment \_\_\_\_\_ of the \_\_\_\_\_ Plant, in accordance with the terms of the Contract made between \_\_\_\_\_, S.A. and \_\_\_\_\_, S.A. on \_\_\_\_\_.

(THE SUPPLIER)

ANNEX: (List of Jobs Pending). The Parties agree that the jobs pending and included in this list must be remedied during the Testing Period.

ANNEX VII

MODEL OF DEFINITIVE ACCEPTANCE CERTIFICATE

ANNEX VII  
MODEL OF DEFINITIVE ACCEPTANCE CERTIFICATE

(TITLE OF CONTRACT)

PLANT DEFINITIVE ACCEPTANCE CERTIFICATE

NOTIFICATION No. \_\_\_\_\_

DATE \_\_\_\_\_

As of \_\_\_\_\_ (date), (THE SUPPLIER) delivers and \_\_\_\_\_, S.A. definitively receives all the Equipment of the \_\_\_\_\_ Plant, in accordance with the terms of the Contract made between \_\_\_\_\_, S.A. and \_\_\_\_\_, S.A. on \_\_\_\_\_.

(THE SUPPLIER) \_\_\_\_\_, S.A.

ANNEX VIII

PERFORMANCE BOND / LETTER OF CREDIT

THE DRAFT FOR THE LETTER OF CREDIT WILL BE SENT BY THE CONTRACTOR WITHIN 30 DAYS FROM SIGNATURE OF THIS AGREEMENT FOR APPROVAL BY THE CLIENT.

ANNEX IX  
TECHNICAL DOCUMENTATION

ANNEX IX  
TECHNICAL DOCUMENTATION

1. GENERAL

Periodic report of project advance

2. BASIC ENGINEERING

General system overview  
PB40ES operation philosophy (including operating modes description)  
General arrangement drawings  
Electrical single-line diagram  
Control and protection system configuration schemes  
Electrical protection equipment definition  
[\*\*]  
Engineering, manufacture, assembly and commissioning planning  
Quality Assurance Plan  
Inspection programs for main equipment  
Plot of [\*\*] versus [\*\*]  
Guaranteed values table  
Procedure indicating how and where to measure the guaranteed values

3. DETAILED ENGINEERING

General assembly drawing of the PB40ES [\*\*]  
Single line diagram [\*\*]  
SCADA system architectural diagram  
Underwater substation pod (USP) requirement specification  
Submarine cable specification  
Buoy farm protection fault protection scheme  
Protection interconnection diagram  
SCADA interconnection diagram  
General system overview  
General assembly of the underwater substation pod (USP)  
Legalization documentation of the equipment [\*\*]  
General assembly drawings of the [\*\*] underwater cable fixings  
Connection to dry land cable terminals drawings  
Main equipment awarding of the order documentation  
Electrical schemes of the USP equipment [\*\*]  
Electrical interconnection schemes of the whole system  
Mooring system calculations  
Short circuit calculations  
Voltage losses calculations  
Selectivity studies  
USP earthing drawings  
Transformer curves; no load losses, intensities, etc.

4. MANUFACTURE

Periodic manufacture advance reports  
Certificate of transformer tests

5. ASSEMBLY

Periodic assembly advance reports

## 6. COMMISSIONING

General description

Procedures and protocols

Operation and Maintenance (O&M) Manuals (including [\*\*], and Electrical protection equipment adjustment protocol)

Quality final dossier

ANNEX X  
COMMISSIONING PROTOCOL

ANNEX X  
COMMISSIONING PROTOCOL

COMMISSIONING PLAN

1.0 SCOPE

This document sets forth the outline for the Commissioning Plan of the SWEP2A program. It is intended to provide a basis for a detailed test plan that will be generated during the program, as required by the EPC Agreement.

This document forms a part of the "Engineering, Procurement, and Construction of a Wave Energy Power Plan at Punta Del Pescador" Agreement (EPC Agreement). This document is not intended to be stand alone. Terms included in this document shall take the defined meaning from the EPC Agreement.

2.0 REFERENCED DOCUMENTS

The following documents form a part of this document to the extent they are referenced. In the event of a conflict between this document and those referenced, the referenced document shall prevail.

2.1 CONTRACTOR DOCUMENTS

[\*\*]

2.2 CLIENT DOCUMENTS

None

3.0 COMMISSIONING TEST PLAN OUTLINE

3.1 GENERAL OVERVIEW

The Commissioning phase of the SWEP 2A program will consist of a [\*\*]. The result of a successful review of test results is the Certificate of Completion of Commissioning and an issuance of the Preliminary Acceptance Certificate (PAC).

Commissioning shall be accomplished in order to determine compliance against the SWEP Phase 2A Wave Power Station Requirement Specification. In accordance with this specification, requirements require testing, demonstration, inspection, or analysis for determination of compliance. When the compliance phase begins, the Contractor will conduct testing and demonstrations for requirements that require these determination methods. Evidence of compliance for requirements requiring inspection or analysis will be reviewed in the Test Results stage, as discussed below.

3.2 TEST PLANNING

The Contractor shall plan for the verification of requirements requiring testing or demonstration in the Commissioning Test Plan. The Commissioning Test Plan shall document, in sufficient detail, the conduct of the testing and shall include Test Procedures for those tests that require them. Procedures generated shall include:

- 1) Specific Descriptions of
  - a) Test Setup
  - b) Instrumentation
  - c) Test Data to be extracted
  - d) Pass/Fail Requirements
  - e) Personnel Requirements
  - f) Anticipated duration of the test
  - g) Requirements flow
- 2) Clear directions for execution of the test
- 3) Ability to repeat test and duplicate test results
- 4) Test Data Sheets for test results recording and witness signatures

### 3.3 TEST EXECUTION

Once the Commissioning Test Plan is completed and the [\*\*], the Contractor may begin the [\*\*]. The testing shall follow the test plan and may be witnessed by the Client, in accordance with the terms of the EPC agreement.

All test results shall be recorded and signed by the witnessing parties.

### 3.4 TEST RESULTS

Once the testing is completed, a Test Report shall be generated. The test report shall include the following information:

- 1) Summary of Testing
- 2) Analysis of Results
- 3) Any Corrective Actions required
- 4) Requests for Deviations of requirements, if required
- 5) Copies of all test data sheets
- 6) Analysis, or reference to analysis documents
- 7) Inspection reports, or reference to inspection documents
- 8) Summary compliance matrix

### 3.5 REVIEW OF RESULTS

Once the Test Report is generated and supplied to the Client, a review of the results will take place. This review will result in a signed copy of the Certificate of Completion of Commissioning and a Preliminary Acceptance Certificate, or an action plan to meet these milestones.

### 3.6 TESTS TO BE INCLUDED

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ANNEX XI

LIST OF SUBCONTRACTORS



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ANNEX XII

LIST OF AUTHORIZATIONS AND PERMITS WHICH MUST BE OBTAINED BY  
THE CLIENT AND TIMELINE



ANNEX XIII  
LOCATION OF THE PLANT

Confidential materials omitted and filed separately with the  
Securities and Exchange Commission.

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ANNEX XIV

PREDICTED TECHNICAL PERFORMANCE

The following table (Table 1) is used to calculate the predicted performance based on measured wave data:

TABLE 1: THEORETICAL POWER TABLE FOR THE PB40ES POWERBUOY

[\*\*]

In order to use this table [\*\*]. Wave data measured includes: [\*\*]. The table assumes [\*\*]

For each measurement interval [\*\*]

For example, a measurement of: [\*\*].

As a second example, [\*\*].

[\*\*].

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FIGURE 1 [\*\*]

[\*\*]

The following table outlines the average seasonal output of the PB40ES PowerBuoy:

TABLE 2 SEASONAL AVERAGE OUTPUT OF PB40ES POWERBUOY IN THE WAVE CLIMATE PROVIDED BY [\*\*] (DATA SHOWN IN TABLE 3.)

SEASON	AVAILABLE ENERGY(1) (MWH)	EXPECTED AVAILABILITY FACTOR	PREDICTED ENERGY PRODUCTION(1) (MWH)
WINTER	[**]	[**]	[**]
SPRING	[**]	[**]	[**]
SUMMER	[**]	[**]	[**]
AUTUMN	[**]	[**]	[**]
ANNUAL	[**]	[**]	[**]

(1) Based on the wave data in table 3

TABLE 3 [\*\*] [\*\*], PROVIDED TO OPT ON [\*\*]

[**]	0.5	1	1.5	2	2.5	3	3.5	4	4.5	5	5.5	6	6.5
[**]													
3	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
4	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
5	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
6	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
7	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
8	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
9	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
10	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
11	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
12	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
13	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
14	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
15	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]
16	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]	[**]

The average wave power at the site, calculated from the above [\*\*].

This leads to a wave-to-wire efficiency of [\*\*] (This is also called "[\*\*]").

Please note that this [\*\*].

O.P.T.  
OCEAN POWER TECHNOLOGIES, INC.

SANTONA WAVE ENERGY PROJECT

BUOY FARM PROTECTION FAULT PROTECTION SCHEME

DOCUMENT NO: [\*\*]

PROGRAM: SWEP

DOCUMENT: Buoy Farm Protection Relay Scheme Description REVISION # 0

RELEASE DATE: March 14, 2006 LATEST MODIFIED DATE March 14, 2006

AUTHOR(S): \_\_\_\_\_ TITLE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

APPROVAL: [\*\*] TITLE: Director Electrical Engineering SIGNATURE: \_\_\_\_\_

REVISION SUMMARY

NAME/TITLE: _____	DATE: _____	NOTES: _____
NAME/TITLE: _____	DATE: _____	NOTES: _____
NAME/TITLE: _____	DATE: _____	NOTES: _____
NAME/TITLE: _____	DATE: _____	NOTES: _____
NAME/TITLE: _____	DATE: _____	NOTES: _____

[\*\*]

## INTRODUCTION

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Protective relaying for this project follows the general relaying concepts to provide the following:

1. Reliability - to meet system needs that dependably handle trouble
2. Selectivity - provide maximum continuity of service, isolate trouble spots and allow balance of system to operate
3. Speed - remove fault and minimize damage
4. Simplicity - minimum amount of equipment to provide maximum protection
5. Economy - minimum cost for maximum protection

## REFERENCES

SWEP One Line [\*\*]

SWEP Protection Interconnection Diagram [\*\*]

## HIGH LEVEL REQUIREMENTS

The basic premises used for the relay scheme are as follows:

1. [\*\*]
2. [\*\*]
3. [\*\*]

## PROTECTION DESCRIPTION

[\*\*]

[\*\*] the [\*\*] in the event that the [\*\*] is damaged or develops an internal fault. Relay operation will [\*\*] the [\*\*] and [\*\*] from the [\*\*] as well as [\*\*] the relay will not operate.

[\*\*]

[\*\*] provides [\*\*] for the [\*\*]. As indicated on the drawing, [\*\*] have [\*\*] adding to the overall protection scheme. The [\*\*] relay offers [\*\*]. The relay [\*\*] on [\*\*] when the [\*\*], preventing [\*\*]. Since the relay is of a [\*\*] it will be capable of providing [\*\*] and [\*\*] on the [\*\*] of the [\*\*]. Relay will also provide [\*\*] for the [\*\*].

[\*\*]

[\*\*] are shown in this [\*\*] is an [\*\*] relay, an [\*\*] that operates when the [\*\*] and a [\*\*].

The [\*\*] relay is designed to [\*\*] in the event that the [\*\*] that would be detrimental to the [\*\*] and could potentially cause [\*\*] from the [\*\*]. Conversely the [\*\*] would [\*\*] from the [\*\*] in the event that the [\*\*] in the system [\*\*].

The [\*\*] relay is placed into the system to [\*\*]. This is required in the event that the [\*\*]. The possibility exists that there may be [\*\*]. The [\*\*] needs the utility as a means for [\*\*] and the [\*\*] as long as the utility is [\*\*]. Should the [\*\*] become [\*\*] from the [\*\*], the [\*\*] supplied by the [\*\*] will not have a [\*\*] and will not [\*\*]. The [\*\*] relay provides a simple and effective method to [\*\*] and [\*\*] from the utility. The [\*\*] is set to [\*\*]. Since this should not occur under normal conditions, [\*\*].

[\*\*]

Since the electrical equipment will be located in a submersible enclosure, it is necessary to [\*\*] relaying provides a high speed method to detect a [\*\*]. The [\*\*] overlaps the [\*\*] providing addition protection. As previously stated, the [\*\*] will [\*\*] on [\*\*] giving additional reliability for the system.

[\*\*]

Each [\*\*] located in the submersible enclosure is [\*\*]. Each [\*\*] is equipped with a [\*\*] will be [\*\*] and also [\*\*].

[\*\*]

The [\*\*]. The [\*\*] will convert the [\*\*]. The [\*\*] is then converted to [\*\*] that will be [\*\*]. The [\*\*] has [\*\*]. Additionally the [\*\*] ahead of the [\*\*] will also act to as a [\*\*].

Exhibit 10.2

Confidential Materials omitted and filed separately with the Securities and Exchange Commission. Asterisks denote omissions.

AWARD/CONTRACT	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)	RATING DO-C9(U)	PAGE OF PAGES 1   14
2. CONTRACT (PROC. INST. IDENT.) NO. N00014-05-C-0384	3. EFFECTIVE DATE SEE BLOCK 20.C.	4. REQUISITION/PURCHASE REQUEST/PROJECT NO. 05PR09436-00	
ISSUED BY OFFICE OF NAVAL RESEARCH ONR 254 Brian Murphy (703)696-0030 E-mail: brian_murphy@onr.navy.mil 875 North Randolph St. Suite 1425 Arlington VA 22203-1995	CODE N00014	6. ADMINISTERED BY (if other than item 5) DCM Philadelphia PO Box 11427 700 Robbins Avenue, Bldg. 4A Philadelphia, PA 19111-0427	CODE S3915A
7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, country, State and ZIP Code)  Ocean Power Technologies, Inc. 1590 Reed Road Pennington, NJ 08534		8. DELIVERY [ ] FOB ORIGIN [ ] OTHER (see below)	
		9. DISCOUNT FOR PROMPT PAYMENT N.A.	
CODE 043P7	FACILITY CODE	10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN:	ITEM See Section G.
11. SHIP TO/MARK FOR OFFICE OF NAVAL RESEARCH Attn: Code 334, Paula Furman 875 North Randolph St. Suite 1425 Arlington VA 22203-1995	CODE N00014	12. PAYMENT WILL BE MADE BY DFAS COLUMBUS CENTER DFAS CO NORTH ENTITLEMENT OPERATIONS PO BOX 182266 COLUMBUS, OH 43218-2266	CODE HQ0337
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION [ ] 10U.S.C.2304(c)( ) [ ] 41U.S.C.253(C)( )		14. ACCOUNTING AND APPROPRIATION DATA  SEE ATTACHED FINANCIAL ACCOUNTING DATA (FAD) SHEET(S)	
15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT
		15E. UNIT PRICE	15F. AMOUNT
See Section B of Schedules			
		15G. TOTAL AMOUNT OF CONTRACT	See Section B. of Schedule

16. TABLE OF CONTENTS

(X) SEC.	PAGE(S)	(X) SEC.	DESCRIPTION	PAGE(S) (X)
			PART I - THE SCHEDULE	
(X) A	2	(X) I	CONTRACT CLAUSES	7-14
(X) B	2		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
(X) C	2	(X) J	LIST OF ATTACHMENTS	14
(X) D	2		PART IV - REPRESENTATIONS AND INSTRUCTIONS	
(X) E	2	(X) K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	14
(X) F	3		AND OTHER STATEMENTS OF OFFERORS	
(X) G	3-5	[ ] L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
(X) H	6-7	[ ] M	EVALUATION FACTORS FOR AWARD	

CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. [ ] CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 2 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if an, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)	18. [ ] AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____, including the addition or changes made by you which additions or changes are set forth in full above, is hereby accepted as to items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further document is necessary.		
19A. NAME AND TITLE OF SIGNER (Type or print) Charles F. Dunleavy C.F.O.	20A. NAME OF CONTRACTING OFFICER R. Brian Bradley Contracting Officer		
19B. NAME OF CONTRACTOR	19C. DATE SIGNED	20B. UNITES STATES OF AMERICA	20C. DATE SIGNED
BY /s/ Charles F. Dunleavy ----- (Signature of person authorized to sign)	20 Sept 2005	BY /s/ R. Brian Bradley ----- (Signature of Contracting Officer)	SEP 20 2005

## SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

ITEM NO.	SUPPLIES/SERVICES	ESTIMATED COST	FIXED FEE	TOTAL ESTIMATED COST & FIXED FEE
0001	The Contractor shall furnish the necessary personnel and facilities to conduct the research effort as described in Section C and provide reports and data in accordance with Exhibit A.	\$[**]	\$[**]	\$2,799,405
000101	ACRN: AA \$2,799,405			
TOTAL ESTIMATED CONTRACT CONSIDERATION:		\$[**]	\$[**]	\$2,799,405

## SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

- The research effort to be performed hereunder shall be subject to the requirements and standards contained in Exhibit A and the following paragraph(s).
- The Contractor shall conduct the research effort under CLIN 0001, submitted under Topic Number N95-074, in accordance with Attachment Number 1, entitled "Statement of Work".

## SECTION D - PACKAGING AND MARKING

Preservation, packaging, packing and marking of all deliverable contract line items shall conform to normal commercial packing standards to assure safe delivery at destination.

All reports, briefs, technical documents, etc. submitted to the Government under this contract should contain the following legend:

## SBIR or STTR DATA RIGHTS

Topic Number: \_\_\_\_\_

Contract No.: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

The Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend are restricted as provided in paragraph (b)(4) of DFARS 252-227-7018, Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program.

## SECTION E - INSPECTION AND ACCEPTANCE

Inspection and acceptance of the final delivery under this contract will be accomplished by the Program Officer designated in Section F of this contract, who shall have thirty (30) days after contractual delivery for acceptance.

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SECTION F - DELIVERIES OR PERFORMANCE

1. The research effort performed under CLIN 0001 shall be conducted from date of contract award through 31 March 2007.

2. Distribution, consignment and marking instructions for all contract line items shall be in accordance with Enclosure Number 1 of Exhibit A. The address for the cognizant Program Officer is as follows:

Program Officer  
Office of Naval Research  
875 North Randolph St. Suite 1425  
Arlington, Virginia 22203-1995  
Attn: Paula Furman Code: 334  
Ref: Contract N00014-05-C-0384

SECTION G - CONTRACT ADMINISTRATION DATA (02/14/05)

1. PAYMENT AND INVOICE INSTRUCTIONS (COST REIMBURSEMENT)

1.1 SUBMISSION OF INVOICES

PAYMENT AND INVOICE INSTRUCTIONS (COST TYPE)

The Office of Naval Research will utilize the new DoD Wide Area Workflow Receipt and Acceptance (WAWF) system. This web based system located at <https://wawf.eb.mil> provides the technology for government contractors and authorized Department of Defense (DoD) personnel to generate, capture and process receipt and payment-related documentation in a paperless environment. Invoices for supplies/services rendered under this contract shall be submitted electronically through WAWF. Submission of hard copy DD250/Invoice/Public Vouchers (SF1034) will no longer be accepted for payment.

It is recommended that the person in your company designated as the Central Contractor Registration (CCR) Electronic Business (EB) Point of Contact and anyone responsible for the submission of invoices, use the online training system for WAWF at <http://wawftraining.com>. The Vendor, Group Administrator (GAM), and sections marked with an asterisk in the training system should be reviewed. Vendor Quick Reference Guides are also available at <http://www.acquisition.navy.mil/navyaos/content/view/full/3521/>). The most useful guides are "Getting Started for Vendors", "WAWF Vendor Guide", and "Creating a Cost Voucher Invoice."

The designated CCR EB point of contact is responsible for activating the company's CAGE code on WAWF by calling 1-866-618-5988. Once the company is activated, the CCR EB will self-register on the WAWF and follow the instructions for a group administrator. After the company is set-up on WAWF, any additional persons responsible for submitting invoices must self-register at the WAWF [HTTPS://WAWF.EB.MIL](https://wawf.eb.mil).

The following required information should automatically fill-in via WAWF; if it does not fill-in, include the following:

Issue By DODAAC: N00014 Admin DODAAC: [Use the 6 character "ADMINISTERED BY" CODE as listed on page one of the award document]

Pay DODAAC: [Use the 6 character "PAYMENT WILL BE MADE BY" CODE as listed on page one of the award document]

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Fill-in the following additional information:

DCAA Auditor DODAAC: [Look up via the AUDIT OFFICE LOCATOR at <http://www.dcaa.mil>. If you encounter any problems finding your cognizant audit office, write to [dcaaweb@dcaa.mil](mailto:dcaaweb@dcaa.mil) or call ONR's DCAA liaison at (703)696-2603]  
Service Approver DODAAC: N00014

The following additional information may need to be filled in:

LPO DODAAC: N00014 (Note - this line is required only when the "PAYMENT WILL BE MADE BY" DODAAC begins with an 'N')

After self-registering and logging on to the WAWF system, click on the plus sign next to the word "Vendor" and then click on the "Create New Document" link. Enter the contract number, cage code, and Pay DODAAC (above) and hit submit. Select the "Cost Voucher" invoice type within WAWF-RA. This type of invoice fulfills any requirement for submission of the Material Inspection and Receiving Report, DD Form 250. Back up documentation, 5MB limit, can be included and attached to the invoice in WAWF under the "Misc Info" tab. Fill-in all applicable information under each tab.

Take special care when you enter Line Item information - the Line Item tab is where you will detail your request for payment and material/services that were provided based upon the contract. Be sure to fill in the following two informational items exactly as they appear in the contract:

Item Number: If the contract schedule has more than one ACRN listed as sub items under the applicable Contract Line Item Number (CLIN), use the 6 character separately identified Sub Line Item Number (SLIN) (e.g. - 0001AA) or Informational SLIN (e.g. - 000101), otherwise use the 4 character CLIN (e.g. - 0001).

ACRN: Fill-in the applicable 2 alpha character ACRN that is associated with the SLIN or CLIN. (Note - DO NOT INVOICE FOR MORE THAN IS STILL AVAILABLE UNDER ANY ACRN).

Special Payment Instructions for CLIN/SLINs with Multiple ACRNs/Lines of Accounting: (Note - since WAWF does not accept the use of multiple ACRNs for any single CLIN or SLIN on one invoice; multiple invoices may have to be used - use the WAWF "Line Item" "Description" area to note the use of multiple invoices). For all invoices submitted against CLINs with multiple Accounting Classification Reference Numbers (ACRNs), the billing shall be paid from the earliest Fiscal Year (FY) appropriation first. Fiscal Year is determined from the 3rd character in the "Appropriation (Critical)" part (Block 6B) of the Line of Accounting on the Financial Accounting Data Sheet of the contract (e.g., 1741319 for FY 2004 and 1751319 for FY 2005). In the event there are multiple ACRNs with the same FY of appropriation, billings shall be proportionally billed to all ACRNs for that FY in the same ratio that the ACRNs are obligated.

After all required information is included, click on the "Submit" button under the "Header" tab.

Helpful Note: Shipment Number format should be three alpha and 4 numeric (e.g., SER0001).

Note: The contractor shall submit invoices for payment per contract terms and the Government shall process invoices for payment per contract terms.

If you have any questions regarding the WAWF, please contact the DoN WAWF Assistance Line at 1-866-618-5988.

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## 1.2 PAYMENT OF ALLOWABLE COSTS AND FIXED FEE

As consideration for the proper performance of the work and services required under this contract, the Contractor shall be paid as follows:

(a) Costs, as provided for under the contract clause entitled "Allowable Cost and Payment," shall not exceed the amount set forth as "Estimated Cost" in Section B, and is subject to the contract clause entitled "Limitation of Cost" or "Limitation of Funds" whichever is applicable.

(b) A fixed fee, in the amount set forth as 'Fixed Fee' in Section B, in accordance with the contract clause FAR 52.216-8 "Fixed Fee", shall be paid upon completion of the work and services required under this contract and upon final acceptance by the Contracting Officer. However, the Contractor, shall bill on each voucher the amount of the fee bearing the same percentage to the total fixed fee as the amount of cost billed bears to the total estimated cost not to exceed the amount set forth as "Fixed Fee" in Section B. The total fixed fee billed, shall not exceed the total fixed fee specified in Section B and is subject to the contract clause entitled "Limitation of Cost" or "Limitation of Funds" whichever applies.

(c) In accordance with FAR 52.216-8, and in order to protect the Government's interest, the Contractor is hereby directed to withhold 10% of the fixed fee amount as set forth in Section B or until a reserve is set aside in the amount of \$100,000, whichever is less. The Administrative Contracting Officer shall release 75% of the fixed fee reserve upon acceptance of the final deliverables identified in Section F of this contract. The remainder 25% of the fixed fee reserve will be released after completion of any final audits, submission of the final patent and royalty reports and if the contractor is not delinquent in submitting final vouchers for prior years' settlements.

## 2. PROCURING OFFICE REPRESENTATIVES

(a) In order to expedite administration of this contract, the Administrative Contracting Officer should direct inquiries to the appropriate office listed below. Please do not direct routine inquiries to the person listed in Item 20A on Standard Form 26.

Contract Negotiator - Brian K. Murphy, ONR 0254, (703) 696-0030, DSN 426-0030, E-Mail Address: brian\_murphy@onr.navy.mil

Inspection and Acceptance - Dr. Paula Furman, (703) 588-1077, DSN 425-1077, E-Mail Address: Paula\_Furman@onr.navy.mil

Security Matters - Ms. Sheila Neal, ONR 43, (703) 696-8177, DSN 426-8177

Patent Matters - Mr. Tom McDonnell, ONR 00CC, (703) 696-4000, DSN 426-4000.

(b) The Administrative Contracting Officer will forward invention disclosures and reports directly to Corporate Counsel (Code 00CC), Office of Naval Research, Department of the Navy, 875 North Randolph St. Suite 1425, Arlington, VA 22203-1995. The Corporate Counsel will return the reports along with a recommendation to the Administrative Contracting Officer. The Corporate Counsel will represent the Contracting Officer with regard to invention reporting matters arising under this contract.

## 3. TYPE OF CONTRACT

This is a cost-plus-fixed-fee completion contract.

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SECTION H - SPECIAL CONTRACT REQUIREMENTS

1. ONR 5252.235-9714 REPORT PREPARATION (FEB 2002)

Scientific or technical reports prepared by the Contractor and deliverable under the terms of this contract will be prepared in accordance with format requirements contained in ANSI/NISO Z39.18-1995, Scientific and Technical Reports: Elements, Organization, and Design.

[NOTE: All NISO American National Standards are available as free, downloadable PDF(s) at <http://www.niso.org/standards/index.html>. NISO standards can also be purchased in hardcopy form from NISO Press Fulfillment, P. O. Box 451, Annapolis Junction, MD 20701-0451 USA. Telephone U.S. and Canada: (877) 736-6476; Outside the U.S. and Canada: 301-362-6904; Fax: 301-206-9789.]

2. INVENTION DISCLOSURES AND REPORTS

The Contractor shall submit all invention disclosures and reports required by the Patent Rights clause of this contract to the Administrative Contracting Officer (ACO). The ACO (Refer to Block 6 of the SF Form 26 for POC information) will forward invention disclosures and reports directly to Corporate Counsel (Code 00CC), Office of Naval Research, Department of the Navy, Arlington, VA 22203. Corporate Counsel will return the reports along with a recommendation to the ACO. Corporate Counsel represents the Contracting Officer regarding invention reporting matters arising under this contract.

3. ELECTRONIC SUBMISSION OF INTERIM AND FINAL REPORTS

In addition to the complete hard copy of the fourth status report (which should be at the end of the first year) and the Final Report, the contractor shall provide a NONPROPRIETARY summary of these reports directly to the Navy SBIR/STTR Web Welcome page at [www.navysbir.com](http://www.navysbir.com). To submit these reports, select Submission, then select Submit a Phase I or II Summary Report, then select Begin Submission Process. Enter your firm name and the password used to submit proposals to the DoD Proposal Submission website. Select Summary Report and Add a New Report. Follow the remaining instructions given on the submission website.

ONR 5252.242-9718 TECHNICAL DIRECTION (FEB 2002)

(a) Performance of the work hereunder is subject to the technical direction of the Program Officer/COR designated in this contract, or duly authorized representative. For the purposes of this clause, technical direction includes the following:

(1) Direction to the Contractor which shifts work emphasis between work areas or tasks, requires pursuit of certain lines of inquiry, fills in details or otherwise serves to accomplish the objectives described in the statement of work;

(2) Guidelines to the Contractor which assist in the interpretation of drawings, specifications or technical portions of the work description.

(b) Technical direction must be within the general scope of work stated in the contract. Technical direction may not be used to:

(1) Assign additional work under the contract;

(2) Direct a change as defined in the contract clause entitled "Changes";

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- (3) Increase or decrease the estimated contract cost, the fixed fee, or the time required for contract performance;
- (4) Change any of the terms, conditions or specifications of the contract.

(c) The only individual authorized to in any way amend or modify any of the terms of this contract shall be the Contracting Officer. When, in the opinion of the Contractor, any technical direction calls for effort outside the scope of the contract or inconsistent with this special provision, the Contractor shall notify the Contracting Officer in writing within ten working days after its receipt. The Contractor shall not proceed with the work affected by the technical direction until the Contractor is notified by the Contracting Officer that the technical direction is within the scope of the contract.

(d) Nothing in the foregoing paragraphs may be construed to excuse the Contractor from performing that portion of the work statement which is not affected by the disputed technical direction.

ONR 5252.237-9705 KEY PERSONNEL (DEC 88)

(a) The Contractor agrees to assign to the contract tasks those persons whose resumes were submitted with its proposal and who are necessary to fulfill the requirements of the contract as "key personnel". No substitutions may be made except in accordance with this clause.

(b) The Contractor understands that during the first ninety (90) days of the contract performance period, no personnel substitutions will be permitted unless these substitutions are unavoidable because of the incumbent's sudden illness, death or termination of employment. In any of these events, the Contractor shall promptly notify the Contracting Officer and provide the information described in paragraph (c) below. After the initial ninety (90) day period the Contractor must submit to the Contracting Officer all proposed substitutions, in writing, at least (30) days in advance ( 45) days if security clearance must be obtained) of any proposed substitution and provide the information required by paragraph (c) below.

(c) Any request for substitution must include a detailed explanation of the circumstances necessitating the proposed substitution, a resume for the proposed substitute, and any other information requested by the Contracting Officer. Any proposed substitute must have qualifications equal to or superior to the qualifications of the incumbent. The Contracting Officer or his/her authorized representative will evaluate such requests and promptly notify the Contractor in writing of his/her approval or disapproval thereof.

(d) In the event that any of the identified key personnel cease to perform under the contract and the substitute is disapproved, the contract may be immediately terminated in accordance with the Termination clause of the contract.

The following are identified as key personnel: [\*\*]

#### SECTION I - CONTRACT CLAUSES

Cost-Plus-Fixed Fee (SBIR-STTR phase I/II) (August 29, 2005)

- \* Applies when contract action exceeds \$10,000
- \*\* Applies when contract action exceeds \$100,000
- + Applies when contract action exceeds \$500,000
- ++ Applies when contract action exceeds \$500,000 and subcontracting possibilities exist. Small Business Exempt.
- x (DD 250)

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All clauses in the Section (A) Tables are required clauses and are applicable, or are applicable at the specified thresholds as designated in accordance with the legend listed above.

(A) FAR 52.252-02 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <http://www.arnet.gov/far/>

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES:

**	FAR 52.202-1	Definitions (JUL 2004)
**	FAR 52.203-3	Gratuities (APR 1984)
**	FAR 52.203-5	Covenant Against Contingent Fees (APR 1984)
**	FAR 52.203-6	Restrictions on Subcontractor Sales to the Government (JUL 1995)
**	FAR 52.203-7	Anti-Kickback Procedures (JUL 1995)
**	FAR 52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)
**	FAR 52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997)
**	FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions (JUN 2003)
**	FAR 52.204-4	Printing/Copying Double-Sided on Recycled Paper (AUG 2000)
	FAR 52.204-7	Central Contractor Registration (OCT 2003)
	FAR 52.211-15	Defense Priority and Allocation Requirements (SEP 1990)
**	FAR 52.215-2	Audit and Records - Negotiation (JUN 1999) and Alternate II (APR 1998) (Alternate II is only applicable with cost reimbursement contracts with State and local Governments, educational institutions, and other non-profit organizations.)
	FAR 52.215-8	Order of Precedence - Uniform Contract Format (OCT 1997)
+	FAR 52.215-10	Price Reduction for the Defective Cost or Pricing Data (OCT 1997) (The provisions of this Clause have been waived by a joint Determination and Findings for the prime contractor only. The clause is applicable to subcontracts over \$550,000.)
+	FAR 52.215-12	Subcontractor Cost or Pricing Data (OCT 1997) (Applicable to subcontracts over \$550,000 only)
**	FAR 52.215-14	Integrity of Unit Prices (OCT 1997) and Alternate I (OCT 1997) (Alternate I is applicable if the action is contracted under Other Than Full and Open Competition)
+	FAR 52.215-15	Pension Adjustments and Asset Reversions (OCT 2004)
+	FAR 52.215-17	Waiver of Facilities Capital Cost of Money (OCT 1997)
+	FAR 52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions (JUL 2005)

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+	FAR 52.215-19	Notification of Ownership Changes (OCT 1997) (Applicable when Cost or Pricing Data is required)
	FAR 52.216-7	Allowable Cost and Payment (DEC 2002)
	FAR 52.216-8	Fixed Fee (MAR 1997)
**	FAR 52.219-4	Notice of Price Evaluation Preference for HUB zone Small Business Concerns (JUL 2005)
	FAR 52.219-6	Notice of Total Small Business Set-Aside (JUN 2003)
**	FAR 52.219-8	Utilization of Small Business Concerns (MAY 2004)
++	FAR 52.219-9	Small Business Subcontracting Plan (JUL 2005)
**	FAR 52.219-14	Limitations on Subcontracting (DEC 1996)
++	FAR 52.219-16	Liquidated Damages - Subcontracting Plan (JAN 1999)
	FAR 52.222-1	Notice to the Government of Labor Disputes (FEB 1997)
**	FAR 52.222-2	Payment for Overtime Premiums (JUL 1990) (Note: The word "zero" is inserted in the blank space indicated by an asterisk)
	FAR 52.222-3	Convict Labor (JUN 2003) (Reserved when FAR 52.222-20 Walsh Healy Public Contracts Act is applicable)
**	FAR 52.222-4	Contract Work Hours and Safety Standards Act -Overtime Compensation (JUL 2005)
	FAR 52.222-21	Prohibition of Segregated Facilities (FEB 1999)
	FAR 52.222-26	Equal Opportunity (APR 2002)
*	FAR 52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
*	FAR 52.222-36	Affirmative Action for Workers with Disabilities (JUN 1998)
*	FAR 52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
**	FAR 52.223-14	Toxic Chemical Release Reporting (AUG 2003)
	FAR 52.225-13	Restrictions on Certain Foreign Purchases (MAR 2005)
	FAR 52.225-16	Sanctioned European Union Country Services (FEB 2000)
**	FAR 52.227-1	Authorization and Consent (JUL 1995) and Alternate I (APR 1984)
**	FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)
	FAR 52.227-20	Rights in Data - SBIR Program (MAR 1994)
	FAR 52.228-7	Insurance Liability to Third Persons (MAR 1996) (Further to paragraph (a)(3), unless otherwise stated in this contract, types and limits of insurance required are as stated in FAR 28.307-2)
	FAR 52.232-9	Limitation on Withholding of Payments (APR 1984)
**	FAR 52.232-17	Interest (JUN 1996)
	FAR 52.232-23	Assignment of Claims (JAN 1986) and Alternate I (APR 1984)

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FAR 52.232-25 Prompt Payment (OCT 2003) and Alternate I (FEB 2002) (The words "the 30th day" are inserted in lieu of "the 7th day" at (a)(5)(i). [When Alternate I is applicable (a)(5)(i) does do not apply] [USE ALTERNATE I WHEN AWARDING A COST REIMBURSEMENT CONTRACT FOR SERVICES]

FAR 52.232-33 Payment by Electronic Funds Transfer - Central Contractor Registration (OCT 2003)

FAR 52.233-1 Disputes (JULY 2002)

FAR 52.233-3 Protest After Award (AUG 1996) and Alternate I (JUN 1985)

FAR 52.242-1 Notice of Intent to Disallow Costs (APR 1984)

+ FAR 52.242-3 Penalties for Unallowable Costs (MAY 2001)

FAR 52.242-4 Certification of Final Indirect Costs (JAN 1997)

\*\* FAR 52.242-13 Bankruptcy (JUL 1995)

FAR 52.242-15 Stop Work Order (AUG 1989) and Alternate I (APR 1984)

FAR 52.243-2 Changes -- Cost-Reimbursement (Aug. 1987) and Alternate V (APR 1984)

FAR 52.244-2 Subcontracts (MAY 2005) and Alternate I (AUG 1998)

\*\* FAR 52.244-5 Competition in Subcontracting (DEC 1996)

FAR 52.244-6 Subcontracts for Commercial Items and Commercial Components (DEC 2004)

FAR 52.245-5 Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) (May 2004) and ALT I (JUN 2003) (As modified by DoD Class Deviation 99-00008 dated 13 July 1999) (ALT I is applicable if the contractor is a nonprofit organization whose primary purpose is the conduct of scientific research)

FAR 52.246-9 Inspection of Research and Development (Short Form) (Apr 1984)

FAR 52.246-23 Limitation of Liability (FEB 1997)

\*\* FAR 52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels (APR 2003)

FAR 52.249-6 Termination (Cost-Reimbursement) (May 2004)

FAR 52.249-14 Excusable Delays (APR 1984)

FAR 52.251-1 Government Supply Sources (APR 1984)

FAR 52.253-1 Computer Generated Forms (JAN 1991)

II. DEPARTMENT OF DEFENSE FAR SUPPLEMENTAL (DFARS) (48 CFR CHAPTER 2) CLAUSES:

\*\* DFARS 252.203-7001 Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (DEC 2004)

DFARS 252.204-7003 Control of Government Work Product (APR 1992)

DFARS 252.204-7004 Alternate A (NOV 2003)

\*\* DFARS 252.209-7004 Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country (MAR 1998)

+ DFARS 252.215-7000 Pricing Adjustments (DEC 1991)

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++ DFARS 252.219-7003 Small, Small Disadvantaged and Women-owned Small Business  
 Subcontracting Plan (DoD Contracts) (APR 1996)  
 DFARS 252.225-7004 Reporting of Contract Performance Outside the United  
 States (JUN 2005)  
 \*\* DFARS 252.225-7012 Preference for Certain Domestic (JUN 2004)  
 DFARS 252.225-7031 Secondary Arab Boycott of Israel (JUN 2005)  
 DFARS 252.227-7016 Rights In Bid Or Proposal Information (JUN 1995)  
 DFARS 252-227-7017 Identification And Assertion Of Use, Release, Or  
 Disclosure Restrictions (JUN 1995)  
 DFARS 252.227-7018 Rights In Noncommercial Technical Data And  
 Computer Software--Small Business Innovation  
 Research (SBIR) Program (JUN 1995)  
 DFARS 252.227-7019 Validation Of Asserted Restrictions -- Computer  
 Software (JUN 1995)  
 DFARS 252.227-7025 Limitations on the Use or Disclosure of  
 Government-Furnished Information Marked with Restrictive  
 Legends (JUN 1995)  
 DFARS 252.227-7028 Technical Data or Computer Software Previously  
 Delivered to the Government (JUN 1995)  
 DFARS 252.227-7030 Technical Data - Withholding of Payment (MAR 2000)  
 DFARS 252.227-7037 Validation of Restrictive Markings on Technical Data (SEP  
 1999)  
 DFARS 252.231-7000 Supplemental Cost Principles (DEC 1991)  
 DFARS 252.232-7003 Electronic Submissions of Payment Requests (JAN 2004)  
 DFARS 252.235-7002 Animal Welfare (DEC 1991)  
 DFARS 252.235-7011 Final Scientific or Technical Report (NOV 2004)  
 DFARS 252.242-7000 Post-Award Conference (DEC 1991)  
 \*\* DFARS 252.243-7002 Requests for Equitable Adjustment (MAR 1998)  
 DFARS 252.245-7001 Reports of Government Property (MAY 1994)  
 X DFARS 252.246-7000 Material Inspection and Receiving Report (MAR 2003)  
 \*\* DFARS 252.247-7023 Transportation of Supplies by Sea (MAY 2002)  
 DFARS 252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000)  
 (Applicable when the Contractor has made a negative response  
 to the inquiry in the representation at DFARS 252.247-7022.)  
 DFARS 252.251-7000 Ordering from Government Supply Sources (NOV 2004)

(B) ADDITIONAL FAR AND DFARS CLAUSES

This contract incorporates one or more clauses by reference as indicated by  
 the mark of (X), with the same force and effect as if they were given in full  
 text. Upon request, the Contracting Officer will make their full text available.  
 Also, the full text of a clause may be accessed electronically at this address:  
<http://www.arnet.gov/far/>

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FAR 52.204-2 Security Requirements (AUG 1996) (Applicable if contract will generate or require access to classified information and DD Form 254, Contract Security Classification Specification, is issued to the contractor)

X FAR 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JAN 2005) (Applicable to contracts exceeding \$25,000 in value.)

FAR 52.215-16 Facilities Capital Cost of Money (Jun 2003) (Applicable in solicitations expected to result in contracts that are subject to the cost principles for contracts with commercial organizations)

X FAR 52.215-17 Waiver of Facilities Capital Cost of Money (Use if FAR52.215-16 is not applicable)

X FAR 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data Modifications (OCT 1997) (Applicable if cost or pricing data or information other than cost or pricing data will be required for modifications)

FAR 52.217-9 Option to Extend the Term of the Contract (MAR 2000) (In paragraph (a), insert "period of time" and "number of days"; and in paragraph (c), insert "month and years") (Applicable if contract contains line item(s) for option(s))

FAR 52.219-3 Notice of Total HUB Zone Set-Aside (JAN 1999)

FAR 52.222-20 Walsh Healy Public Contracts Act (DEC 1996) (Applicable if the contract includes deliverable materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000)

X FAR 52.223-5 Pollution Prevention and Right-to-Know Information (AUG 2003) (Applicable if contract provides for performance, in whole or in part, on a Federal facility)

X FAR 52.223-6 Drug-Free Workplace (MAY 2001) (Applies when contract action exceeds \$100,000 or at any value when the contract is awarded to an individual)

FAR 52.227-10 Filing of Patent Applications -- Classified Subject Matter (APR 1984)

X FAR 52.227-11 Patent Rights -- Retention by the Contractor (Short Form) (Jun 1997)(Applicable if contractor is a small business or a non profit organization.

X FAR 52.232-20 Limitation of Cost (APR 1984) (Applicable only when contract action is fully funded)

FAR 52.232-22 Limitation of Funds (APR 1984) (Applicable only when contract action is incrementally funded)

FAR 52.239-1 Privacy or Security Safeguards (AUG 1996) (Applicable to contracts for information technology which require security of information technology, and/or are for the design, development, or operation of a system of records using commercial information technology services or support services.)

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FAR 52.245-18 Special Test Equipment (FEB 1993) Applicable when it is anticipated that the contractor will acquire or fabricate special test equipment but the exact identification of the equipment is not known)

FAR 52.246-08 Inspection of Research and Development - Cost Reimbursement (MAY 2001) (Use instead of FAR 52.246-09 (Inspection of Research and Development - Short Form) (APR 84) when the primary objective of the contract is the delivery of end items other than designs, drawings and reports.)

DFARS 252.203-7002 Display of DoD Hotline Poster (DEC 1991) (Applicable only when contract action exceeds \$5 million or when any modification increases contract amount to more than \$5 million)

DFARS 252.204-7000 Disclosure of Information (DEC 1991) (Applies when Contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public)

DFARS 252.204-7005 Oral Attestation of Security Responsibilities (NOV 2001) (Applicable if FAR 52.204-2, Security Requirements Applies)

X DFARS 252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (Applicable only when contract action exceeds \$1,000,000 or when any modification increases total contract amount to more than \$1,000,000)

DFARS 252.211-7003 Item Identification and Valuation (JUN 2005) (Applicable if the contract includes deliverable items (1) with a unit cost of \$5000 or more or (2) that will be serially managed or controlled inventory.)

X DFARS 252.215-7002 Cost Estimating System requirements (OCT 1998) (Applicable only to contract actions awarded on the basis of certified cost or pricing data)

DFARS 252.223-7004 Drug-Free Work Force (SEP 1988) (Applicable (a) if contract involves access to classified information: or (b) when the Contracting Officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of performance of the contract.

DFARS 252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (APR 1993) (Applicable if work requires, may require, or permits contractor performance on a DoD installation)

DFARS 252.225-7001 Buy American Act and Balance of Payments Program (JUN 2005) (Applicable if the contract includes deliverable supplies) (This clause does not apply if an exception to the Buy American Act or Balance of Payments Program is known or if using the clause at 252.225-7007, 252.225-7021, or 252.225-7036.)

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- DFARS 252.225-7002 Qualifying Country Sources as Subcontractors (APR 2003)  
(Applicable when clause at DFARS 252.225-7001,  
252.227-7007, 252.227-7021, or 252.227-7036 applies)
- DFARS 252.225-7016 Restriction On Acquisition Of Ball And Roller Bearings  
(JUN 2005) (Applicable if contract includes deliverable  
supplies, unless Contracting Officer knows that items  
being acquired do not contain ball or roller bearings)
- DFARS 252.226-7001 Utilization of Indian Organizations and Indian-Owned  
Economic Enterprises, and Native Hawaiian Small Business  
Concerns(SEP 2004) (Section 8021 of Pub. L.107-248 [ and  
similar sections in subsequent DoD appropriation acts.]
- X DFARS 252.227-7018 Rights in Noncommercial Technical Data and Computer  
Software - Small Business Innovation Research (SBIR)  
Program (JUN 195) (Also applies to STTR programs)
- DFARS 252.227-7025 Limitations On The Use Or Disclosure Of  
Government-Furnished Information Marked With Restrictive  
Legends (JUN 1995) (Applicable when the Government will  
provide the contractor, for the performance of its  
contract, technical data, including software marked with  
another contractor's restrictive legend(s))
- X DFARS 252.227-7034 Patents--Subcontracts (APR 1984) [Applicable to contracts  
containing FAR 52.227-11, Patent Rights--Retention by the  
Contractor (Short Form)]
- X DFARS 252.227-7039 Patents--Reporting Of Subject Inventions (APR 1990)  
[Applicable to contracts containing FAR 52.227-11, Patent  
Rights--Retention by the Contractor (Short Form)]

SECTION J - LIST OF ATTACHMENTS

1. EXHIBIT A, entitled "Contract Data Requirements List" (DD Form 1423) - 1  
page with Enclosure Number 1, entitled "Contract Data Requirements List -  
Instructions for Distribution."
2. Attachment Number 1, entitled, "Statement of Work" - 5 pages.
3. Attachment Number 2, entitled, "Report Documentation Page" (SF 298) 1 page.
4. Attachment Number 3, entitled, "Financial Accounting Data Sheet."

SECTION K - REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

1. The Contractor's ORCA validation dated from: 28 July 2005 to: 28 July 2006 is  
hereby incorporated into this contract by reference. The DFARS and Contract  
Specific Representations and Certifications, dated 30 March 2005 are hereby  
incorporated by reference.

Contract Number: N00014-05-C-0384

CONTRACT DATA REQUIREMENTS LIST  
(2 Data Items)

Form Approved  
OMB No. 0704-0188

The public reporting burden for this collection of information is estimated to average 110 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0701-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no (illegible) be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to the above address. Send completed form to the Government Issuing Contracting Officer for the Contract/PR No. Listed in Block E.

A. CONTRACT LINE ITEM NO. 0001	B. EXHIBIT A	C. CATEGORY TDP	TM	OTHER	X
-----					
D. SYSTEM/ITEM WET Program	E. CONTRACT/PR NO. N00014-05-C-0384	F. CONTRACTOR Ocean Power Technologies, Inc.		17. PRICE GROUP	
1. DATA ITEM NO. A001	2. TITLE OF DATA ITEM Progress Reports		3. SUBTITLE		
4. AUTHORITY (DATA ACQUISITION DOCUMENT NO.)		5. CONTRACT REFERENCE See Section H.1	6. REQUIRING OFFICE See Section F	18. ESTIMATED TOTAL PRICE	
7. DD 250 REQ LT*	9. DIST STATEMENT REQUIRED	10 FREQUENCY As Required	12. DATE OF FIRST SUBMISSION *	14. DISTRIBUTION	
8. APP CODE N/A	11. AS OF DATE *		13. DATE OF SUBSEQUENT SUBMISSION *	B. COPIES ----- FINAL -----	
			A. ADDRESSEE	DRAFT	REG REPRO
			-----	-----	-----
16. REMARKS			See Enclosure Number 1		

\* As required by the Program Officer, these reports, submitted quarterly for the purpose of reporting progress (both technical and cost expenditure status), may be in the form of a letter report or a technical report.

15. TOTAL					
1. DATA ITEM NO. A002	2. TITLE OF DATA ITEM Final Report		3. SUBTITLE		17. PRICE GROUP
4. AUTHORITY (DATA ACQUISITION DOCUMENT NO.)		5. CONTRACT REFERENCE See Section H.1	6. REQUIRING OFFICE See Section F	18. ESTIMATED TOTAL PRICE	
7. DD 250 REQ DD*	9. DIST STATEMENT REQUIRED	10 FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 31 MAR 2007	14. DISTRIBUTION	
8. APP CODE N/A	11. AS OF DATE 31 MAR 2007		13. DATE OF SUBSEQUENT SUBMISSION N/A	B. COPIES ----- FINAL -----	
			A. ADDRESSEE	DRAFT	REG REPRO
			-----	-----	-----
16. REMARKS			See Enclosure Number 1		

\* The Contractor shall include relevant databases as part of the Final Report.

\* DD 250 is only required for acceptance by the Program Officer designated in Section F. Information copies shall be sent to the appropriate parties in accordance with Enclosure Number 1.

15. TOTAL					
G. PREPARED BY Brian K. Murphy	H. DATE 9/19/2005	I. APPROVED BY R. Brian Bradley		J. DATE 9/19/2005	
DD FORM 1423-2, AUG 96 (EG)		PREVIOUS EDITION MAY BE USED		PAGE 1 OF 1 PAGE(S)	

N00014-04-C-0384 Exhibit A

Contract Number: N00014-05-C-0384  
USIDOC5 5881056v1

CONTRACT DATA REQUIREMENTS LIST  
INSTRUCTIONS FOR DISTRIBUTION

## DISTRIBUTION OF TECHNICAL REPORTS AND FINAL REPORT

The minimum distribution of technical reports and the final report submitted in connection with this contract is as follows:

ADDRESSEE -----	DODAAD CODE -----	NUMBER OF COPIES	
		UNCLASSIFIED/ UNLIMITED -----	UNCLASSIFIED/LIMITED AND CLASSIFIED -----
Program Officer, Paula Furman E-Mail: Paula_Furman@onr.navy.mil	N00014	1	1
Administrative Contracting Officer*	S3915A	1	1
Director, Naval Research Lab Attn: Code 5227 4555 Overlook Avenue, SW Washington, D.C. 20375-5320 E-mail: reports@library.nr1.navy.mil	N00173	1	1
Defense Technical Information Center 8725 John J. Kingman Road STE 0944 Ft. Belvoir, VA 22060-6218 E-mail: tr@dtic.mil	HJ4701	2	2

\* Send only a copy of the transmittal letter to the Administrative Contracting Officer; do not send actual reports to the Administrative Contracting Officer.

ELECTRONIC SUBMISSIONS OF TECHNICAL REPORTS IS PREFERRED AND ENCOURAGED.  
ELECTRONIC SUBMISSION SHOULD BE SENT TO THE E-MAIL ADDRESSES PROVIDED IN THE ABOVE TABLE, HOWEVER PLEASE NOTE THE FOLLOWING:

- - Only Unlimited/Unclassified document copies may be submitted by e-mail.
- - Unclassified/Limited has restricted distribution and a classified document (whether in its entirety or partially) is to be distributed in accordance with classified material handling procedures.
- - Electronic submission to DIRECTOR, NAVAL RESEARCH LAB, shall be unclassified/unlimited reports and 30 pages or less. If unclassified and more than 30 pages, hardcopies of reports must be mailed.
- - Electronic submission to DTIC shall be unclassified/unlimited reports. If submission is for limited documents, please send them in on a disk or sign up for DTIC's web-based document submission system at [http://www.dtic.mil/dtic/submitting/elec\\_subm.html](http://www.dtic.mil/dtic/submitting/elec_subm.html).

If the Program Officer directs, the Contractor shall make additional distribution of technical reports in accordance with a supplemental distribution list provided by the Program Officer.

Contract Number: N00014-05-C-0384

DISTRIBUTION OF PROGRESS REPORTS, WHICH ARE NOT, TECHNICAL REPORTS

The minimum distribution for reports that are not technical reports is as follows:

ADDRESSEE -----	DODAAD CODE -----	NUMBER OF COPIES	
		UNCLASSIFIED/ UNLIMITED -----	UNCLASSIFIED/LIMITED AND CLASSIFIED -----
Program Officer, Paula Furman	N00014	1	1
E-Mail: Paula_Furman@onr.navy.mil			
Administrative Contracting Officer*	S3915A	1	1

\* Send only a copy of the transmittal letter to the Administrative Contracting Officer; do not send actual reports to the Administrative Contracting Officer.

Contract Number: N00014-05-C-0384

## STATEMENT OF WORK

### TASK GROUP 1.0: REQUIREMENTS

1.1 PREPARATION OF DESIGN REQUIREMENTS - OPT will prepare a document that states the requirements of the scaled up advanced WEC system for Hawaii in order to guide design work. The design requirements document prepared in earlier work may be used as a template or baseline if deemed adequate or helpful in this purpose. OPT will solicit input from the project team and the program review board in the preparation of the design requirements.

1.2 PREPARATION OF TEST REQUIREMENTS - OPT will prepare a test requirements document that will identify parameters to be tested, the method of test, how the data is to be managed and analyzed, and the sampling rate. OPT will solicit input from the project team and the program review board in the preparation of the test requirements.

1.3 REVIEW OF PREVIOUS PROGRAM RESULTS - OPT and the project team will review the results of the work performed under the previous WET Project Multi-Buoy Power Integration Development Program. The team will review "lessons learned" from that program and utilize fundamental design parameters applicable to the larger scale advanced WEC. Areas of continued development and investigation will be identified.

1.4 CONCEPT MODELING AND DESIGN ANALYSIS - OPT (and designated contractors as required) will engage in modeling, simulation work, and trade studies to arrive at an [\*\*]. Key design parameters will be identified and alternative design solutions will be investigated. Various design options will be matched against the design requirements for compliance. OPT will prepare and provide technical reports as called out by the Navy in the CDRL items, performing necessary requirements validation through laboratory testing, and conducting design reviews with the Navy.

1.5 STUDY OF ENVIRONMENTAL CONSIDERATIONS - OPT and the project team will review the [\*\*] and prepare a document that defines the advanced system with respect to environmental considerations.

1.6 [\*\*] AND EVALUATION - OPT, the project team and the [\*\*] board will hold a formal [\*\*] meeting. The [\*\*] will be evaluated, discussed and rated as to their relative merits versus the requirements, and [\*\*] will be selected. The [\*\*] will be further reviewed by the project team for conformance to [\*\*] and test requirements and for an assessment of risk. Based on the program progress and material presented, the program [\*\*] board will make recommendations for moving forward to the next task group.

### TASK GROUP 2.0: PRELIMINARY DESIGN PHASE

2.1 BUOY SCALING FOR MCBH SITE WAVE CLIMATE - OPT will [\*\*]. The [\*\*] will yield key parameters such as [\*\*] to be used in establishing the structural and equipment requirements for both prevailing and maximum design ocean conditions. The [\*\*] will consist of [\*\*].

2.2 POWER SYSTEMS SPECIFICATIONS - OPT will provide specifications for the new [\*\*] to support follow-on designs of critical components for the [\*\*]. A scheme for [\*\*] will be specified. A one-line diagram will be produced. [\*\*]. [\*\*] for the [\*\*] will be calculated.

2.3 SEA-KEEPING AND SAFETY COMPONENTS SPECIFICATIONS - OPT and its contractors will determine the [\*\*]. Previously designed system [\*\*] configurations will be [\*\*] as appropriate for the [\*\*]. The final configuration of equipment design and structural members will be designed to accommodate the [\*\*] under certain maximum ocean conditions.

2.4 INSTALLATION, RETRIEVAL AND MAINTENANCE CONSIDERATIONS - OPT will determine necessary installation, retrieval and maintenance procedures for the [\*\*]. A configuration of [\*\*] and [\*\*] features and [\*\*] will be established to accommodate the [\*\*] and [\*\*] required for [\*\*].

2.5 ESTABLISH STRUCTURAL, MECHANICAL SPECIFICATIONS - This task includes [\*\*], and determination of key structural components of the [\*\*] based on [\*\*] and [\*\*] from [\*\*]. An initial [\*\*] is prepared in order to establish [\*\*] and [\*\*] based on [\*\*] summaries. A [\*\*] will be conducted on the [\*\*]. A [\*\*] of the mechanical systems will be conducted by the project team.

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2.6 ESTABLISH ELECTRICAL SPECIFICATIONS - OPT will design the [\*\*] system for the [\*\*]. This includes detailed specifications for [\*\*] for the [\*\*]. OPT will determine [\*\*] and [\*\*] necessary for [\*\*] of the WEC into the [\*\*] system. OPT will review the [\*\*] and relevant [\*\*] from existing unit tests. This engineering work will form the basis for [\*\*] during the test phase. Specifications for the [\*\*] and [\*\*] will be prepared. [\*\*] and [\*\*] analysis of the [\*\*] will be conducted.

2.7 ESTABLISH [\*\*] - OPT will develop a [\*\*] and [\*\*] that encompasses the addition of a [\*\*] with its [\*\*] and [\*\*]. Additional features will be necessary for [\*\*]. The [\*\*] will include [\*\*] with existing [\*\*] and [\*\*] will be studied. A [\*\*] will be conducted.

2.8 PRELIMINARY [\*\*] REVIEW - OPT, the project team and the review board will hold a [\*\*] review meeting. During this review, the preliminary [\*\*] activities and resulting preliminary analyses and [\*\*] will be examined for conformance to the [\*\*] and test requirements. [\*\*].

#### TASK GROUP 3.0: FINAL DESIGN PHASE

3.1 MECHANICAL DESIGN AND CREATION OF FABRICATION DRAWINGS - This task includes converting the [\*\*] for the [\*\*] and [\*\*] into a detailed design that meets the required [\*\*] and [\*\*] requirements. This effort includes [\*\*], and providing a [\*\*]. Reviews with [\*\*] will be held to [\*\*]. This task will include the [\*\*].

3.2 POWER TAKE-OFF AND POWER CONVERSION SYSTEM SPECIFICATIONS - OPT will prepare [\*\*] to allow [\*\*] such equipment. Reviews with [\*\*] will be held to insure [\*\*] for the new system.

3.3 CIRCUIT DESIGN AND HARDWARE SPECIFICATIONS - Based on the [\*\*] system designs, OPT will specify the [\*\*] to enable integration of the [\*\*]. Circuit diagrams and drawings, including [\*\*] diagrams will be prepared. Proper [\*\*] will be prepared for the [\*\*]. [\*\*] will be produced for [\*\*]. Reviews with [\*\*] will be held to insure [\*\*].

3.4 [\*\*] - OPT will prepare a detailed [\*\*] document that encompasses the [\*\*] for the [\*\*] as well as the [\*\*]. Reviews with [\*\*] will be held to insure [\*\*]. OPT will prepare final specifications and drawings to [\*\*].

3.5 FINAL DESIGN REVIEW - OPT, the project team and the review board will hold a formal design review meeting. During this review, the final design activities, analyses and resulting final design will be examined for conformance to the design and test requirements. [\*\*].

#### TASK GROUP 4.0: OCEAN TEST PREPARATION- PLAN, BUILD AND INSTALL

4.1 FABRICATION, INSTALLATION AND TEST PLANS - Plans for the fabrication, installation and testing phases of the project will be drafted by OPT and its contractors, and circulated to the project team for feedback, leading up to a review of such plans. Test plans will include [\*\*]. Installation plans will include [\*\*]. Installation plans will be in sufficient detail to denote responsibilities, communications, methods, equipment, contingencies, and timing. The project team will participate in fabrication, installation and test plan reviews; necessary contractors will be involved. The purpose of reviews is to insure that ocean test and installation plans have been established to satisfy the following criteria:

[\*\*]

4.2 SYSTEM PROCUREMENT & FABRICATION - This task includes activities involved in procurement, fabrication, supplier and QA management. For major expense items, where possible, [\*\*]. Long lead-time items will be identified and [\*\*] to allow the final installation and ocean test schedules to be met.

4.3 [\*\*] ASSEMBLY AND TEST IN-HOUSE - The [\*\*] and [\*\*] and sub-assemblies for the [\*\*] will be [\*\*].

4.4 FINAL ASSEMBLY AND TEST AT STAGING AREAS - All [\*\*] will be shipped to the [\*\*] for final assembly into [\*\*]. Final system testing at that stage will be conducted to insure [\*\*] and [\*\*] are to specification. Integration of the [\*\*] will be performed.

4.5 SITE PREPARATIONS - [\*\*]. Any necessary [\*\*] or [\*\*] will be installed.

4.6 PRE-DEPLOYMENT REVIEW - Prior to deployment, an on-site review by members of the project team will be held that covers the objectives, methods, equipment, safety, and contingency procedures intended

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with respect to the installation and test plans. This will include review of [\*\*].

4.7 DEPLOYMENT OF [\*\*] - The installation of the [\*\*] will utilize [\*\*]. All sea-based equipment will require [\*\*], as well as [\*\*] to make [\*\*]. Final staging and fabrication will be conducted in [\*\*] and the equipment can [\*\*] to the final site. The installation may be [\*\*] and [\*\*] and [\*\*] will be installed in that order. Once the required equipment is situated [\*\*], the [\*\*] can be made to the existing [\*\*] via the [\*\*]. Once the [\*\*], the [\*\*] is followed utilizing a [\*\*] as the system is [\*\*], and [\*\*].

#### TASK GROUP 5.0: CONDUCTING THE OCEAN TEST

5.1 MONITORING, DATA COLLECTION, ANALYSIS AND REVIEW - [\*\*] operation will be collected and entered into the operational database. Many parameters will be monitored electronically from sensors located throughout the system via a data acquisition system. Other parameters will require [\*\*]. Data from other sensing devices such as the [\*\*] will be collected and integrated. Analysis of the data will identify [\*\*]. Some of the analysis will be conducted by [\*\*] from spreadsheet or other database format. Data will be analyzed by [\*\*] as required. Members of the project team will review the results of the ocean test mid-way through the test period. [\*\*].

5.2 INSPECTION, MAINTENANCE, AND REPAIR - An [\*\*] will be contracted to make [\*\*] to check for [\*\*], and [\*\*] on the sea-based equipment. [\*\*].

5.3 DESIGN VALIDATION - Data collected via the automated data collection system will be available in a database format suitable for analysis. [\*\*] will be used [\*\*].

5.4 CONCLUSIONS AND RECOMMENDATIONS AND FINAL REVIEW - Comparisons of the [\*\*] will be made to form the results. Conclusions and recommendations can then be formulated. Project members will review the results, conclusions and recommendations, and key findings.

5.5 [\*\*] - At the [\*\*], the [\*\*] will be [\*\*]. An [\*\*] for this task.

#### TASK GROUP 6.0: PROGRAM AND TECHNICAL MANAGEMENT

The OPT Technical Manager will provide the overall technical direction for this effort in coordination with the Program Manager.

- Program Planning, Tracking and Technical Management - The OPT Technical and Program Managers will be responsible for resource assignment, technical direction, task direction and schedule management. OPT will [\*\*].
- Program Meetings- Program Meetings- Program meetings will be established to coincide with key technical milestones.
- Progress Reports- OPT will prepare and distribute the minutes from Review Meetings, Monthly Progress Reports, and Major Technical Reports in accordance with the Contract Data Requirements List (CDRL) Items.

#### TASK GROUP 7.0: DELIVERABLES

Contract Data Requirements List consists of the following items;  
Administrative Progress Reports (APR)  
Review meeting agendas  
Minutes from review meetings  
Presentation materials from review meetings  
Technical Documents -

[\*\*] as part of this contract. In addition, this report will include [\*\*] of [\*\*] including [\*\*].

[\*\*] - This report will contain [\*\*] of expected hydrodynamic and electrical (power) [\*\*] and associated [\*\*].

[\*\*] - This report will describe [\*\*].

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Attachment 1

[\*\*] - This document will compare [\*\*], including associated [\*\*] and/or the [\*\*].

[\*\*] - This report will contain [\*\*] subsystems, [\*\*]. The report will outline installation, repair, and recovery scenarios and risk analyses.

[\*\*] - This report will contain [\*\*] information for all system components.

[\*\*]- This plan will describe [\*\*] associated with [\*\*]. It will include all parameters to be monitored while the system is deployed- [\*\*].

[\*\*]- This report will [\*\*].

[\*\*] - This report will summarize the [\*\*] results of at-sea mechanical, electrical, and hydrodynamic performance.

Final Program Report- This report will summarize final administrative aspects of the project.

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Attachment 1

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for following instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing this collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0188), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS.

- 1. REPORT DATE (DD-MM-YYYY)
- 2. REPORT TYPE
- 3. DATES COVERED (From - To)
- 4. TITLE AND SUBTITLE
- 5A. CONTRACT NUMBER
- 5B. GRANT NUMBER
- 5C. PROGRAM ELEMENT NUMBER
- 6. AUTHOR(S)
- 5D. PROJECT NUMBER
- 5E. TASK NUMBER
- 5F. WORK UNIT NUMBER
- 7. PERFORMING ORGANIZATION NAMES(S) AND ADDRESS(ES)
- 8. PERFORMING ORGANIZATION REPORT
- 9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)
- 10. SPONSOR/MONITOR'S ACRONYM(S)
- 11. SPONSOR/MONITOR'S NUMBER(S)
- 12. DISTRIBUTION/AVAILABILITY STATEMENT

Distribution authorized/limited to U.S. Government Agencies only; report contains proprietary data produced under SBIR(or STTR) contract (whichever applies). Other requests shall be referred to the performing organization in Block 7 of this form.

13. SUPPLEMENTARY NOTES

14. ABSTRACT

This record was developed under a SBIR or STTR (Cite the appropriate Program) contract award for Solicitation topic # \_\_\_\_.

15. SUBJECT TERMS

- 16. SECURITY CLASSIFICATION OF:
- 17. LIMITATION
- 18. NUMBER
- 19A. NAME OF RESPONSIBLE PERSON

- A. REPORT
- B. ABSTRACT
- C. THIS PAGE

- 19B. TELEPHONE NUMBER  
(include area code)

STANDARD FORM 298(REV. 8-98)  
PRESCRIBED BY ANSI STD. Z39.18

FINANCIAL ACCOUNTING DATA SHEET - NAVY

1. CONTRACT NUMBER (CRITICAL) 2. SPIIN (CRITICAL) 3. MOD (CRITICAL) 4. PR NUMBER

PAGE 1 OF 1

N0001405C0384

05PR09436-00

6. LINE OF ACCOUNTING

-----														
											K.			
											COST CODE			
A.	B.	C.	D.	E.	F.	G.	H.	I.	J.	K.		7.	NAVY INTERNAL	
ACRN	APPROPRIATION	SUBHEAD	OBJ	CLA	PARM	RFM	AAA	IT	PAA	PROJ	PDLI	AMOUNT	USE ONLY	
CLIN/SLIN	(CRITICAL)	(CRITICAL)	(CRITICAL)	CLA	PARM	RFM	AAA	IT	PAA	UNIT	MCC & SUF	(CRITICAL)	REF DOC/ACRN	
-----														
AA	1751319	W3DK	255	RA	333	0	068342	2D	000000	09019	000	4KT0	\$2,799,405.00	PR#05PR09436-00 FRC: 34KT

PAGE TOTAL \$2,799,405.00

GRAND TOTAL \$2,799,405.00

PREPARED/AUTHORIZED BY:

COMPTROLLER APPROVAL:  
FOR FISCAL DATA AND SIGNATURE

BY \_\_\_\_\_ for COMPTROLLER, ONR CONTRACT REVIEWED

DATE:

DATE:

Exhibit 10.3

Confidential Materials omitted and filed separately with the Securities and Exchange Commission. Asterisks denote omissions.

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AWARD/CONTRACT	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)	RATING DO	PAGE OF PAGES 1 17
----------------	---	--------------	-----------------------

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2. CONTRACT (Proc. Inst. Ident.) NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQUEST/PROJECT NO.	
	[see block 20c.]	02PR02408-00	

-----

6. ISSUED BY	CODE N00014	7. ADMINISTERED BY (If other than Item 5)	CODE S3915A
OFFICE OF NAVAL RESEARCH ONR 254, Cheryl De Lisle (703) 696-2571 BALLSTON TOWER ONE 800 NORTH QUINCY STREET ARLINGTON, VA 22217-5660		DCM PHILADELPHIA PO BOX 11427 700 ROBBINS AVENUE, DLDG 4A PHILADELPHIA, PA 19111-0427	

-----

7. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State, and Zip Code)	8. DELIVERY
OCEAN POWER TECHNOLOGIES INC. 1590 REED ROAD PENNINGTON, NJ 08534	SEE SECTION F OF SCHEDULE [ ] FOB ORIGIN [ ] OTHER (See below)

-----

9. DISCOUNT FOR PROMPT PAYMENT	10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN (see Section G)
N.A.	ITEM SC1018

-----

CODE 04EP7	FACILITY CODE	11. SHIP TO/MARK FOR CODE N00014	12. PAYMENT WILL BE MADE BY CODE SC1018
		OFFICE OF NAVAL RESEARCH ONR 334, PAULA FURMAN (703) 527-2636 800 NORTH QUINCY ST., BCT 1 ARLINGTON, VA 22217	DFAS Columbus Center/CO Dominion Division PO Box 182041 Columbus, OH 43218-2041

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13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION	14. ACCOUNTING AND APPROPRIATION DATA
[ ] 10 U.S.C. 2304(c) ( ) [ ] 41 U.S.C. 253(c) ( )	See Attached Financial Accounting Data Sheet(s)

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15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
SEE SECTION B OF SCHEDULE					

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15. G TOTAL AMOUNT OF CONTRACT	\$ SEE SECTION B OF SCHEDULE
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16. TABLE OF CONTENTS

([X])	SEC.	DESCRIPTION	PAGE(S)	([X])	SEC.	DESCRIPTION	PAGE(S)
		PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES	
[X]	A	SOLICITATION/CONTRACT FORM	1	[X]	I	CONTRACT CLAUSES	7
[X]	B	SUPPLIES OR SERVICES AND PRICES/COSTS	2	[X]	III	LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
[X]	C	DESCRIPTION/SPECS./WORK STATEMENT	2	[X]	J	LIST OF ATTACHMENTS	4
[X]	D	PACKAGING AND MARKING	2	[X]	IV	REPRESENTATIONS AND INSTRUCTIONS	
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[X]	G	CONTRACT ADMINISTRATION DATA	3		M	EVALUATION FACTORS FOR AWARD	Deleted
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Contract Number: N00014-02-C-0053

CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. [X] CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 2 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)

18. [X] AWARD (Contractor is not required to sign this document.) Your offer on Solicitation. Number \_\_\_\_\_, including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.

19A. NAME AND TITLE OF SIGNER (Type or print)

20A. NAME OF CONTRACTING OFFICER

/s/ Charles F. Dunleavy, CFO

19B. NAME OF CONTRACTOR

19C. DATE SIGNED

20B. UNITED STATES OF AMERICA

20C. DATE SIGNED

Ocean Power Technologies, Inc. 2/8/2002

2/11/02

By: /s/ Charles F. Dunleavy

By: /s/ illegible

(Signature of person authorized to sign)

(Signature of Contracting Officer)

NSN 7540-01-152-8069  
PREVIOUS EDITION UNUSABLE  
NAVONR OVERPRINT (4-85)

STANDARD FORM 26 (Rev. 4-85)  
Prescribed by GSA  
FAR (48 CFR) 53.214(a)

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SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

ITEM NO.	SUPPLIES/SERVICES	ESTIMATED COST	FIXED FEE	TOTAL ESTIMATED COST & FIXED FEE
0001	The Contractor shall furnish the necessary personnel and facilities to conduct fee research effort as described in Section C.	\$[**]	\$[**]	\$2,399,893.00
0002	Reports and Data in accordance with Exhibit A (DD Form 1423)			[**]
0003	Option 1, Wave Tank Test 2; Validate Numerical Models	\$[**]	[**]	\$ [**]
0004	Option 2, On-Going Ocean Test-Continue Monitoring	\$[**]	[**]	\$ [**]
0005	Option 3, Complete System Removal	\$[**]	[**]	\$ [**]
TOTAL ESTIMATED CONTRACT CONSIDERATION:		\$[**]	\$[**]	\$2,399,893.00

SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

1. The Contractor shall conduct research in accordance with the proposal described below which was submitted by the Contractor in response to the Department of Defense Program Solicitation Number, Phase III Small Business Innovation (SBIR) Program.

Topic Number: N95-074

Title Proposed by Firm: Ocean Power Technology

Date: 19 Oct 01

2. The Statement of Work is provided as attachment 1.

SECTION D - PACKAGING AND MARKING

Preservation, packaging, packing and marking of all deliverable contract line items shall conform to normal commercial packing standards to assure safe delivery at destination.

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SECTION E - INSPECTION AND ACCEPTANCE

Inspection and acceptance of the final delivery under this contract will be accomplished by the Program Officer designated in Section F of this contract, who shall have at least thirty (30) days after contractual delivery for acceptance.

SECTION F - DELIVERIES OR PERFORMANCE

1. The research effort performed under this contract shall be conducted during the period from the effective date of award through 27 months thereafter. A final report will be prepared, submitted, reproduced and distributed by sixty days thereafter unless the contract is extended, in which case, the final report will be prepared in accordance with the terms of such extension.

a. Item No. 0002 of Section B (Reports and Data) shall be delivered within the time periods stated in Exhibit A, F.O.B. Destination.

2. Distribution, consignment and marking instructions for all contract line items shall be in accordance with Attachment Number 1 and the following:

Program Officer  
Office of Naval Research  
Ballston Tower One  
800 North Quincy Street  
Arlington, Virginia 22217-5660

Attn: Paula Furman, Code 334, Telephone (703) 588-1077  
Ref: Contract N00014-02-C-0053

SECTION G - CONTRACT ADMINISTRATION DATA

1. NAPS 5252.232-9001 SUBMISSION OF INVOICES (COST REIMBURSEMENT, TIME-AND-MATERIALS, LABOR-HOUR, OR FIXED PRICE INCENTIVE) (JUL 1992)

(a) "Invoice" as used in this clause includes contractor requests for interim payments using public vouchers (SF 1034) but does not include contractor requests for progress payments under fixed price incentive contracts.

(b) The Contractor shall submit invoices and any necessary supporting documentation, in an original and 4 copies, to the contract auditor\* at the following address:

Audit Agency Name: Defense Contract Audit Agency  
Address: Southern New Jersey Branch Office  
10 Melrose Avenue, Suite 200  
Cherry Hill, NJ

Contract Number: N00014-02-C-0053

unless delivery orders are applicable, in which case invoices will be segregated by individual order and submitted to the address specified in the order. In addition, an information copy shall be submitted to the Program Officer identified in Section F.2a of this contract. Following verification, the contract auditor\* will forward the invoice to the designated payment office for payment in the amount determined to be owing, in accordance with the applicable payment (and fee) clause(s) of this contract.

(c) Invoices requesting interim payments shall be submitted no more than once every two weeks, unless another time period is specified in the Payments clause of this contract. For indefinite delivery type contracts, interim payment invoices shall be submitted no more than once every two weeks for each delivery order. There shall be a lapse of no more than 30 calendar days between performance and submission of an interim payment invoice.

(d) In addition to the information identified in the Prompt Payment clause herein, each invoice shall contain the following information, as applicable:

- (1) Contract line item number (CLIN)
- (2) Subline item number (SLIN)
- (3) Accounting Classification Reference Number (ACRN)
- (4) Payment terms
- (5) Procuring activity
- (6) Date supplies provided or services performed
- (7) Costs incurred and allowable under the contract
- (8) Vessel (e.g., ship, submarine or other craft) or system for which supply/service is provided.

(e) A DD Form 250, "Material Inspection and Receiving Report",

- is required with each invoice submittal.
- is required only with the final Invoice.
- is not required.

(f) A Certificate of Performance

- shall be provided with each invoice submittal.
- is not required

(g) The Contractor's final invoice shall be identified as such, and shall list all other invoices (if any) previously tendered under this contract.

(h) Costs of performance shall be segregated, accumulated and invoiced to the appropriate ACRN categories to the extent possible. When such segregation of costs by ACRN is not possible for invoices submitted with CLINS/SLINS with more than one ACRN, an allocation ratio shall be established in the same ratio as the obligations cited in the accounting data so that costs are allocated on a proportional basis.

Contract Number: N00014-02-C-0053

"[X]" In contracts with the Canadian Commercial Corporation, substitute "Administrative Contracting Officer" for "contract auditor".

"[X]" Check appropriate requirements.

## 2. Submission of Invoices Direct to Payment Office

a. Pursuant to DFARS 242.803(b)I(C), if the cognizant Government auditor has notified the contractor of its authorization to do so, the contractor may submit interim vouchers under this contract direct to the payment office shown in Block 12 of SF-26 instead of to the address shown in subparagraph (b) of section G.1 above.

b. Such authorization does not extend to the first and final vouchers. The contractor shall continue to submit first vouchers to the cognizant auditor shown in subparagraph (b) of section G.1. above. The final voucher shall be submitted to the Administrative Contracting Officer (SF-26 block 6) with a copy to the cognizant auditor.

## 3. Method of Payment

As consideration for the proper performance of the work and services required under this contract, the Contractor shall be paid as follows:

a. Costs, as provided for under the contract clause entitled "Allowable Cost and Payment," not to exceed the amount set forth as "Estimated Cost" in Section B, subject to the contract clause entitled "Limitation of Cost" or "Limitation of Funds" whichever is applicable.

b. A fixed fee in the amount set forth as "Fixed Fee" in Section B, in accordance with the contract clause entitled "Fixed Fee", which shall be paid upon completion of the work and services required under this contract and upon final acceptance by the Contracting Officer; however, the Contractor may bill on each voucher the amount of the fee bearing the same percentage to the total fixed fee as the amount of cost billed bears to the total estimated cost.

## 4. Procuring Office Representatives

a. In order to expedite administration of this contract, the Administrative Contracting Officer should direct inquiries to the appropriate office listed below. Please do not direct routine inquiries to the person listed in Item 20A on Standard Form 26.

Contract Negotiator - Ms. Cheryl J. De Lisle, ONR 254, (703) 696-2571 -, DSN 426-2571, E-mail Address: cheryl\_delisle@onr.navy.mil

Inspection and Acceptance - Ms. Paula Furman,, ONR334, (703) 588-1077-, DSN 426-1077, E-mail Address: FurmanP@ONR.NAVY.MIL

Security Matters - Ms. Jennifer Ramsey, ONR 43, (703) 696-4618, DSN 426-4618

Patent Matters - Mr. Tom McDonnell, ONR 00CC, (703) 696-4000, DSN 426-4000.

b. The Administrative Contracting Officer will forward invention disclosures and reports directly to Corporate Counsel (Code 00CC), Office of Naval Research, Department of the Navy,

Contract Number: N00014-02-C-0053

Arlington, Virginia 22217-5660. The Corporate Counsel will return the reports along with a recommendation to the Administrative Contracting Officer. The Corporate Counsel will represent the Contracting Officer with regard to invention reporting matters arising under this contract.

#### 5. Type of Contract

This is a cost-plus-fixed-fee completion contract.

#### SECTION H - SPECIAL CONTRACT REQUIREMENTS

##### 1. ONR 5252.235-9714 REPORT PREPARATION (DEC 1988)

Scientific or technical reports prepared by the Contractor and deliverable under the terms of this contract will be prepared in accordance with format requirements contained in ANSI Z39.18, Scientific and Technical Reports: Organization, Preparation and Production.

[NOTE: ANSI Z39.18 may be obtained from NISO Press Fulfillment Center, P.O. Box 451, Annapolis Junction, MD 20701-0451. Telephone Toll-Free: 1-877-736-6476, access via the web: [www.niso.org](http://www.niso.org)]

##### 2. INVENTION DISCLOSURES AND REPORTS

The Contractor shall submit all invention disclosures and reports required by the Patent Rights clause of this contract to the Administrative Contracting Officer.

##### 3. ONR 5252.210-9708 METRICATION REQUIREMENTS (DEC 1988)

(a) All scientific and technical reports delivered pursuant to the terms of this contract shall identify units of measurement in accordance with the International System of Units (SI) commonly referred to as the "Metric System". Conversion to U.S. customary units may also be given where additional clarity is deemed necessary. Guidance for application of the metric system is contained in the American Society of Testing Materials document entitled "Standard Practice for Use of the International System of Units (The Modernized Metric System)" (ASTM Designation E380-89A).

(b) This provision also applies to journal article preprints, reprints, commercially published books or chapters of books, theses or dissertations submitted in lieu of a scientific and/or technical report.

##### 4. ONR 5252.242-9718 TECHNICAL DIRECTION (DEC 1988)

(a) Performance of the work hereunder is subject to the technical direction of the Program Officer/COTR designated in this contract, or duly authorized representative. For the purposes of this clause, technical direction includes the following:

(1) Direction to the Contractor which shifts work emphasis between work areas or tasks, requires pursuit of certain lines of inquiry, fills in details or otherwise serves to accomplish the objectives described in the statement of work;

Contract Number: N00014-02-C-0053

(2) Guidelines to the Contractor which assist in the interpretation of drawings, specifications or technical portions of the work description.

(b) Technical direction must be within the general scope of work stated in the contract. Technical direction may not be used to:

- (1) Assign additional work under the contract;
- (2) Direct a change as defined in the contract clause entitled "Changes";
- (3) Increase or decrease the estimated contract cost, the fixed fee, or the time required for contract performance;
- (4) Change any of the terms, conditions or specifications of the contract.

(c) The only individual authorized to in any way amend or modify any of the terms of this contract shall be the Contracting Officer. When, in the opinion of the Contractor, any technical direction calls for effort outside the scope of the contract or inconsistent with this special provision, the Contractor shall notify the Contracting Officer in writing within ten working days after its receipt. The Contractor shall not proceed with the work affected by the technical direction until the Contractor is notified by the Contracting Officer that the technical direction is within the scope of the contract.

(d) Nothing in the foregoing paragraphs may be construed to excuse the Contractor from performing that portion of the work statement which is not affected by the disputed technical direction.

#### 5. ONR 5252.237-9705 KEY PERSONNEL (DEC 88)

(a) The Contractor agrees to assign to the contract tasks those persons whose resumes were submitted with its proposal and who are necessary to fulfill the requirements of the contract as "key personnel". No substitutions may be made except in accordance with this clause.

(b) The Contractor understands that during the first ninety (90) days of the contract performance period, no personnel substitutions will be permitted unless these substitutions are unavoidable because of the incumbent's sudden illness, death or termination of employment. In any of these events, the Contractor shall promptly notify the Contracting Officer and provide the information described in paragraph (c) below. After the initial ninety (90) day period the Contractor must submit to the Contracting Officer all proposed substitutions, in writing, at least days in advance ( days if security clearance must be obtained) of any proposed substitution and provide the information required by paragraph (c) below.

(c) Any request for substitution must include a detailed explanation of the circumstances necessitating the proposed substitution, a resume for the proposed substitute, and any other information requested by the Contracting Officer. Any proposed substitute must have qualifications equal to or superior to the qualifications of the incumbent. The Contracting Officer or his/her authorized representative will evaluate such requests and promptly notify the Contractor in writing of his/her approval or disapproval thereof.

(d) In the event that any of the identified key personnel cease to perform under the contract and the substitute is disapproved, the contract may be immediately terminated in accordance with the Termination clause of the contract.

Introduction: Section I

Contract Number: N00014-02-C-0053

Attention: Prime Contractors. If a subaward is made to an educational institution, Prime Contractors are directed to please refer to the ONR Model Award for appropriate flow-down clauses to universities. See <http://www.onr.navy.mil>, click Contracts & Grants Icon. Click Model Awards Link. Click Section I clauses that flow-down to University subcontractors.

#### SECTION I - CONTRACT CLAUSES

##### Cost Plus Fixed Fee Research and Development (SBIR) (DEC 2001) (1)

- \* Applies when contract action exceeds \$10,000
- \*\* Applies when contract action exceeds \$100,000
- + Applies when contract action exceeds \$500,000
- ++ Applies when contract action exceeds \$500,000 and subcontracting possibilities exist. Small Business Exempt.
- x (DD 250)
- (A) FAR 52.252-02 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <http://www.arnet.gov/far/>

[http://web1.deskbook.osd.mil/htmlfiles/DBY\\_far.asp](http://web1.deskbook.osd.mil/htmlfiles/DBY_far.asp)  
[http://web2.deskbook.osd.mil/htmlfiles/DBY\\_dfars.asp](http://web2.deskbook.osd.mil/htmlfiles/DBY_dfars.asp)  
[http://farsite.hill.af.mil/farsite\\_script.html](http://farsite.hill.af.mil/farsite_script.html)

##### I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES:

- \*\* FAR 52.202-1 Definitions (DEC 2001)
- \*\* FAR 52.203-3 Gratuities (APR 1984)
- \*\* FAR 52.203-5 Covenant Against Contingent Fees (APR 1984)
- \*\* FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995)
- \*\* FAR 52.203-7 Anti-Kickback Procedures (JUL 1995)
- \*\* FAR 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)
- \*\* FAR 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997)
- \*\* FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 1997)
- \*\* FAR 52.204-4 Printing/Copying Double-Sided on Recycled Paper (AUG 2000)
- FAR 52.211-15 Defense Priority and Allocation Requirements (SEP 1990)
- \*\* FAR 52.215-2 Audit and Records - Negotiation (JUN 1999) and Alternate II (APR 1998) (Alternate II is only applicable with cost reimbursement contracts with State and local Governments, educational institutions, and other non-profit organizations.)
- FAR 52.215-8 Order of Precedence - Uniform Contract Format (OCT 1997)
- + FAR 52.215-10 Price Reduction for the Defective Cost or Pricing Data (OCT 1997) (The clause is applicable to subcontracts over \$550,000.)

Contract Number: N00014-02-C-0053

- + FAR 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997) (Applicable to subcontracts over \$550,000 only)
- \*\* FAR 52.215-14 Integrity of Unit Prices (OCT 1997) and Alternate I (OCT 1997) (Alternate I is applicable if the action is contracted under Other Than Full and Open Competition)
- + FAR 52.215-15 Pension Adjustments and Asset Reversions (DEC 1998)
- + FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions (OCT 1997)
- + FAR 52.215-19 Notification of Ownership Changes (OCT 1997) (Applicable when Cost or Pricing Data is required)
- FAR 52.216-7 Allowable Cost and Payment (MAR 2000)
- FAR 52.216-8 Fixed Fee (MAR 1997)
- \*\* FAR 52.219-4 Notice of Price Evaluation Preference for HUBzone Small Business Concerns (JAN 1999)
- \*\* FAR 52.219-8 Utilization of Small Business Concerns (OCT 2000)
- ++ FAR 52.219-9 Small Business Subcontracting Plan (OCT 2001)
- ++ FAR 52.219-16 Liquidated Damages - Subcontracting Plan (JAN 1999)
- FAR 52.222-1 Notice to the Government of Labor Disputes (FEB 1997)
- \*\* FAR 52.222-2 Payment for Overtime Premiums (JUL 1990) (Note: The word "zero" is inserted in the blank space indicated by an asterisk)
- FAR 52.222-3 Convict Labor (AUG 1996) (Reserved when FAR 52.222-20 Walsh Healy Public Contracts Act is applicable)
- \*\* FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (SEP 2000)
- FAR 52.222-21 Prohibition of Segregated Facilities (FEB 1999)
- FAR 52.222-26 Equal Opportunity (FEB 1999)
- \* FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001 1998)
- \* FAR 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)
- \* FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
- \*\* FAR 52.223-14 Toxic Chemical Release Reporting (OCT 2000)
- FAR 52.225-13 Restrictions on Certain Foreign Purchases (JUL 2000)
- \*\* FAR 52.227-1 Authorization and Consent (JUL 1995)
- \*\* FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)
- FAR 52.228-7 Insurance Liability to Third Persons (MAR 1996) (Further to paragraph (a)(3), unless otherwise stated in this contract, types and limits of insurance required are as stated in FAR 28.307-2)
- FAR 52.232-9 Limitation on Withholding of Payments (APR 1984)
- \*\* FAR 52.232-17 Interest (JUN 1996)
- FAR 52.232-23 Assignment of Claims (JAN 1986) and Alternate I (APR 1984)
- FAR 52.232-33 Payment by Electronic Funds Transfer - Central Contractor Registration (MAY 1999)
- FAR 52.233-1 Disputes (DEC 1998)
- FAR 52.233-3 Protest After Award (AUG 1996) and Alternate I (JUN 1985)
- FAR 52.242-1 Notice of Intent to Disallow Costs (APR 1984)

Contract Number: N00014-02-C-0053

- + FAR 52.242-3 Penalties for Unallowable Costs (MAY 2001)
- FAR 52.242-4 Certification of Final Indirect Costs (JAN 1997)
- \*\* FAR 52.242-13 Bankruptcy (JUL 1995)
- FAR 52.242-15 Stop Work Order (AUG 1989) and Alternate I (APR 1984)
- FAR 52.244-2 Subcontracts (AUG 1998) and Alternate I (AUG 1998) [INSERT IN COST-REIMBURSEMENT CONTRACTS, AND LETTER, TIME-AND-MATERIAL, AND LABOR-HOUR CONTRACTS EXCEEDING SAP, AND FIXED PRICE CONTRACTS EXCEEDING SAP WHERE UNPRICED ACTIONS ARE ANTICIPATED. USE ALTERNATE I FOR COST-REIMBURSEMENT CONTRACTS]
- \*\* FAR 52.244-5 Competition in Subcontracting (DEC 1996)
- FAR 52.244-6 Subcontracts for Commercial Items and Commercial Components (DEC 2001)
- FAR 52.245-5 Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) (JAN 1986) and ALT I (JUL 1985) (As modified by DoD Class Deviation 99-00008 dated 13 July 1999) (ALT I is applicable if the contractor is a nonprofit organization whose primary purpose is the conduct of scientific research)
- \*\* FAR 52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels (JUN 2000)
- FAR 52.249-6 Termination (Cost-Reimbursement) (SEP 1996)
- FAR 52.249-14 Excusable Delays (APR 1984)
- FAR 52.251-1 Government Supply Sources (APR 1984)
- FAR 52.253-1 Computer Generated Forms (JAN 1991)

II. DEPARTMENT OF DEFENSE FAR SUPPLEMENTAL (DFARS) (48 CFR CHAPTER 2) CLAUSES:

- \*\* DFARS 252.203-7001 Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (MAR 1999)
- DFARS 252.204-7003 Control of Government Work Product (APR 1992)
- DFARS 252.204-7004 Required Central Contractor Registration (NOV 2001)
- \*\* DFARS 252.209-7000 Acquisition from Subcontractors subject to On-Site Inspection under the Intermediate Range Nuclear Forces (INF) Treaty (NOV 1995)
- \*\* DFARS 252.209-7004 Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country (MAR 1998)
- + DFARS 252.215-7000 Pricing Adjustments (DEC 1991)
- ++ DFARS 252.219-7003 Small, Small Disadvantaged and Women-owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996)
- \*\* DFARS 252.225-7012 Preference for Certain Domestic Commodities (AUG 2000)
- DFARS 252.225-7031 Secondary Arab Boycott of Israel (JUN 1992)
- DFARS 252.227-7016 Rights in Bid or Proposal Information (JUN 1995)

Contract Number: N00014-02-C-0053

- DFARS 252.227-7019 Validation of Asserted Restrictions - Computer Software (JUN 1995)
- DFARS 252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (JUN 1995)
- DFARS 252.227-7028 Technical Data or Computer Software Previously Delivered to the Government (JUN 1995)
- DFARS-252.227-7030 Technical Data - Withholding of Payment (MAR 2000)
- DFARS 252.227-7036 Declaration of Technical Data Conformity (JAN 1997)
- DFARS 252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999)
- DFARS 252.231-7000 Supplemental Cost Principles (DEC 1991)
- DFARS 252.242-7000 Post-Award Conference (DEC 1991)
- \*\* DFARS 252.243-7002 Requests for Equitable Adjustment (MAR 1998)
- DFARS 252.245-7001 Reports of Government Property (MAY 1994)
- DFARS 252.246-7000 Material Inspection and Receiving Report (DEC 1991)
- DFARS 252.251-7000 Ordering from Government Supply Sources (MAY 1995)
- \*\* DFARS 252.247-7023 Transportation of Supplies by Sea (MAR 2000)
- \*\* DFARS 252.247-7024 Notification Of Transportation Of Supplies By Sea (MAR 2000) (Applicable when the Contractor has made a negative response to the inquiry in the representation at DFARS 252.247-7022.)
- DFARS 252.251-7000 Ordering from Government Supply Sources (MAY 1995)

(B) ADDITIONAL FAR AND DFARS CLAUSES

This contract incorporates one or more clauses by reference as indicated by the mark of (X), with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <http://www.arnet.gov/far/>

- FAR 52.204-2 Security Requirements (AUG 1996) (Applicable if contract will generate or require access to classified information and DD Form 254, Contract Security Classification Specification, is issued to the contractor)
- X FAR 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JUL 1995) (Applicable to contracts exceeding \$25,000 in value.)
- X FAR 52.215-17 Waiver of Facilities Capital Cost of Money (OCT 1997) (Applicable if the Contractor did not propose facilities capital cost of money in the offer)
- X FAR 52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (OCT 1997) (Applicable if cost or pricing data or information other than cost or pricing data are required)
- FAR 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications (OCT 1997) (Applicable if cost or pricing data or information other than cost or pricing data will be required for modifications)
- X FAR 52.217-9 Option to Extend the Term of the Contract (MAR 2000) (In

Contract Number: N00014-02-C-0053

paragraph (a), insert "any time before the contract expires", and in paragraph (c), insert "27 months")

FAR 52.219-3 Notice of Total HUBZone Set-Aside (JAN 1999)

FAR 52.219-5 Very Small Business Set-Aside (MAR 1999) (For actions between \$2,500 and \$50,000)

FAR 52.219-6 Notice of Total Small Business Set-Aside (JUL 1996), and Alternate I (OCT 1995) (Applicable to total small business set-asides, including SBIR)

FAR 52.219-7 Notice of Partial Small Business Set-Aside (JUL 1996) and Alternate I (OCT 1995)

FAR 52.219-10 Incentive Subcontracting Program (OCT 2001) (Applicable at the PCO's discretion to contract actions exceeding \$500,000 and when subcontracting possibilities exist. The clause is small business exempt) (In paragraph (b), insert the appropriate number between 0 and 10 - "XX") (Complete the space in the parentheses)

FAR 52.219-25 Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting (OCT 1999) (Applicable if contract includes FAR 52.219-24)

FAR 52.219-26 Small Disadvantaged Business Participation Program - Incentive Subcontracting Program (OCT 2000) (Applicable at the PCO's discretion to contract actions exceeding \$500,000 and when subcontracting possibilities exist. The clause is small business exempt) (In paragraph (b), insert the appropriate number between 0 and 10 - "XX") (Complete the space in the parentheses)

FAR 52.222-20 Walsh Healy Public Contracts Act (DEC 1996) (Applicable if the contract includes deliverable materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000)

FAR 52.223-5 Pollution Prevention and Right-to-Know Information (APR 1998) (Applicable if contract provides for performance, in whole or in part, on a Federal facility)

X FAR 52.223-6 Drug-Free Workplace (MAY 2001) (Applies when contract action exceeds \$100,000 or at any value when the contract is awarded to an individual)

X FAR 52.227-20 Rights in Data - SBIR Program (Mar 1994)

FAR 52.230-2 Cost Accounting Standards (APR 1998) (Applicable when contract amount is over \$500,000, if contractor is subject to full CAS coverage, as set forth in 48 CFR Chapter 99, Subpart 9903.201-2(a) (FAR Appendix B)

FAR 52.230-3 Disclosure and Consistency of Cost Accounting Practices (APR 1998) (Applicable when contract amount is over \$500,000 but less than \$25 million, and the offerer certifies it is eligible for and elects to use modified CAS coverage as set forth in 48 CFR Chapter 99, Subpart 9903.201-2 (FAR Appendix B)

FAR 52.230-6 Administration of Cost Accounting Standards (NOV 1999) (Applicable if contract is subject to either clause at FAR 52.230-2 or the clause at FAR 52.230-3 and FAR 52.230-5)

X FAR 52.232-20 Limitation of Cost (APR 1984) (Applicable only when contract action is fully funded)

Contract Number: N00014-02-C-0053

X	FAR 52.232-22	Limitation of Funds (APR 1984) (Applicable only when contract action is incrementally funded)
X	FAR 52.232-33	Payment by Electronic Funds Transfer - Central Contractor Registration (MAY 1999)
	FAR 52.239-1	Privacy or Security Safeguards (AUG 1996) (Applicable to contracts for information technology which require security of information technology, and/or are for the design, development, or operation of a system of records using commercial information technology services or support services.)
	FAR 52.245-18	Special Test Equipment (FEB 1993) Applicable when it is anticipated that the contractor will acquire or fabricate special test equipment but the exact identification of the equipment is not known)
	DFARS 252.203-7002	Display of DoD Hotline Poster (DEC 1991) (Applicable only when contract action exceeds \$5 million or when any modification increases contract amount to more than \$5 million)
	DFARS 252.204-7000	Disclosure of Information (DEC 1991) (Applies when Contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public)
	DFARS 252.204-7005	Oral Attestation of Security Responsibilities (NOV 2001) (Applicable if FAR 52.204-2, Security Requirements Applies)
X	DFARS 252.205-7000	Provision of Information to Cooperative Agreement Holders (DEC 1991) (Applicable only when contract action exceeds \$500,000 or when any modification increases total contract amount to more than \$500,000)
X	DFARS 252.215-7002	Cost Estimating System requirements (Oct 1998) (Applicable only to contract actions awarded on the basis of certified cost or pricing data)
	DFARS 252.223-7004	Drug-Free Work Force (SEP 1988) (Applicable (a) if contract involves access to classified information: or (b) when the Contracting Officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of performance of the contract.
	DFARS 252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials (APR 1993) (Applicable if work requires, may require, or permits contractor performance on a DoD installation)
	DFARS 252.225-7001	Buy American Act and Balance of Payments Program (MAR 1998) (Applicable if the contract includes deliverable supplies) (This clause does not apply if an exception to the Buy American Act or Balance of Payments Program is known or if using the clause at 252.225-7007, 252.225-7021, or 252.225-7036.)
	DFARS 252.225-7002	Qualifying Country Sources as Subcontractors (DEC 1991)

Contract Number: N00014-02-C-0053

(Applicable when clause at DFARS 252.225-7001, 252.227-7007, 252.227-7021, or 252.227-7036 applies)

- DFARS 252.225-7007 Buy American Act - Trade Agreements - Balance of Payments Program (SEP 2001) (Use instead of FAR 52.225-5, Trade Agreements (Include in contracts valued at \$186,000 or more, if the Trade Agreements Act applies (see 25.401 and 25.403) and the agency has determined that the restrictions of the Buy American Act or Balance of Payments Program are not applicable to U.S.- made end products, unless the acquisition is to be awarded and performed outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation and does not exceed the increase simplified acquisition threshold of \$200,000.) The clause need not be used where purchase from foreign sources is restricted (see 225.401 (b)(ii)). The clause may be used where the contracting officer anticipates a waiver of the restriction.)
- DFARS 252.225-7008 Supplies to be Accorded Duty-Free Entry (MAR 1998) (Applicable when the contract provides for duty-free entry and includes FAR 52.225-8 - Duty-Free Entry)
- DFARS 252.225-7009 Duty-Free Entry- Qualifying Country Supplies (End Products and Components) (AUG 2000) (Applicable if contract includes deliverable supplies)
- DFARS 252.225-7010 Duty-Free Entry - Additional Provisions (AUG 2000) (Applicable when FAR 52.225-8 - Duty-Free Entry is included in the contract.)
- DFARS 252.225-7016 Restriction On Acquisition Of Ball And Roller Bearings (DEC 2000) (Applicable if contract includes deliverable supplies, unless Contracting Officer knows that items being acquired do not contain ball or roller bearings)
- X DFARS 252.225-7026 Reporting of Contract Performance Outside the United States (JUN 2000) (Applicable only when contract value exceeds \$500,000 or when any modification increases contract value to more than \$500,000)
- DFARS 252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises (SEP 2001) [(Applicable if contract is subject to FAR 52.219-9 Small Business Subcontracting Plan) (This Interim Rule replaces FAR 52.226-1 (JUN 2000) via DFARS Chg Ntc 200110911]
- X DFARS 252.227-7018 Rights in Noncommercial Technical Data and Computer Software - Small Business Innovation Research (SBIR) Program (JUN 1995) (Applicable when technical data or computer software will be generated during performance of contracts under the SBIR Program)
- DFARS 252.242-7004 Material Management and Accounting System (DEC 2000) (Applicable to contract actions exceeding \$100,000) (Not

Contract Number: N00014-02-C-0053

applicable to contracts set aside for exclusive participation by small business and small disadvantaged business concerns)

D. COST-PLUS-FIXED-FEE-RESEARCH AND DEVELOPMENT CLAUSES

The following FAR and DFARS clauses apply to Cost-Plus-Fixed-Fee Research and Development Contracts and are either required by regulation or are required when the circumstances of the contract warrant that they apply: (\*\* - applies to contract actions exceeding \$100,000)

FAR 52.225-16	Sanctioned European Union Country Services (FEB 2000)
** FAR 52227-1	Authorization and Consent (JUL 1995) and Alternate I (APR 1984)
FAR 52.243-2	Changes - Cost Reimbursement (AUG 1987) and Alternate V(APR 1984)
FAR 52.246-9	Inspection of Research and Development (Short Form) (APR 1984)
FAR 52.246-23	Limitation of Liability (FEB 1997)
DFARS 252.235-7002	Animal Welfare (DEC 1991)
DFARS 252.235-7011	Final Scientific or Technical Report (SEP 1999)

The following FAR and DFARS clauses for Cost-Plus-Fixed-Fee Research and Development Contracts only apply when specifically marked with a check (x):

FAR 52.227-10	Filing of Patent Applications - Classified Subject Matter (APR 1984) (Applicable if contract is subject to FAR clause 52.204-02 and either 52.227-11 or 52.227-12)
X FAR 52.227-11	Patent Rights - Retention by the Contractor (Short Form) (JUN 1997) (Applicable if contractor is a small business or non profit organization)
OR	
FAR 52.227-12	Patent Rights - Retention by the Contractor (Long Form) (JAN 1997) (Applicable if contractor is a large business)
X DFARS 252.227-7034	Patents - Subcontracts (APR 1984) (Applicable when FAR 52.227-11 applies)
X DFARS 252.227-7039	Patents - Reporting of Subject Inventions (APR 1990) (Applied when FAR 52.227-11 applies)

SECTION J - LIST OF ATTACHMENTS

1. EXHIBIT A, entitled "Contract Data Requirements List" (DD Form 1423) - 13 pages with Enclosure Number 1, entitled "Contract Data Requirements List - Instructions for Distribution."
2. Attachment Number 1, entitled, "Statement of Work," 6 pages.
3. Attachment Number 2, entitled "Financial Accounting Data Sheet."

Contract Number: N00014-02-C-0053

SECTION K - REPRESENTATION, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

1. The Contractor's Representations and Certifications, dated 2001-06-07 are hereby incorporated into this contract by reference.

Contract Number: N00014-02-C-0053

CONTRACT DATA REQUIREMENTS LIST  
INSTRUCTIONS FOR DISTRIBUTION

DISTRIBUTION OF TECHNICAL REPORTS AND FINAL REPORT

ADDRESSEE -----	DODAAD CODE -----	NUMBER OF COPIES	
		UNCLASSIFIED/ UNLIMITED -----	UNCLASSIFIED/ LIMITED AND CLASSIFIED -----
Program Officer E-mail: FurmanP@onr.navy.mil	N00014	1	1
Administrative Contracting Officer*	S3915A	1	1
SBIR Program Coordinator ATTN: Doug Harry Office of Naval Research 800 North Quincy Street Arlington, VA 22217-5660	N00014	1	1
Director, Naval Research Laboratory ATTN: Code 5227 Washington, D. C. 20375-5326	N00173	1	1
Defense Technical Information Center 8725 John J. Kingman Road STE 0944 Ft. Belvoir, VA 22060-6218 ATTN: Pat Mawby E-mail: pmawby@dtic.mil	S47031	2	2

Enclosure Number 1

Contract Number: N00014-02-C-0053

REPORT DOCUMENTATION PAGE

FORM APPROVED  
OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1214 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget. Paperwork Reduction Project (0704-0188), Washington, DC 20503.

1. AGENCY USE ONLY (Leave Blank)	2. REPORT DATE	3. REPORT TYPE AND DATES COVERED	
4. TITLE AND SUBTITLE			5. FUNDING NUMBERS
6. AUTHOR(S)			
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES)			8. PERFORMING ORGANIZATION REPORT NUMBER
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)			10. SPONSORING / MONITORING AGENCY REPORT NUMBER
11. SUPPLEMENTARY NOTES			
12A. DISTRIBUTION / AVAILABILITY STATEMENT Distribution authorized to U.S. Government Agencies only; report contains proprietary data produced under SBIR (or STTR) contract (whichever applies). Other requests shall be referred to the performing organization in Block 7 of this form.		12B. DISTRIBUTION CODE	
13. ABSTRACT (MAXIMUM 200 WORDS)			
14. SUBJECT TERMS		15. NUMBER OF PAGES	
		16. PRICE CODE	
17. SECURITY CLASSIFICATION OF REPORT	18. SECURITY CLASSIFICATION OF THIS PAGE	19. SECURITY CLASSIFICATION OF ABSTRACT	20. LIMITATION OF ABSTRACT

NSN 7540-01-280-5500

Standard Form 298 (Rev 2-89)  
Prescribed By ANSI std. Z39-18  
298-102

Enclosure Number 1

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A. CONTRACT LINE ITEM NO. N00014-02-C-0053		B. EXHIBIT A	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]					
D. SYSTEM/ITEM Ocean Power Technology Program				E. CONTRACT/PR NO.	F. CONTRACTOR Ocean Power Technologies, Inc.			
1. DATA ITEM NO. A001	2. TITLE OF DATA ITEM Progress Report					3. SUBTITLE Administrative Progress Report		
4. AUTHORITY (Data Acquisition Document No.) Contractor Format			5. CONTRACT REFERENCE SOW Task 5		6. REQUIRING OFFICE ONR 334			
7. DD 250 REQ LT	9. DIST STATEMENT REQUIRED	10. FREQUENCY MTHLY	12. DATE OF FIRST SUBMISSION 28 DAC. See BLK 16		14. DISTRIBUTION			
							b. COPIES	
8. APP CODE		11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION 15th of each month. See BLK 16		Final			
					ADDRESSEE	Draft	REQ	REPRO
16. REMARKS					ONR 254		LT	
The first Administrative Progress Report shall be delivered 28 days after award of the contract. Subsequent monthly submittals shall be delivered on the 15th of each month for the previous months activities.					ONR 334		1	1
The first page shall indicate:					NFESC 52		1	1
- the title,					-----			
- the contractor's name and address,					15. TOTAL			
- the contract number and CDRL number,						0	2	2
- the date of the report, and the period covered by the report.					=====			
Progress payment vouchers shall be coordinated with the costs given in these reports.								
_____ report shall summarize the following information for the previous months reporting period:								
- Actual versus planned resource								
- Actual versus planned deliverables, showing due and completion dates.								
- Resolution of previous problem areas reported on the previous report.								
- Any technical, schedule, or cost problems encountered or expected.								
If any problems are reported, then the report shall also include the following information:								
- Description of problem(s)								
- Recommend action(s)								
- Resulting impact on contract (if any)								
G. PREPARED BY R. L. Brackett		H. DATE 28 Nov. 2001	L. APPROVED BY P. Furman		J. DATE 28 Nov. 2001			

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Form Approved  
OMB No. 0704-0188

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A. CONTRACT LINE ITEM NO. N00014-02-C-0053		B. EXHIBIT A	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]				
D. SYSTEM/ITEM Ocean Power Technology Program			E. CONTRACT/PR NO.	F. CONTRACTOR Ocean Power Technologies, Inc.			
1. DATA ITEM NO. A002	2. TITLE OF DATA ITEM Meeting Agenda		3. SUBTITLE				
4. AUTHORITY (Data Acquisition Document No.) Contractor Format			5. CONTRACT REFERENCE SOW Task 5	6. REQUIRING OFFICE ONR 334			
7. DD 250 REQ LT	9. DIST STATEMENT REQUIRED	10. FREQUENCY ASREQ	12. DATE OF FIRST SUBMISSION See BLK 16	14. DISTRIBUTION			
b. COPIES							
8. APP CODE	11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION See BLK 16		Final			
				ADDRESSEE	Draft	REQ	REPRO
16. REMARKS The Contractor shall prepare and deliver a Draft Meeting Agenda to the Government at least 10 working days prior to each Review Meeting. The agenda shall be prepared in Contractor format and shall indicate each topic proposed for discussion as well as the time allocated for each topic. Government comments will be returned to the contractor 5 working days prior to the meeting. The contractor shall incorporate the government comments and present a Final Agenda at the beginning of each meeting.				ONR 254		LT	
				ONR 334	1	1	1
				NFESC 52	1	1	1
				15. TOTAL	2	2	2
=====							
G. PREPARED BY R. L. Brackett		H. DATE 28 Nov. 2001	L. APPROVED BY P. Furman		J. DATE 28 Nov. 2001		

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A. CONTRACT LINE ITEM NO. N00014-02-C-0053		B. EXHIBIT A	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]					
D. SYSTEM/ITEM Ocean Power Technology Program				E. CONTRACT/PR NO.	F. CONTRACTOR Ocean Power Technologies, Inc.			
1. DATA ITEM NO. A003	2. TITLE OF DATA ITEM Meeting Minutes					3. SUBTITLE		
4. AUTHORITY (Data Acquisition Document No.) Contractor Format			5. CONTRACT REFERENCE SOW Task 5		6. REQUIRING OFFICE ONR 334			
7. DD 250 REQ LT	9. DIST STATEMENT REQUIRED	10. FREQUENCY ASREQ	12. DATE OF FIRST SUBMISSION 7 days after meeting		14. DISTRIBUTION			
								b. COPIES
8. APP CODE		11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION See BLK 16					Final
					ADDRESSEE	Draft	REQ	REPRO
16. REMARKS Meeting Minutes shall be submitted in Contractor format within 7 days after each Review Meeting.					ONR 254		LT	
The first page shall indicate:					ONR 334		1	1
- the title,					NFESC 52		1	1
- the contractor's name and address,					-----			
- the contract number and CDRL number,					15. TOTAL	0	2	2
- the date of the meeting, and the location.					=====			
Meeting Minutes shall summarize all topics discussed and shall include resolution of any technical issues. The Minutes shall include an appendix presenting a list of Action Items, person or organization responsible for completing the task as well as the agreed completion date. The Minutes shall include a list of attendees by name, rank or position, activity, and phone number.								
G. PREPARED BY R. L. Brackett		H. DATE 28 Nov. 2001	L. APPROVED BY P. Furman		J. DATE 28 Nov. 2001			

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A. CONTRACT LINE ITEM NO. N00014-02-C-053		B. EXHIBIT A	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]						
D. SYSTEM/ITEM Ocean Power Technology Program			E. CONTRACT/PR NO.		F. CONTRACTOR Ocean Power Technologies, Inc.				
1. DATA ITEM NO. A004	2. TITLE OF DATA ITEM Presentation material					3. SUBTITLE			
4. AUTHORITY (Data Acquisition Document No.)			5. CONTRACT REFERENCE SOW Task 5		6. REQUIRING OFFICE ONR 334				
7. DD 250 REQ LT	9. DIST STATEMENT REQUIRED	10. FREQUENCY ASREQ	12. DATE OF FIRST SUBMISSION See BLK 16		14. DISTRIBUTION				
								b. COPIES	
8. APP CODE		11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION See BLK 16					Final	
					ADDRESSEE	Draft	REQ	REPRO	
16. REMARKS					ONR 254		LT		
The Contractor shall provide a set of all audio/visual material used during each Review Meeting at the conclusion of the presentation. Video presentation material shall be prepared in NTSC standard and recorded on VHS format videotape. Hard copies of presentation View Graphs shall be prepared on 8 1/2 by 11 inch white bond paper. Electronic (reproducible) copies shall be compatible with Microsoft PowerPoint 2000.					ONR 334		1	1	
					NFESC 52		1	1	
					15. TOTAL	0	2	2	
					=====				
G. PREPARED BY R. L. Brackett		H. DATE 28 Nov. 2001	L. APPROVED BY P. Furman		J. DATE 28 Nov. 2001				

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A. CONTRACT LINE ITEM NO. N00014-02-C-0053		B. EXHIBIT A	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]		
D. SYSTEM/ITEM Ocean Power Technology Program			E. CONTRACT/PR NO.	F. CONTRACTOR Ocean Power Technologies, Inc.	
1. DATA ITEM NO. A005	2. TITLE OF DATA ITEM Technical Report		3. SUBTITLE Hydrodynamic Model Upgrade & Validation		
4. AUTHORITY (Data Acquisition Document No.)			5. CONTRACT REFERENCE SOW Task 2.6.1	6. REQUIRING OFFICE ONR 334	
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 83 DAC - See BLK 16	14. DISTRIBUTION	
8. APP CODE			11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION 103 DAC - See BLK 16	b. COPIES
			Final		
			ADDRESSEE	Draft	REQ REPRO
16. REMARKS			ONR 254	LT	DD
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 14 days prior to the required submission of the Final Technical Report (see BLK 13)			ONR 334	1	1 1
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.			NFESC 52	1	1 1
			15. TOTAL	2	2 2
			=====		

The Final Report shall compile all of the design criteria, assumptions, calculations performed, issues, and resolutions addressed during performance of the contract. All calculations shall be presented in a clear and logical order. The calculation sheets shall be fully annotated in such a manner that the government design quality assurance engineers can independently review the assumptions, method and calculations. Each calculation sheet shall include: project title, task title, date, engineer's name, and page number. With each submittal, calculations covering the work performed shall be included. The contractor shall also deliver electronic data file(s) of any simulation model calculations or results.

The first page shall indicate:  
 - the title,  
 - the contractor's name and address,  
 - the contract number and CDRL number,  
 - the date of the report, and the period covered by the report.

All copies of this Contract Deliverable shall be provided in electronic format. Electronic copies of reports shall be submitted in one of the following formats: (a) Portable Document Format (.pdf), or (b) Microsoft Word, 2000. All embedded figures and tables in these reports must be compatible with MS-Windows95. All electronic files shall be delivered preferably on a medium compatible with a 100MB Iomega(R) zip(TM) drive or CD ROM. Electronic copies of small items, (less than 1 Megabyte), may be delivered by E-mail or on 3.5" floppy discs, as mutually agreed to by the Contractor and the Government.

G. PREPARED BY R. L. Brackett	H. DATE 28 Nov. 2001	L. APPROVED BY P. Furman	J. DATE 28 Nov. 2001
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OMB No. 0704-0188

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A. CONTRACT LINE ITEM NO. N00014-02-C-0053		B. EXHIBIT A	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]		
D. SYSTEM/ITEM Ocean Power Technology Program			E. CONTRACT/PR NO.	F. CONTRACTOR Ocean Power Technologies, Inc.	
1. DATA ITEM NO. A006	2. TITLE OF DATA ITEM Technical Report		3. SUBTITLE Operational Availability Model		
4. AUTHORITY (Data Acquisition Document No.)			5. CONTRACT REFERENCE SOW Task 2.2 & 2.6.2	6. REQUIRING OFFICE ONR 334	
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 137 DAC - See BLK 16		14. DISTRIBUTION
8. APP CODE			11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION 168 DAC - See BLK 16	
16. REMARKS			b. COPIES		
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 14 days prior to the required submission of the Final Technical Report (See BLK 13)			Final		
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.			Draft		
			REQ		
			REPRO		
			ONR 254		
			ONR 334		
			NFESC 52		
			15. TOTAL		
			2 2 2		

Technical Report shall compile all of the design criteria, assumptions, calculations performed, issues and resolutions addressed during performance of the contract. All calculations shall be presented in a clear and logical order. The calculation sheets shall be fully annotated in such a manner that government design quality assurance engineers can independently review the assumptions, method and calculations. Each calculation sheet shall include: project title, task title, date, engineer's name, and page number. With each submittal, calculations covering the work performed shall be included. The contractor shall also deliver electronic data file(s) of any simulation model calculations or results.

The first page shall indicate:

- the title,
- the contractor's name and address,
- the contract number and CDRL number,
- the date of the report, and the period covered by the report.

All copies of this Contract Deliverable shall be provided in electronic format. Electronic copies of reports shall be submitted in one of the following formats: (a) Portable Document Format (.pdf), or (b) Microsoft word, 2000. All embedded figures and tables in these reports must be compatible with MS-Windows95. All electronic files shall be delivered preferably on a medium compatible with a 100 MB Iomega(R) zip (TM) drive or CD ROM. Electronic copies of small items (less than 1 Megabyte), may be deliverable by E-mail or on 3.5" floppy discs, as mutually agreed to by the Contractor and the Government.

G. PREPARED BY R. L. Brackett	H. DATE 28 Nov. 2001	L. APPROVED BY P. Furman	J. DATE 28 Nov. 2001
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OMB No. 0704-0188

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A. CONTRACT LINE ITEM NO. N00014-02-C-0053		B. EXHIBIT A	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]		
D. SYSTEM/ITEM Ocean Power Technology Program			E. CONTRACT/PR NO.	F. CONTRACTOR Ocean Power Technologies, Inc.	
1. DATA ITEM NO. A007	2. TITLE OF DATA ITEM Technical Report		3. SUBTITLE Multi-Buoy Simulation Model		
4. AUTHORITY (Data Acquisition Document No.)			5. CONTRACT REFERENCE SOW Task 2.3	6. REQUIRING OFFICE ONR 334	
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 109 DAC - See BLK 16		14. DISTRIBUTION
					b. COPIES
8. APP CODE	11. AS OF DATE		13. DATE OF SUBSEQUENT SUBMISSION 144 DAC - See BLK 16		Final
					ADDRESSEE    Draft    REQ    REPRO
16. REMARKS					ONR 254    LT    DD
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 14 days prior to the required submission of the Final Technical Report (see BLK 13)					ONR 334    1    1    1
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.					NFESC 52    1    1    1
					-----
					15. TOTAL    2    2    2
					=====

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G. PREPARED BY R. L. Brackett	H. DATE 28 Nov. 2001	L. APPROVED BY P. Furman	J. DATE 28 Nov. 2001
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A. CONTRACT LINE ITEM NO. N00014-02-C-0053		B. EXHIBIT A	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]		
D. SYSTEM/ITEM Ocean Power Technology Program			E. CONTRACT/PR NO.		F. CONTRACTOR Ocean Power Technologies, Inc.
1. DATA ITEM NO. A008	2. TITLE OF DATA ITEM Technical Report		3. SUBTITLE Ocean Test Requirements		
4. AUTHORITY (Data Acquisition Document No.)			5. CONTRACT REFERENCE SOW Task 2	6. REQUIRING OFFICE ONR 334	
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 125 DAC - See BLK 16		14. DISTRIBUTION
					b. COPIES
8. APP CODE		11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION 139 DAC - See BLK 16		Final
					ADDRESSEE    Draft    REQ    REPRO
16. REMARKS			ONR 254	LT	DD
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 7 days prior to the required submission of the Final Technical Report (See BLK 13)			ONR 334	1	1    1
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.			NFESC 52	1	1    1
					-----
15. TOTAL					2    2    2
					=====

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A. CONTRACT LINE ITEM NO. N00014-02-C-0053		B. EXHIBIT A	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]						
D. SYSTEM/ITEM Ocean Power Technology Program		E. CONTRACT/PR NO.			F. CONTRACTOR Ocean Power Technologies, Inc.				
1. DATA ITEM NO. A009	2. TITLE OF DATA ITEM Technical Report					3. SUBTITLE Design Requirements Report			
4. AUTHORITY (Data Acquisition Document No.)			5. CONTRACT REFERENCE SOW Task 2.7		6. REQUIRING OFFICE ONR 334				
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 125 DAC - See BLK 16		14. DISTRIBUTION				
								b. COPIES	
8. APP CODE	11. AS OF DATE		13. DATE OF SUBSEQUENT SUBMISSION 139 DAC - See BLK 16					Final	
					ADDRESSEE	Draft	REQ	REPRO	
16. REMARKS					ONR 254	LT	DD		
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 7 days prior to the required submission of the Final Technical Report (see BLK 13)					ONR 334	1	1	1	
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.					NFESC 52	1	1	1	
					15. TOTAL	2	2	2	
					=====				
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A. CONTRACT LINE ITEM NO. N00014-02-C-0053		B. EXHIBIT A	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]			
D. SYSTEM/ITEM Ocean Power Technology Program			E. CONTRACT/PR NO.		F. CONTRACTOR Ocean Power Technologies, Inc.	
1. DATA ITEM NO. A010	2. TITLE OF DATA ITEM Technical Report		3. SUBTITLE Wave Tank Tests			
4. AUTHORITY (Data Acquisition Document No.)			5. CONTRACT REFERENCE SOW Task 2.5	6. REQUIRING OFFICE ONR 334		
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 111 DAC - See BLK 16	14. DISTRIBUTION		
				b. COPIES		
8. APP CODE	11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION 153 DAC - See BLK 16	Final			
			ADDRESSEE	Draft	REQ	REPRO
16. REMARKS			ONR 254	LT	DD	
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 14 days prior to the required submission of the Final Technical Report (see BLK 13)			ONR 334	1	1	1
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.			NFESC 52	1	1	1
			15. TOTAL	2	2	2

Technical Report shall compile all of the design criteria, assumptions, calculations performed, issues and resolutions addressed during performance of the contract. All calculations shall be presented in a clear and logical order. The calculation sheets shall be fully annotated in such a manner that government design quality assurance engineers can independently review the assumptions, method and calculations. Each calculation sheet shall include: project title, task title, date, engineer's name, and page number. With each submittal, calculations covering the work performed shall be included. The contractor shall also deliver electronic data file(s) of any simulation model calculations or results.

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A. CONTRACT LINE ITEM NO. N00014-02-C-0053		B. EXHIBIT A	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]						
D. SYSTEM/ITEM Ocean Power Technology Program					E. CONTRACT/PR NO.)	F. CONTRACTOR Ocean Power Technologies, Inc.			
1. DATA ITEM NO. A011	2. TITLE OF DATA ITEM Design Drawings					3. SUBTITLE Multi-Buoy Wave Energy Converter Design			
4. AUTHORITY (Data Acquisition Document No.)			5. CONTRACT REFERENCE SOW Task 2.9 & 2.10		6. REQUIRING OFFICE ONR 334				
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 214 DAC - See BLK 16		14. DISTRIBUTION				
					b. COPIES				
8. APP CODE		11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION 241 DAC - See BLK 16		Final				
					ADDRESSEE	Draft	REQ	REPRO	
16. REMARKS					ONR 254	LT	DD		
BLK 12: The first submission of the Design Drawings shall be a draft of the drawings. Government comments on the draft drawings will be returned to the Contractor 14 days prior to the required submission of the Final Design Drawings (see BLK 13)					ONR 334	1	1	1	
BLK 13: The second submission of the Design Drawings shall be a final version that incorporates comments from the Government review of the draft report.					NFESC 52	1	1	1	
					15. TOTAL	2	2	2	
					=====				
Final Drawings shall be prepared in sufficient detail and presented in such a form that they could be used by an independent reviewer to support the conclusions and assessment of feasibility presented in the Final Design Report. Drawings and specifications shall be coordinated. The terminology used in specifications and drawings shall be identical. All drawing shall be delivered in electronic form and shall be compatible with either .dxf or .pdf file formats. Electronic files shall be delivered on a medium compatible with a 100 MB Iomega(R) zip (TM) drive or CD ROM. The electronic drawing files shall be scaled such that when printed they produce size F, 28 x 40 inch full size design drawings.									
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A. CONTRACT LINE ITEM NO. N00014-02-C-0053		B. EXHIBIT A	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]		
D. SYSTEM/ITEM Ocean Power Technology Program			E. CONTRACT/PR NO.	F. CONTRACTOR Ocean Power Technologies, Inc.	
1. DATA ITEM NO. A012	2. TITLE OF DATA ITEM Technical Report		3. SUBTITLE Installation and Test Plan		
4. AUTHORITY (Data Acquisition Document No.)			5. CONTRACT REFERENCE SOW Task 3.22.5	6. REQUIRING OFFICE ONR 334	
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 214 DAC - See BLK 16		14. DISTRIBUTION
					b. COPIES
8. APP CODE		11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION 326 DAC - See BLK 16		Final
					ADDRESSEE      Draft      REQ      REPRO
16. REMARKS					ONR 254      LT      DD
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 14 days prior to the required submission of the Final Technical Report (see BLK 13)					ONR 334      1      1      1
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					-----
					15. TOTAL      2      2      2
					=====

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A. CONTRACT LINE ITEM NO. B. EXHIBIT C. CATEGORY:  
N00014-02-C-0053 A TOP [ ] TM [ ] OTHER [ ]

D. SYSTEM/ITEM E. CONTRACT/PR NO. F. CONTRACTOR  
Ocean Power Technology Program

1. DATA ITEM NO. 2. TITLE OF DATA ITEM 3. SUBTITLE  
A013 Technical Report Multi-Buoy In-Ocean Physical Test

4. AUTHORITY (Data Acquisition Document No.) 5. CONTRACT REFERENCE 6. REQUIRING OFFICE  
SOW Task 4 ONR 334

7. DD 250 REQ 9. DIST STATEMENT 10. FREQUENCY 12. DATE OF FIRST SUBMISSION 14. DISTRIBUTION  
DD REQUIRED 3TIME 573 DAC - See BLK 16

8. APP CODE 11. AS OF DATE 13. DATE OF SUBSEQUENT SUBMISSION  
624 DAC - See BLK 16

16. REMARKS	b. COPIES			
	ADDRESSEE	Draft	REQ	REPRO
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 14 days prior to the required submission of the Final Technical Report (see BLK 13)	ONR 254	LT	DD	
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	NFESC 52	1	1	1
	15. TOTAL	2	2	2

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G. PREPARED BY H. DATE L. APPROVED BY J. DATE  
R. L. Brackett 28 Nov. 2001 P. Furman 28 Nov. 2001

STATEMENT OF WORK

TASK DESCRIPTIONS

TASK GROUP 1.0: OCEAN TEST SITE PLANNING AND PREPARATION

TASK 1.1: OPT CONTRACT AWARD (MILESTONE)

TASK 1.2: OPT KICK-OFF AND PHEPS UPDATE (MEETING)

The project team will conduct a kick-off meeting to review the OPT program plan and any information pertinent to the [\*\*] test. Important inputs and factors learned thus far on the PHEPS effort will be reviewed to determine their relevance to the OPT effort.

TASK GROUP 2.0 MEDELING SYSTEM DESIGN

Key mathematical models in three design areas will be developed during the design phase: Hydrodynamic, Operational Availability, and Multiple Buoy Power Combination. The upgrade of OPT's existing Hydrodynamic model was performed on the PHEPS contract; however, subsequent wave tank testing and further model validation and simulation will occur during the OPT system design phase. The models will be developed around OPT's baseline WEC design, using actual data retrieved from past and present buoy testing for validation. Inputs to the model will consist of agreed upon met-ocean parameters such as wave climate and baseline WEC configuration.

TASK 2.1: RETRIEVE DATA FROM WEC OPERATIONS

OPT will assemble pertinent data from past wave tank and ocean experiments and make available to modeling teams.

TASK 2.2: CREATE AO MODEL

With the assistance of NFESC technical personnel, OPT will select an outside contractor to develop a basic and reasonable Ao model of the WEC system. NFESC's experience with the MPAT Model will be reviewed for applicability to this program. OPT will provide information to the contractor about the baseline WEC design and the input met-ocean conditions. The contractor will develop and code a model that will estimate system availability, and also identify key risk areas. Due to NFESC's experience in this modeling, NFESC will provide consultation in guiding model development. The model will be reviewed with OPT and NFESC for quality and system completeness.

TASK 2.3: CREATE MULTI-BUOY POWER COMBINATION MODEL

Using various simulation and software packages, such as Simulink or Sabe, OPT will model a multi-unit WEC system to determine the most efficient method of combining power from two separate WEC units. Work will focus on hydraulic and electrical subsystem configuration to find an optimal arrangement. The model will yield a block diagram (with identified equipment) with major equipment parameters from which a system can be designed. Code will be primarily developed in-house with sub-contractors providing recommended practical system configurations in hydraulics and electrical power conversion for basis of the modeling. Varying input data on buoy motion will be input into the models for a preliminary validation, checking for reasonability.

TASK 2.4: MODELS REVIEW

Members of the project team involved with the modeling efforts (NFESC, OPT and contractors/consultants) will review the models and assumptions for accuracy, relevance, quality and completeness versus their intended design.

TASK 2.5: WAVE TANK TESTING

Wave tank testing will encompass a small-scale buoy and mooring design based on the baseline design OPT, consultants, and NFESC technical personnel will identify the necessary parameters and expected results from a wave tank test. The purpose of the test is to provide validation of the hydrodynamic model and Ao model. A wave tank test plan will be devised. A scale model of the proposed WEC system design will be fabricated. The model will be appropriately sized and instrumented to yield useful results. Data will be collected, results tabulated and analyzed. The test can occur at the University of Delaware, US Naval Academy, NSWC Carderock, or other suitable facility, depending upon scaling needs and tank capabilities.

TASK 2.6: MODEL VALIDATION AND SIMULATIONS

TASK 2.6.1: HYDRODYNAMIC MODEL

Wave tank test data will be used to update and validate the model. Then full-scale simulations using input met-ocean data will be conducted to determine system response and loads on the structure.

TASK 2.6.2: AO MODEL

Pertinent wave tank test data will be used to validate the model. Then full-scale simulations using input met-ocean data will be conducted to evaluate the preliminary system design.

TASK 2.7: IDENTIFY RISKS AND SYSTEM DESIGN REQUIREMENTS

Results from the hydrodynamic and Ao simulations, and multi-buoy studies, site-specific data, and test requirements will be documented. This step is important in defining the detailed requirements that hardware and systems must be designed to. This document will lead up to a review of the design requirements and test system expectations. A general system specification

requirements document will be prepared. Risks and System Design Requirements previously documented for the PHEPS project will be amended.

**TASK 2.8: IDENTIFY OCEAN TEST REQUIREMENTS**

OPT will solicit from members of the project team opinions and recommendations as to desired and necessary types of data associated with the full-scale system test. Data that will help support Ao and hydrodynamic analyses are important. Based on these inputs, OPT's engineering staff will amend the system test requirements document, previously prepared on the PHEPS project, circulate it to the project team and solicit further inputs and recommendations. The amended document will identify what is to be tested, how it is to be tested, who will manage the data, and the sampling rate. The team will identify how the data will be analyzed. The document will state the success criteria for the test.

**TASK 2.9: DESIGN**

**TASK 2.9.1: DESIGN REQUIREMENTS REVIEW**

The project team will conduct a review of the design requirements developed under the PHEPS contract that will incorporate changes suggested by the Operational Availability analysis, wave tank tests and hydrodynamic analysis and address the system design with regard to the site to include system design requirements, ocean test requirements and issues relating to the deployment site such as environmental, cable, shore-based facilities, buoy and anchor/mooring installation and removal implications.

**TASK 2.9.2: BUOY DESIGN**

OPT engineering staff and contractors will modify the existing buoy design to meet the design requirements. These changes will be done using CAD packages such as ProE, Solidworks or Autocad. FEA's will be conducted on critical structural members under high loads.

**TASK 2.9.3: ANCHOR/MOORING DESIGN**

An experienced contractor (such as Makai Ocean Engineering) will design an anchoring and mooring system that meets the holding power and damping requirements for the buoy based on the local oceanographic conditions, Ao model inputs and the force calculations from the hydrodynamic modeling.

**TASK 2.9.4: ELECTRICAL AND HYDRAULIC SUBSYSTEMS DESIGN**

A contractor experienced in ocean cable systems (such as Makai Ocean Engineering) plus OPT's electrical engineering staff will specify electrical transmission cable and mode. The remainder of the electrical and hydraulic subsystems will be designed by OPT and its contractors in accordance with the Design Requirements for a [\*\*].

**TASK 2.9.5: SENSORS, DATA ACQUISITION AND CONTROL DESIGN**

Under the PHEPS contract, the work content in the area of sensors and data acquisition design focused on accommodating enhanced data and instrumentation requirements to support needs for

comprehensive test data. In this task, the work will utilize the enhanced sensor and data capability already developed but will focus on the control algorithm and user interface for sea-based and shore-based equipment for a [\*\*].

TASK 2.9.6: DESIGN REVIEW

The project team including NFESC, OPT, ONR, design consultants, and fabrication contractors as required, will review the system design. Additional wave tank testing will be performed, if necessary under Program Option 1, for additional validation.

TASK 2.10: DESIGN- MODIFICATIONS

Based on the results of the Preliminary Design Review, the system design may need to be modified. A final system design will be compiled, and then assessed relative to the wave tank test results and context of the AO, Hydrodynamic models and matched against the System Design Requirements to check on design conformity to the requirements.

TASK GROUP 3.0: OCEAN TEST PREPARATION

TASK 3.1: SYSTEM PROCUREMENT AND FABRICATION

This task will include the conversion of the WEC system design to detailed fabrication drawings, the selection of suppliers, and the activities involved in procurement, fabrication and supplier and QA management. It is important that long-lead time items be identified and ordered early on in the project so they may follow a staged deployment within the plan to allow the final installation timing goals to be met.

TASK 3.2: INSTALLATION AND TEST PLANS

Detailed installation and test plans, previously developed for the PHEPS contract, will be amended by OPT to include the additional installation and test requirements necessary to support the two-buoy system. These plans will be circulated to the project team for feedback, leading up to a review of such plans.

TASK 3.3: INSTALLATION AND TEST PLANS REVIEW

The project team will review the installation and test plan. Involved site and contractor personnel or their representatives will be involved in the review.

TASK 3.4 SITE PREPARATIONS

Any required permits or coordinating with local facilities will have been obtained by the government under an earlier task. Local Navy personnel previously worked with OPT's electrical engineering and project staff to specify on shore electrical interface and equipment facilities requirements. The land based electrical and communications equipment facility will be either constructed or arranged for within existing infrastructure. Any remaining final diving surveys to map cable routes and anchor site and hydrographic surveys will be conducted. OPT will be responsible for this effort, working through contractors, or seeking US Navy/NFESC

diving resources and other resources if cost effective and available. This proposal assumes that OPT's contractor will perform these tasks.

#### TASK 3.5 PRE-INSTALLATION REVIEW

Prior to system installation, a final review of the installation plan will be held with the project team.

#### TASK 3.8: SYSTEM INSTALLATION (1 BUOY AND ELECTRICAL HOOK-UP)

The installation of the [\*\*] will be carried out in accordance with the installation and test plans. The organizational structure for the installation activity will be established with clear lines of communication protocol and decision making authority. An experienced contractor (such as Sea Engineering, Inc. and Makai Ocean Engineering and their subcontractors) will carry out the installation of the cable, anchors/mooring, buoy, and additional infrastructure necessary to support the [\*\*]. The installation may be carried out in separate phases due to its relative sensitivity to weather. The land-based equipment previously specified and documented in the cost proposal will be installed in the equipment facility. Based on local infrastructure, resource scheduling, weather and logistical issues, the installation schedule must remain somewhat flexible.

#### TASK GROUP 4.0: OCEAN TEST

##### TASK 4.1: MONITORING, DATA COLLECTION AND ANALYSIS

Data from the WEC system operation will be collected and entered into the operational database. Data will be collected in several different ways. Some parameters will be monitored electronically from sensors through a data acquisition system. Other parameters may be monitored by direct human interaction, such as daily observations of an electric meter or counter at a land-based facility. Other parameters may require divers to make routine visual inspections of the buoy and anchor components to check for corrosion, marine growth, and wear. Data from other sensing devices such as independent wave characteristic monitoring devices (wave rider buoys, acoustic Doppler units, etc.) must be collected and integrated. Analysis of the data collected will identify trends, anomalies and key operational points. Some of this analysis will be conducted by statistical and event mapping of data from spreadsheet or other database format. The data will be presented in a time-based format to allow correlation with varying events with system responses. Data will be analyzed by OPT personnel with assistance from contractors and NFESC personnel as required.

##### TASK 4.2: MID-TEST REVIEW

Members of the project team will review the results of the ocean test mid-way through the test period. Recommendations for changes in the test plan can be made at that time.

TASK 4.3: MODEL UPDATE AND DESIGN VALIDATION

On-going actual data collected will be "fed" back into the key models for purposes of model validation. Variations in actual results vs. model predictions will be studied. Models will be updated once resolutions to the variances have been solved or researched.

TASK 4.4: CONCLUSIONS AND RECOMMENDATIONS

Comparison of the models to actual performance will be made to form the results. Conclusions and recommendations can then be formulated.

TASK 4.5: FINAL REVIEW

All project team members will meet to present the key findings from the tests and review the conclusions and recommendations.

TASK GROUP 5.0: PROGRAM MANAGEMENT

PROGRAM PLANNING AND TRACKING - The OPT Program Manager will be responsible for resource assignment, task direction and schedule management. OPT will notify the government when the project reaches 75% completion in terms of cost.

PROGRAM MEETINGS - Program meetings will be established to coincide with key technical milestones.

PROGRESS REPORTS - OPT will prepare and distribute the minutes from Review Meetings, Monthly Progress Reports, and Major Technical Reports in accordance with the Contract Data Requirements List (CDRL) Items.

TASK GROUP 6.0: PROGRAM OPTIONS:

TASK 6.1 WAVE TANK TEST AND MODEL VALIDATION - OPTION 1

TASK 6.1.1 WAVE TANK TESTS (SECOND PASS)

Second pass wave tank testing will encompass a small-scale buoy and mooring design based on the preliminary design. OPT, consultants, and NFESC technical personnel will identify the necessary parameters and expected results from a wave tank test. The purpose of the test is to provide validation of the hydrodynamic model. A wave tank test plan will be devised. A scale model of the proposed WEC system design will be fabricated. The model will be appropriately sized to yield useful results.

TASK 6.1.2: VALIDATE NUMERICAL MODELS

Based on the results of the wave tank studies, the data will be input back into the hydrodynamic and Ao models for validation.

TASK 6.2: ON-GOING OCEAN TEST - CONTINUE TO MONITOR [\*\*] - OPTION 2

The WEC system deployed in the ocean [\*\*] project [\*\*] will continue to be to be monitored. Data will be retrieved and entered into the operational availability database.

Data will be gathered from electronic monitoring of sensors as well as routine visual observations and inspections of the unit.

TASK 6.3: SYSTEM REMOVAL - OPTION 3

This option will allow for removal [\*\*], canister, wave data buoy, sub sea cable, land-based cable, and shore-based electronics. [\*\*].

FINANCIAL ACCOUNTING DATA SHEET - NAVY

1. CONTRACT NUMBER (CRITICAL) 2. SPIIN (CRITICAL) 3. MOD (CRITICAL) 4. PR NUMBER PAGE 10F 1  
 N0001405C0384 05PR09436-00

6. LINE OF ACCOUNTING

A. ACRN CLIN/SLIN (Critical)	B. APPROPRIATION (CRITICAL)	C. SUBHEAD (CRITICAL)	D. OBJ E. CLA PARM	E. RFM	F. SA	G. AAA (CRITICAL)	H. IT	I. PAA	J. PROJ UNIT	K. COST CODE		7. AMOUNT (CRITICAL)	NAVY INTERNAL USE ONLY REF DOC/ACRN
										MCC	SUF		
AA	1711319	W3FA	255 RA	333	0	068342	2D	000000	02839	000	4KT0	\$2,400,000.00	PR#02PR02408-00 FRC: 34KT

PAGE TOTAL \$2,400,000.00  
 GRAND TOTAL \$2,400,000.00

PREPARED/AUTHORIZED BY:

COMPTROLLER APPROVAL:  
 FOR FISCAL DATA AND SIGNATURE

BY \_\_\_\_\_ for COMPTROLLER, ONR CONTRACT REVIEWED

DATE:

DATE: \_\_\_\_\_

(SEAL)

DEPARTMENT OF THE NAVY  
OFFICE OF NAVAL RESEARCH  
800 NORTH QUINCY STREET  
ARLINGTON, VA 22217-5660

IN REPLY REFER TO  
15 April 2002

OCEAN POWER TECHNOLOGIES, INC.  
Attn: Ms. Debbie Montagna  
1590 Reed Road  
Pennington, NJ 08534

Dear GSA Supplier:

Office of Naval Research (ONR) has awarded a contract to the contractor referenced above. Ocean Power Technologies (OPT) is currently conducting research for the ONR under contract N00014-01-C-0368 through 15 March 2003 and N00014-01 -C-0053 through 10 May 2004.

Please allow OPT to purchase under the GSA schedule to obtain pricing as if ONR was purchasing the item. The materials purchased are for ONR under the contracts referenced above.

The Office of Naval Research appreciates your cooperation for this acquisition. For further information, please contact Cheryl De Lisle at 703-696-2571.

Sincerely,

/s/ Todd Hanson

-----  
Todd Hanson  
Contracting Officer

2. AMENDMENT/MODIFICATION NO. 3. EFFECTIVE DATE 4. REQUISITION/PURCHASE REG. NO. 5. PROJECT NO. (If applicable)  
P00001 SEE BLOCK 16C 02PR02408-01 N.A.

6. ISSUED BY CODE N00014 7. ADMINISTERED BY (If other than Item 6) CODE S3915A  
SCD-C  
OFFICE OF NAVAL RESEARCH DCM PHILADELPHIA  
ONR 254 Cheryl De Lisle (703)696-2571 E-mail PO BOX 11427  
cheryl\_delisle@onr.navy.mil 700 ROBBINS AVE., BLDG 4A  
BALLSTON CENTRE TOWER ONE PHILADELPHIA, PA 19111-0427  
800 NORTH QUINCY STREET  
ARLINGTON, VA 22217-5660

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code) (3) 9A. AMENDMENT OF SOLICITATION NO. N.A.  
[ ] 9B. DATED (SEE ITEM 11)  
OCEAN POWER TECHNOLOGIES INC. [X] 10A. MODIFICATION OF CONTRACT/ORDER NO N00014-02-C-0053  
1590 REED ROAD  
PENNINGTON, NJ 08534 [ ] 10B. DATED (SEE ITEM 13) 11-FEB-02

CODE FACILITY CODE  
04EP7

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

[ ] The above numbered solicitation is amended as set forth in Item 14. The hour and data specified for receipt of Offers [ ] is extended [ ] is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and data specified in the solicitation or as amended, by on of the following methods:  
(a) By completing items 8 and 15, and returning \_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and data specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)  
SEE THAT ATTACHED FINANCIAL ACCOUNTING DATA (FAD) SHEET(S)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRTACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(3) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify Authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.  
[ ]

[ ] B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

[ ] C. SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:  
AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION:

[X] D. OTHER (Specify type of modification and authority)  
MUTUAL AGREEMENT OF BOTH PARTIES AND KTR PROPOSAL DATED 1 JULY 2002

E. IMPORTANT: Contractor [ ] is not, [X] is required to sign this document and return \_\_\_ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The purpose of this modification is to exercise and expand the effort under Option 3 (CLIN 0005) of contract N00014-02-C-0053, add the Allotment of Funds clause, incorporate the latest terms and conditions, and incrementally fund Option 3.

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)  
Charles F. Dunleavy Lee Ann Boyer  
Chief Financial Officer Contracting Officer

15B. CONTRACTOR/OFFEROR 15C. DATE SIGNED 16B. UNITED STATES OF AMERICA 16C. DATE SIGNED  
/s/ Charles F. Dunleavy 3 Sept. 2002 BY /s/ Lee Ann Boyer 9/9/02

(Signature of person authorized to sign) (Signature of Contracting Officer)

This modification results in the expansion of Option 3 of Section B as stated below:

- Option 3 of Section B - Supplies or Services and Prices/Costs is hereby exercised and expanded as follows

ITEM NO.	SUPPLIES/SERVICES	ESTIMATED COST	FIXED FEE	TOTAL ESTIMATED COST & FIXED FEE
0001	The Contractor shall furnish the necessary personnel and facilities to conduct the research effort as described in Section C.	\$[**]	\$[**]	\$2,399,893.00
0002	Reports and Data in accordance with Exhibit A (DD Form 1423)			[**]
0003	Option 1, Wave Tank Test 2; Validate Numerical Models	\$[**]	[**]	\$ [**]
0004	Option 2, On-Going Ocean Test-Continue Monitoring	\$[**]	[**]	\$ [**]
0005	Option 3, Complete System Removal as stated in section C.	\$[**]	[**]	\$ [**]

SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

- The Contractor shall conduct research in accordance with the original contract with the exception of Option 3 revised as stated below:

OPTION 3: WES System Removal

This option will allow for removal of [\*\*] and the associated system components including the canister, wave data device, Sub Sea, and land-based cables, and shore-based electronics. At the end of the test period, a suitable subcontractor such as Sea Engineering Inc. will remove [\*\*] from the water and move them to a temporary government storage location. Storage costs, if applicable will be at the Government's expense. From this storage point, at the Government's discretion, the equipment can either be made available for use at some other Government test site, scrapped at the Government's expense or offered to Ocean Power Technologies, Inc. for its own use.

- Add to SECTION G, the Allotment of Funds clause, paragraph 6 below, and increase the total amount of the contract by \$[\*\*] for the expansion to Option 3.

6. ALLOTMENT OF FUNDS

It is hereby understood and agreed that this contract will not exceed a total amount of \$[\*\*] including an estimated cost of \$[\*\*] and a fixed fee of \$[\*\*].

CLIN 0001 is fully funded.

Contract Number: N00014-02-C-0053  
Modification P00001

CLIN 0005 is incrementally funded in the amount of \$[\*\*] including an estimated cost of \$[\*\*] and a fixed fee of \$[\*\*]

3. In Section I, delete all the clauses and insert the following Section I clauses:

Introduction: Section I

Attention: Prime Contractors. If a subaward is made to an educational institution, Prime Contractors are directed to please refer to the ONR Model Award for appropriate flow-down clauses to universities. See <http://www.onr.navy.mil>. Click Contracts & Grants Icon. Click Model Awards Link. Click Section I clauses that flow-down to University subcontractors.

#### SECTION I - CONTRACT CLAUSES

Cost-Plus-Fixed Fee (JUNE 2002) (1)

(A) FAR 52.252-02 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<http://www.arnet.gov/far/>  
[http://web1.deskbook.osd.mil/htmlfiles/DBY\\_far.asp](http://web1.deskbook.osd.mil/htmlfiles/DBY_far.asp)  
[http://web2.deskbook.osd.mil/htmlfiles/DBY\\_dfars.asp](http://web2.deskbook.osd.mil/htmlfiles/DBY_dfars.asp)  
[http://farsite.hill.af.mil/farsite\\_script.html](http://farsite.hill.af.mil/farsite_script.html)

For instance, a dollar threshold may trigger the applicability of the clause or a certain condition of the research may trigger the applicability of the clause. In order to provide some assistance, as to when a dollar threshold triggers a clause, we have associated certain symbols with dollar thresholds. The symbols and their appropriate dollar thresholds are as follows:

- \* Applies when contract action exceeds \$10,000
- \*\* Applies when contract action exceeds \$100,000
- + Applies when contract action exceeds \$500,000
- ++ Applies when contract action exceeds \$500,000 and subcontracting possibilities exist. Small Business Exempt.
- x (DD 250)
- xx Not applicable

Contract Number: N00014-02-C-0053  
Modification P00001

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES:

\*\* FAR 52.202-1 Definitions (DEC 2001)  
\*\* FAR 52.203-3 Gratuities (APR 1984)  
\*\* FAR 52.203-5 Covenant Against Contingent Fees (APR 1984)  
\*\* FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995)  
\*\* FAR 52.203-7 Anti-Kickback Procedures (JUL 1995)  
\*\* FAR 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)  
\*\* FAR 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997)  
\*\* FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 1997)  
\*\* FAR 52.204-4 Printing/Copying Double-Sided on Recycled Paper (AUG 2000)  
\*\* FAR 52.211-15 Defense Priority and Allocation Requirements (SEP 1990)  
\*\* FAR 52.215-2 Audit and Records - Negotiation (JUN 1999) and Alternate II (APR 1998) (Alternate II is only applicable with cost reimbursement contracts with State and local Governments, educational institutions, and other non-profit organizations.)  
FAR 52.215-8 Order of Precedence - Uniform Contract Format (OCT 1997)  
+ FAR 52.215-10 Price Reduction for the Defective Cost or Pricing Data (OCT 1997) (The clause is applicable to subcontracts over \$550,000.)  
+ FAR 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997) (Applicable to subcontracts over \$550,000 only)  
\*\* FAR 52.215-14 Integrity of Unit Prices (OCT 1997) and Alternate I (OCT 1997) (Alternate I is applicable if the action is contracted under Other Than Full and Open Competition)  
+ FAR 52.215-15 Pension Adjustments and Asset Reversions (DEC 1998)  
+ FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions (OCT 1997)  
+ FAR 52.215-19 Notification of Ownership Changes (OCT 1997) (Applicable when Cost or Pricing Data is required)  
FAR 52.216-7 Allowable Cost and Payment (FEB 2002)  
FAR 52.216-8 Fixed Fee (MAR 1997)  
\*\* FAR 52.219-4 Notice of Price Evaluation Preference for HUBzone Small Business Concerns (JAN 1999)  
\*\* FAR 52.219-8 Utilization of Small Business Concerns (OCT 2000)  
++ FAR 52.219-9 Small Business Subcontracting Plan (JAN 2002)

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++ FAR 52.219-16 Liquidated Damages - Subcontracting Plan (JAN 1999)  
 FAR 52.222-1 Notice to the Government of Labor Disputes (FEB 1997)  
 \*\* FAR 52.222-2 Payment for Overtime Premiums (JUL 1990) (Note: The word "zero" is inserted in the blank space indicated by an asterisk)  
 FAR 52.222-3 Convict Labor (AUG 1996) (Reserved when FAR 52.222-20 Walsh Healy Public Contracts Act is applicable)  
 \*\* FAR 52.222-4 Contract Work Hours and Safety Standards Act -Overtime Compensation (SEP 2000)  
 FAR 52.222-21 Prohibition of Segregated Facilities (FEB 1999)  
 FAR 52.222-26 Equal Opportunity (APR 2002)  
 \* FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001 1998)  
 \* FAR 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)  
 \* FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)  
 \*\* FAR 52.223-14 Toxic Chemical Release Reporting (OCT 2000)  
 FAR 52.225-13 Restrictions on Certain Foreign Purchases (JUL 2000)  
 \*\* FAR 52.227-1 Authorization and Consent (JUL 1995) and Alternate I (APR 1984)  
 \*\* FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)  
 FAR 52.228-7 Insurance Liability to Third Persons (MAR 1996) (Further to paragraph (a)(3), unless otherwise stated in this contract, types and limits of insurance required are as stated in FAR 28.307-2)  
 FAR 52.232-9 Limitation on Withholding of Payments (APR 1984)  
 \*\* FAR 52.232-17 Interest (JUN 1996)  
 FAR 52.232-23 Assignment of Claims (JAN 1986) and Alternate I (APR 1984)  
 FAR 52.232-25 Prompt Payment (FEB 2002) and Alternate I (FEB 2002) (The words "the 30th day" are inserted in lieu of "the 7th day" at (a)(5)(i). [When Alternate I is applicable (a)(5)(i) does do not apply] [ALTERNATE I APPLIES WHEN AWARDING A COST REIMBURSEMENT CONTRACT FOR SERVICES])  
 FAR 52.232-33 Payment by Electronic Funds Transfer - Central Contractor Registration (MAY 1999)  
 FAR 52.233-1 Disputes (JULY 2002)  
 FAR 52.233-3 Protest After Award (AUG 1996) and Alternate I (JUN 1985)  
 FAR 52.242-1 Notice of Intent to Disallow Costs (APR 1984)

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+ FAR 52.242-3 Penalties for Unallowable Costs (MAY 2001)  
 FAR 52.242-4 Certification of Final Indirect Costs (JAN 1997)  
 \*\* FAR 52.242-13 Bankruptcy (JUL 1995)  
 FAR 52.242-15 Stop Work Order (AUG 1989) and Alternate I (APR 1984)  
 FAR 52.244-2 Subcontracts (AUG 1998) and Alternate I (AUG 1998)

[INSERT IN COST-REIMBURSEMENT CONTRACTS, AND LETTER, TIME-AND-MATERIAL, AND LABOR-HOUR CONTRACTS EXCEEDING SAP, AND FIXED PRICE CONTRACTS EXCEEDING SAP WHERE UNPRICED ACTIONS ARE ANTICIPATED. USE ALTERNATE I FOR COST-REIMBURSEMENT CONTRACTS]

\*\* FAR 52.244-5 Competition in Subcontracting (DEC 1996)  
 FAR 52.244-6 Subcontracts for Commercial Items and Commercial Components (APR 2002)  
 FAR 52.245-5 Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) (JAN 1986) and ALT I (JUL 1985) (As modified by DoD Class Deviation 99-00008 dated 13 July 1999) (ALT I is applicable if the contractor is a nonprofit organization whose primary purpose is the conduct of scientific research)

\*\* FAR 52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels (JUN 2000)  
 FAR 52.249-6 Termination (Cost-Reimbursement) (SEP 1996)  
 FAR 52.249-14 Excusable Delays (APR 1984)  
 FAR 52.251-1 Government Supply Sources (APR 1984)  
 FAR 52.253-1 Computer Generated Forms (JAN 1991)

II. DEPARTMENT OF DEFENSE FAR SUPPLEMENTAL (DFARS) (48 CFR CHAPTER 2) CLAUSES:

\*\* DFARS 252.203-7001 Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (MAR 1999)  
 DFARS 252.204-7003 Control of Government Work Product (APR 1992)  
 DFARS 252.204-7004 Required Central Contractor Registration (NOV 2001)  
 \*\* DFARS 252.209-7000 Acquisition from Subcontractors subject to On-Site Inspection under the Intermediate Range Nuclear Forces (INF) Treaty (NOV 1995)  
 \*\* DFARS 252.209-7004 Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country (MAR 1998)  
 + DFARS 252.215-7000 Pricing Adjustments (DEC 1991)  
 ++ DFARS 252.219-7003 Small, Small Disadvantaged and Women-owned Small Business Subcontracting Plan (DoD Contracts) (APR

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1996)

\*\* DFARS 252.225-7012 Preference for Certain Domestic Commodities (APRIL 2002)

DFARS 252.225-7031 Secondary Arab Boycott of Israel (JUN 1992)

XX DFARS 252.227-7013 Rights in Technical Data - Noncommercial Items (NOV 1995), and Alternate I (JUN 1995)

XX DFARS 252.227-7014 Rights In Noncommercial Computer Software and Noncommercial Computer Software Documentation (JUN 1995)

DFARS 252.227-7016 Rights in Bid or Proposal Information (JUN 1995)

DFARS 252.227-7019 Validation of Asserted Restrictions - Computer Software (JUN 1995)

DFARS 252.227-7025 Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (JUN 1995)

DFARS 252.227-7028 Technical Data or Computer Software Previously Delivered to the Government (JUN 1995)

DFARS 252.227-7030 Technical Data - Withholding of Payment (MAR 2000)

DFARS 252.227-7036 Declaration of Technical Data Conformity (JAN 1997)

DFARS 252.227-7037 Validation of Restrictive Markings on Technical Data (SEP 1999)

DFARS 252.231-7000 Supplemental Cost Principles (DEC 1991)

DFARS 252.242-7000 Post-Award Conference (DEC 1991)

\*\* DFARS 252.243-7002 Requests for Equitable Adjustment (MAR 1998)

DFARS 252.245-7001 Reports of Government Property (MAY 1994)

X DFARS 252.246-7000 Material Inspection and Receiving Report (DEC 1991)

DFARS 252.251-7000 Ordering from Government Supply Sources (MAY 1995)

\*\* DFARS 252.247-7023 Transportation of Supplies by Sea (MAY 2000)

\*\* DFARS 252.247-7024 Notification Of Transportation Of Supplies By Sea (MAR 2000) (Applicable when the Contractor has made a negative response to the inquiry in the representation at DFARS 252.247-7022.)

DFARS 252.251-7000 Ordering from Government Supply Sources (MAY 1995)

(B) ADDITIONAL FAR AND DFARS CLAUSES

This contract incorporates one or more clauses by reference as indicated by the mark of (X), with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <http://www.arnet.gov/far/>

FAR 52.204-2 Security Requirements (AUG 1996) (Applicable if contract will generate or require access to classified information and DD Form 254, Contract Security

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Modification Number: P00001

Classification Specification, is issued to the contractor)

- X FAR 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JUL 1995) (Applicable to contracts exceeding \$25,000 in value.)
- X FAR 52.215-17 Waiver of Facilities Capital Cost of Money (OCT 1997) (Applicable if the Contractor did not propose facilities capital cost of money in the offer)
- FAR 52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (OCT 1997)
- X (Applicable if cost or pricing data or information other than cost or pricing data are required)
- FAR 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications (OCT 1997) (Applicable if cost or pricing data or information other than cost or pricing data will be required for modifications)
- X FAR 52.217-9 Option to Extend the Term of the Contract (MAR 2000) (In paragraph (a), insert "any time before the contract expires", and in paragraph (c), insert "27 months")
- FAR 52.219-3 Notice of Total HUBZone Set-Aside (JAN 1999)
- FAR 52.219-5 Very Small Business Set-Aside (MAR 1999) (For actions between \$2,500 and \$50,000)
- FAR 52.219-6 Notice of Total Small Business Set-Aside (JUL 1996), and Alternate I (OCT 1995) (Applicable to total small business set-asides, including SBIR)
- FAR 52.219-7 Notice of Partial Small Business Set-Aside (JUL 1996) and Alternate I (OCT 1995)
- FAR 52.219-10 Incentive Subcontracting Program (OCT 2001) (Applicable at the PCO's discretion to contract actions exceeding \$500,000 and when subcontracting possibilities exist. The clause is small business exempt) (In paragraph (b), insert the appropriate number between 0 and 10 - "XX") (Complete the space in the parentheses)
- FAR 52.219-25 Small Disadvantaged Business Participation Program -Disadvantaged Status and Reporting (OCT 1999) (Applicable if contract includes FAR 52.219-24)
- FAR 52.219-26 Small Disadvantaged Business Participation Program -Incentive Subcontracting Program (OCT 2000) (Applicable at the PCO's discretion to contract actions exceeding \$500,000 and when subcontracting possibilities exist. The clause is small business exempt) (In paragraph (b), insert the appropriate number between 0 and 10 - "XX") (Complete the space in the parentheses)
- FAR 52.222-20 Walsh Healy Public Contracts Act (DEC 1996)

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(Applicable if the contract includes deliverable materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000)

- FAR 52.223-5 Pollution Prevention and Right-to-Know Information (APR 1998) (Applicable if contract provides for performance, in whole or in part, on a Federal facility)
- X FAR 52.223-6 Drug-Free Workplace (MAY 2001) (Applies when contract action exceeds \$100,000 or at any value when the contract is awarded to an individual)
- X FAR 52.227-20 Rights in Data - SBIR Program (Mar 1994)
- FAR 52.230-2 Cost Accounting Standards (APR 1998) (Applicable when contract amount is over \$500,000, if contractor is subject to full CAS coverage, as set forth in 48 CFR Chapter 99, Subpart 9903.201-2(a) (FAR Appendix B)
- FAR 52.230-3 Disclosure and Consistency of Cost Accounting Practices (APR 1998) (Applicable when contract amount is over \$500,000 but less than \$25 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage as set forth in 48 CFR Chapter 99, Subpart 9903.201-2 (FAR Appendix B)
- FAR 52.230-6 Administration of Cost Accounting Standards (NOV 1999) (Applicable if contract is subject to either clause at FAR 52.230-2, FAR 52.230-3 or FAR 52.230-5)
- X FAR 52.232-20 Limitation of Cost (APR 1984) (Applicable only when contract action is fully funded)
- X FAR 52.232-22 Limitation of Funds (APR 1984) (Applicable only when contract action is incrementally funded)
- X FAR 52.232-33 Payment by Electronic Funds Transfer - Central Contractor Registration (MAY 1999)
- FAR 52.239-1 Privacy or Security Safeguards (AUG 1996) (Applicable to contracts for information technology which require security of information technology, and/or are for the design, development, or operation of a system of records using commercial information technology services or support services.)
- FAR 52.245-18 Special Test Equipment (FEB 1993) Applicable when it is anticipated that the contractor will acquire or fabricate special test equipment but the exact identification of the equipment is not known)
- DFARS 252.203-7002 Display of DoD Hotline Poster (DEC 1991) (Applicable only when contract action exceeds \$5 million or when any modification increases contract amount to more than \$5 million)
- DFARS 252.204-7000 Disclosure of Information (DEC 1991) (Applies when Contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public)

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- DFARS 252.204-7005 Oral Attestation of Security Responsibilities (NOV 2001) (Applicable if FAR 52.204-2, Security Requirements Applies)
- X DFARS 252.205-7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (Applicable only when contract action exceeds \$500,000 or when any modification increases total contract amount to more than \$500,000)
- X DFARS 252.215-7002 Cost Estimating System requirements (Oct 1998) (Applicable only to contract actions awarded on the basis of certified cost or pricing data)
- DFARS 252.223-7004 Drug-Free Work Force (SEP 1988) (Applicable (a) if contract involves access to classified information: or (b) when the Contracting Officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of performance of the contract.
- DFARS 252.223-7006 Prohibition on Storage and Disposal of Toxic and Hazardous Materials (APR 1993) (Applicable if work requires, may require, or permits contractor performance on a DoD installation)
- DFARS 252.225-7001 Buy American Act and Balance of Payments Program (MAR 1998) (Applicable if the contract includes deliverable supplies) (This clause does not apply if an exception to the Buy American Act or Balance of Payments Program is known or if using the clause at 252.225-7007, 252.225-7021, or 252.225-7036.)
- DFARS 252.225-7002 Qualifying Country Sources as Subcontractors (DEC 1991) (Applicable when clause at DFARS 252.225-7001, 252.227-7007, 252.227-7021, or 252.227-7036 applies)
- DFARS 252.225-7008 Supplies to be Accorded Duty-Free Entry (MAR 1998) (Applicable when the contract provides for duty-free entry and includes FAR 52.225-8 - Duty-Free Entry)
- DFARS 252.225-7009 Duty-Free Entry - Qualifying Country Supplies (End Products and Components) (AUG 2000) (Applicable if contract includes deliverable supplies)
- DFARS 252.225-7010 Duty-Free Entry - Additional Provisions (AUG 2000) (Applicable when FAR 52.225-8 - Duty-Free Entry is included in the contract.)
- DFARS 252.225-7016 Restriction On Acquisition Of Ball And Roller Bearings (DEC 2000) (Applicable if contract includes deliverable supplies, unless Contracting Officer knows that items being acquired do not contain ball or roller bearings)
- X DFARS 252.225-7026 Reporting of Contract Performance Outside the United States (JUN 2000) (Applicable only when contract value exceeds \$500,000 or when any modification increases contract value to more than \$500,000)
- DFARS 252.226-7001 Utilization of Indian Organizations and Indian-Owned

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Economic Enterprises (SEP 2001) [(Applicable if FAR Part 12 is not used, and for supplies and services (but not R&D) expected to exceed SAP thresholds) (This Final Rule replaces FAR 52.226-1 (JUN 2000) via DFARS Chg Ntc 20020531]

- X DFARS 252.227-7018 Rights in Noncommercial Technical Data and Computer Software - Small Business Innovation Research (SBIR) Program (JUN 1995) (Applicable when technical data or computer software will be generated during performance of contracts under the SBIR Program)
  
- DFARS 252.242-7004 Material Management and Accounting System (DEC 2000) (Applicable to contract actions exceeding \$100,000) (Not applicable to contracts set aside for exclusive participation by small business and small disadvantaged business concerns)

C. COST-PLUS-FIXED-FEE-RESEARCH AND DEVELOPMENT CLAUSES

The following FAR and DFARS clauses apply to Cost-Plus-Fixed-Fee Research and Development Contracts and are either required by regulation or are required when the circumstances of the contract warrant that they apply: (\*\* - applies to contract actions exceeding \$100,000)

- FAR 52.225-16 Sanctioned European Union Country Services (FEB 2000)
- \*\* FAR 52.227-1 Authorization and Consent (JUL 1995) and Alternate I (APR 1984)
- FAR 52.243-2 Changes - Cost Reimbursement (AUG 1987) and Alternate V (APR 1984)
- FAR 52.246-9 Inspection of Research and Development (Short Form) (APR 1984)
- FAR 52.246-23 Limitation of Liability (FEB 1997)
- DFARS 252.235-7002 Animal Welfare (DEC 1991)
- DFARS 252.235-7011 Final Scientific or Technical Report (SEP 1999)

The following FAR and DFARS clauses for Cost-Plus-Fixed-Fee Research and Development Contracts only apply when specifically marked with a check (x):

- FAR 52.227-10 Filing of Patent Applications -Classified Subject Matter (APR 1984) (Applicable if contract is subject to FAR clause 52.204-02 and either 52.227-11 or 52.227-12)
- X FAR 52.227-11 Patent Rights - Retention by the Contractor (Short Form) (JUN 1997) (Applicable if contractor is a small business or non profit organization)

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OR

- FAR 52.227-12 Patent Rights - Retention by the Contractor (Long Form) (JAN 1997) (Applicable if contractor is a large business)
- X DFARS 252.227-7034 Patents - Subcontracts (APR 1984) (Applicable when FAR 52.227-11 applies)
- X DFARS 252.227-7039 Patents - Reporting of Subject Inventions (APR 1990) (Applied when FAR 52.227-11 applies)

4. Revise sentence number 1 of Section K - Representations, Certifications and other statements of offeror as follows:

- 1. The Contractor's Representations and Certifications, dated 21 June 2002 is hereby incorporated in to this contract by reference.

Award Number: N00014-02-C-0053  
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1. CONTRACT NUMBER (CRITICAL) 2. SPIIN (CRITICAL) 3. MOD (CRITICAL) 4. PR NUMBER PAGE 1 OF 1  
 N0001402C0053 P00001 02PR02408-01

6. LINE OF ACCOUNTING

A. ACRN CLIN/SLN (Critical)	B. APPROPRIATION (CRITICAL)	C. SUBHEAD (CRITICAL)	D. OBJ E. CLA PARM	E. RFM	F. SA	G. AAA (CRITICAL)	H. IT PAA	K. COST CODE			7. AMOUNT (CRITICAL)	NAVY INTERNAL USE ONLY REF DOC/ACRN
								PROJ UNIT	MCC & SUF	PDLI SUF		
AA	1711319	W3FA	255 RA	333	0	068342	2D 000000	02839	000	4KT0	[**]	PR#02PR02408-01 FRC: 34KT
AB	1711319	W3EK	255 RA	333	0	068342	2D 000000	02830	000	4KP0	[**]	PR#02PR02408-01 FRC: 34KP

PAGE TOTAL [\*\*]  
 GRAND TOTAL [\*\*]

PREPARED/AUTHORISED BY:

COMPTROLLER APPROVAL:  
 FOR FISCAL DATA AND SIGNATURE

BY \_\_\_\_\_ for COMPTROLLER, ONR CONTRACT REVIEWED

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

2. AMENDMENT/MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REG. NO.	5. PROJECT NO. (If applicable)
P00002	SEE BLOCK 16C	03PR07099-00	N.A.

6. ISSUED BY	CODE	N00014	7. ADMINISTERED BY (If other than Item 6)	CODE	S3915A
			SCD-C		
OFFICE OF NAVAL RESEARCH ONR 254 Cheryl De Lisle (703)696-2571 E-mail cheryl_delisle@onr.navy.mil BALLSTON CENTRE TOWER ONE 800 NORTH QUINCY STREET ARLINGTON, VA 22217-5660			DCM PHILADELPHIA PO BOX 11427 700 ROBBINS AVE., BLDG 4A PHILADELPHIA, PA 19111-0427		

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and Zip Code)	(3)	9.A. AMENDMENT OF SOLICITATION NO.
OCEAN POWER TECHNOLOGIES INC. 1590 REED ROAD PENNINGTON, NJ 08534	[ ]	N.A.
	[ ]	9B. DATED (SEE ITEM 11)
	[X]	10A. MODIFICATION OF CONTRACT/ORDER NO. N00014-02-C-0053
		10B. DATED (SEE ITEM 13) 11-FEB-02

CODE	FACILITY CODE
04EP7	

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

[ ] The above numbered solicitation is amended as set forth in Item 14. The hour and data specified for receipt of Offers [ ] is extended, [ ] is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and data specified in the solicitation or as amended, by on of the following methods:  
(a) By completing items 8 and 15, and returning \_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and data specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)  
SEE THE ATTACHED FINANCIAL ACCOUNTING DATA (FAD) SHEET(S)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRTACTS/ORDERS,  
IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(3) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify Authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT  
[ ] ORDER NO. IN ITEM 10A.

[ ] B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

[ ] C. SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:  
AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION:

[X] D. OTHER (Specify type of modification and authority)  
Bilateral Mod issued pursuant to Mutual Agreement of the Parties

E. IMPORTANT: Contractor [ ] is not, [X] is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFCATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The purpose of this modification is to fund for a cost growth in the amount of \$[\*\*] under CLIN 0001, replace the current statement of work with attached statement of work, exercise Option 2 and incrementally fund it in the amount of \$[\*\*] under Contract N00014-02-C-0053.

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Charles F. Dunleavy Chief Financial Officer	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Margaret L. Graves Contracting Officer
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15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
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/s/ Charles F. Dunleavy	21 April 2003	BY /s/ Margaret L. Graves	22 April 2003
-------------------------	---------------	---------------------------	---------------

(Signature of person authorized to sign)	(Signature of Contracting Officer)
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Effective as of the date of this modification:

1. The funding available for the performance of this Contract is increased by the amount set forth in the attached Financial Data Sheet.
2. Option 2 of Section B - Supplies or Services and Prices/Costs is hereby exercised and CLIN 0001 changed as follows:

ITEM NO.	SUPPLIES/SERVICES	ESTIMATED COST	FIXED FEE	TOTAL ESTIMATED COST & FIXED FEE
0001	The Contractor shall furnish the necessary personnel and facilities to conduct the research effort as described in Section C	\$[**]	\$[**]	\$ [**]
	000101 ACRN: AA \$[**]			
	000102 ACRN: AC \$[**]			
0002	Reports and Data in accordance with Exhibit A (DD Form 1423)			[**]
0003	OPTION 1, Wave Tank Test 2; Validate Numerical Models	\$[**]	[**]	\$ [**]
0004	OPTION 2, On-Going Ocean Test-Continue Monitoring			
	000301 ACRN: AC \$[**]	\$[**]	[**]	\$ [**]
0005	OPTION 3, Complete System Removal	\$[**]	[**]	\$ [**]
	000501 ACRN: AA \$[**]			
	000502 ACRN: AB \$[**]			
TOTAL ESTIMATED CONTRACT CONSIDERATION:		\$[**]	\$[**]	\$4,075,170.00

\* Option 3 was exercised prior to Options 1 and 2 to fund the buoy removal.  
 Option 2 is exercised due to related decisions made for the base period.  
 Option 1 may be exercised at a later time.

Award Number: N00014-02-C-0053  
 Modification Number: P00002

3. Change SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT, to read as follows:

1. The Contractor shall conduct research in accordance with the proposal described below which was submitted by the Contractor in response to the Department of Defense Program Solicitation Number, Phase III Small Business Innovation (SBIR) Program.

Topic Number: N95-074

Title Proposed by Firm: Ocean Power Technology

Date: 19 Oct 01

2. Delete the original Statement of Work and add the Revised Statement of Work dated Feb 12, 2003, 6 pages, and provided as attachment 1.

4. Add the following clause to SECTION H, SPECIAL CONTRACT REQUIREMENTS, and incorporate herein:

6. ONR 5252.244-9701 Contractor-Acquired Property (JAN 1999)

(a) The Contractor is authorized to acquire the following equipment needed to accomplish this contract:

EQUIPMENT TO BE ACQUIRED	ESTIMATED COST
-----	-----
2 each - Dell 2.00GHz/400MHz Front Side Bus, Xeon, Dell Precision 530 Minitower, 512K Cache	\$[**]
RD Instruments Wave Device	\$[**]
Bolt Torquing Equipment	\$[**]

(b) The Contracting Officer's consent is hereby given for the acquisition of the above items.

(c) Pursuant to the contract clause entitled "Government Property," title to the property shall vest in the Government.

Award Number: N00014-02-C-0053

Modification Number: P00002

5. Revise SECTION G, paragraph 6 entitled "Allotment of Funds" to add funding in the amount of \$[\*\*] as follows:

6. ALLOTMENT OF FUNDS

It is hereby understood and agreed that this contract will not exceed a total amount of \$4,075,170.00 including an estimated cost of \$[\*\*] and a fixed fee of \$[\*\*].

CLIN 0001 is fully funded.

CLIN 0004 is incrementally funded in the amount of \$[\*\*] including an estimated cost of \$[\*\*] and a fixed fee of \$[\*\*].

CLIN 0005 is incrementally funded in the amount of \$[\*\*] including an estimated cost of \$[\*\*] and a fixed fee of \$[\*\*]

Award Number: N00014-02-C-0053

Modification Number: P00002

## REVISED STATEMENT OF WORK

## TASK DESCRIPTIONS

## TASK GROUP 1.0: OCEAN TEST SITE PLANNING AND PREPARATION

## TASK 1.1: OPT CONTRACT AWARD (MILESTONE)

## TASK 1.2: OPT KICK-OFF AND PHEPS UPDATE (MEETING)

The project team will conduct a kick-off meeting to review the OPT program plan and any information pertinent to a [\*\*] design. Important inputs and factors learned thus far on the PHEPS effort will be reviewed to determine their relevance to the OPT effort.

## TASK GROUP 2.0: MODELING AND SYSTEM DESIGN

Key mathematical models in three design areas will be developed during the design phase: Hydrodynamic, Operational Availability, and Multiple Buoy Power Combination. The upgrade of OPT's existing Hydrodynamic model was performed on the PHEPS contract; however, further changes, as recommended by NFESC technical personnel, will occur during the OPT system design phase. Wave tank testing, if deemed necessary, will be performed under Program Option 1. The models will be developed around OPT's baseline WEC design, using actual data retrieved from past and present buoy testing for validation. Inputs to the model will consist of agreed upon met-ocean parameters such as wave climate and baseline WEC configuration.

## TASK 2.1: RETRIEVE DATA/ANALYZE NJ WEC OPERATIONS

OPT will assemble pertinent data from past wave tank and ocean experiments and make it available to the modeling teams. Analysis of the operation of the Tuckerton, NJ System will also be performed.

## TASK 2.2: CREATE AO MODEL

With the assistance of NFESC technical personnel, OPT will select an outside contractor to develop a basic and reasonable Ao model of the WEC system. NFESC's experience with the MPAT Model will be reviewed for applicability to this program. OPT will provide information to the contractor about the baseline WEC design and the input met-ocean conditions. The contractor will develop and code a model that will estimate system availability, and also identify key risk areas. Due to NFESC's experience in this modeling, NFESC will provide consultation in guiding model development. The model will be reviewed with OPT and NFESC for quality and system completeness.

## TASK 2.3: CREATE MULTI-BUOY POWER COMBINATION MODEL

Using various simulation and software packages, such as Simulink or Saber, OPT will model a multi-unit WEC system to determine the most efficient method of combining power from two separate WEC units. Work will focus on hydraulic and electrical subsystem configuration to find

an optimal arrangement. The model will yield a block diagram (with identified equipment) with major equipment parameters from which a system can be designed. Code will be primarily developed in-house with sub-contractors providing recommended practical system configurations in hydraulics and electrical power conversion for basis of the modeling. Consistency checks will include examination of response of power conversion systems to controlled force and velocity input

**TASK 2.4: MODELS REVIEW**

Members of the project team involved with the modeling efforts (NFESC, OPT and contractors/consultants) will review the models and assumptions for accuracy, relevance, quality and completeness versus their intended design.

**TASK 2.5: WAVE TANK TESTING - INITIAL PLANNING**

With technical assistance from NFESC personnel, OPT will develop a preliminary wave tank test plan to include identification of a hierarchy of key model components to be validated, a matrix of tests to validate these model components, basic test requirements, identification of test parameters and scope of the series of tests to be performed.

**TASK 2.6: MODEL UPGRADE****TASK 2.6.1: UPGRADE HYDRODYNAMIC MODEL**

Necessary changes to hydrodynamic model will be carried out. Changes made will be based on a) results of analysis of wave tank test data and b) recommendations of NFESC technical personnel in response to their review of OPT's report on the hydrodynamic code.

**TASK 2.9: SYSTEM DESIGN****TASK 2.9.4: POWER CONVERSION AND CONDITIONING (ELECTRICAL AND HYDRAULIC) SUBSYSTEMS DESIGN**

A contractor experienced in ocean cable systems (such as Makai Ocean Engineering) plus OPT's electrical engineering staff will specify electrical transmission cable and mode. The remainder of the power conversion and conditioning (electrical and hydraulic) subsystems, both land and sea-based will be designed by OPT and its contractors in accordance with the Design Requirements for a single-buoy system with the appropriate design considerations for a [\*\*].

**TASK 2.9.5: SENSORS, DATA ACQUISITION AND CONTROL DESIGN**

Under the PHEPS contract, the work content in the area of sensors and data acquisition design focused on accommodating enhanced data and instrumentation requirements to support needs for comprehensive test data. In this task, the work will utilize the enhanced sensor and data capability already developed but will focus on the control algorithm and user interface for sea-based and shore-based equipment for a single-buoy system with the appropriate design considerations for a [\*\*].

## TASK 2.10: DESIGN- MODIFICATIONS

Based on the results of the Final System Design Review, the system design may need to be modified. The final system design modifications will be compiled, and circulated to the project team under the PHEPS contract deliverable.

## TASK GROUP 3.0: OCEAN TEST PREPARATION

## TASK 3.1: PROCUREMENT, FABRICATION, FINAL SYSTEM ASSEMBLY AND TEST

This task will include the activities associated with the procurement and fabrication of the WEC power conversion and conditioning system and sensors and data acquisition system to include final modifications to the detailed drawings, the selection of suppliers, and the activities involved in supporting the procurement, fabrication and supplier and QA management. It is important that long-lead time items be identified and ordered early on in the project so they may follow a staged deployment within the plan to allow the final installation timing goals to be met. Upon delivery of all system components to the primary staging area in Hawaii, the final assembly and testing of the entire system will occur prior to installation.

## TASK 3.2: INSTALLATION AND TEST PLANS

Detailed installation and test plans for the subsea cable, anchor/mooring system, buoy and canister, based on the installation planning previously performed by OPT and its installation subcontractor on the PHEPS contract, will be developed by OPT. Cable forces will be determined using mathematical models, and rock bolt tests will be performed at the installation site to determine the design capacity of the anchoring system and the subsea cable for the installation. These plans will be circulated to the project team for feedback, leading up to a review of such plans.

## TASK 3.3: INSTALLATION AND TEST PLANS REVIEW

The project team will review the installation and test plan. Involved site and contractor personnel or their representatives will be involved in the review.

## TASK 3.4 SITE PREPARATIONS

Any required permits or coordinating with local facilities will have been obtained by the government. Local Navy personnel will work with OPT's electrical engineering and project staff to specify on shore electrical interface and equipment facilities requirements. The land based electrical and communications equipment facility will be either constructed or arranged for within existing infrastructure. Any remaining final diving surveys to map cable routes and anchor site and hydrographic surveys will be conducted. OPT will be responsible for this effort, working through contractors, or seeking US Navy/NFESC diving resources and other resources if cost effective and available. This proposal assumes that OPT's contractor will perform these tasks.

## TASK 3.5 PRE-INSTALLATION BRIEFING

Prior to system installation, a final briefing of the installation plan will be held with the project team.

## TASK 3.6: SYSTEM INSTALLATION (1 BUOY AND ELECTRICAL HOOK-UP)

The installation of the buoy will be carried out in accordance with the installation and test plans. The organizational structure for the installation activity will be established with clear lines of communication protocol and decision making authority. An experienced contractor (such as Sea Engineering, Inc. and Makai Ocean Engineering and their subcontractors) will carry out the installation of the cable, anchors/mooring, buoy, and additional infrastructure necessary to support the [\*] configuration. The installation may be carried out in separate phases due to its relative sensitivity to weather. The land-based equipment previously specified and documented in the cost proposal will be installed in the equipment facility. Based on local infrastructure, resource scheduling, weather and logistical issues, the installation schedule must remain somewhat flexible.

## TASK GROUP 4.0: OCEAN TEST

## TASK 4.1: MONITORING, DATA COLLECTION AND ANALYSIS

Data from the WEC system operation will be collected for a nine-month period and entered into the operational database. Data will be collected in several different ways. Some parameters will be monitored electronically from sensors through a data acquisition system. Other parameters may be monitored by direct human interaction, such as daily observations of an electric meter or counter at a land-based facility. Other parameters may require divers to make routine visual inspections of the buoy and anchor components to check for corrosion, marine growth, and wear. Data from other sensing devices such as independent wave characteristic monitoring devices (wave rider buoys, acoustic Doppler units, etc.) must be collected and integrated. Analysis of the data collected will identify trends, anomalies and key operational points. Some of this analysis will be conducted by statistical and event mapping of data from spreadsheet or other database format. The data will be presented in a time-based format to allow correlation with varying events with system responses. Data will be analyzed by OPT personnel with assistance from contractors and NFESC personnel as required.

## TASK 4.2: MID-TEST REVIEW

Members of the project team will review the results of the ocean test mid-way through the test period. Recommendations for changes in the test plan can be made at that time.

## TASK 4.3: MODEL UPDATE AND DESIGN VALIDATION

On-going actual data collected will be "fed" back into the key models for purposes of model validation. Variations in actual results vs. model predictions will be studied. Models will be updated once resolutions to the variances have been solved or researched.

## TASK 4.4: CONCLUSIONS AND RECOMMENDATIONS

Comparison of the models to actual performance will be made to form the results. Conclusions and recommendations can then be formulated.

## TASK 4.5: FINAL OCEAN TEST REVIEW

All project team members will meet to present the key findings from the tests and review the conclusions and recommendations.

## TASK GROUP 5.0: PROGRAM MANAGEMENT

PROGRAM PLANNING AND TRACKING - The OPT Program Manager will be responsible for resource assignment, task direction and schedule management. OPT will notify the government when the project reaches 75% completion in terms of cost as required in the contract clauses FAR 52.232.20, Limitation of Cost and FAR 52.232-22, Limitation of Funds.

PROGRAM MEETINGS - Program meetings will be established to coincide with key technical milestones.

PROGRESS REPORTS - OPT will prepare and distribute the minutes from Review Meetings, Monthly Progress Reports, and Major Technical Reports in accordance with the Contract Data Requirements List (CDRL) Items.

## TASK GROUP 6.0: SYSTEM REMOVAL - (CLIN 0005 - PREVIOUSLY OPTION 3)

This option will allow for removal of one buoy, and the associated system components including the anchor/mooring system, canister, ADCP device, sub sea and land-based cables, and shore-based electronics.

At the end of the test period, a suitable subcontractor such as Sea Engineering Inc. will remove the buoy from the water and move it to a temporary government storage location.

## TASK GROUP 7.0: PROGRAM OPTIONS:

## TASK 7.1 WAVE TANK TEST AND MODEL VALIDATION - OPTION 1

## TASK 7.1.1 WAVE TANK TESTING

Wave tank testing will encompass a small-scale buoy and mooring design based on the baseline design. OPT, consultants, and NFESC technical personnel will identify the necessary parameters and expected results from a wave tank test. The purpose of the test is to provide validation of the hydrodynamic model. A detailed wave tank test plan based on the preliminary test plan developed under Task 2.5 will be devised. A scale model of the proposed WEC system design will be fabricated. The model will be appropriately sized to yield useful results. Data will be collected, results tabulated and analyzed.

## TASK 7.1.2: VALIDATE NUMERICAL MODELS

Based on the results of the wave tank studies, the data will be input back into the hydrodynamic and Ao models for validation

TASK 7.2: ON-GOING OCEAN TEST - CONTINUE TO MONITOR EXISTING BUOYS - OPTION 2

The WEC system deployed in the ocean under this contract will continue to be to be monitored for a six-month period. Data will be retrieved utilized to update existing models. Data will be gathered from electronic monitoring of sensors as well as routine visual observations and inspections of the unit.

CONTRACT DATA REQUIREMENTS LIST

Form Approved  
OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 440 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection or information, including suggestions for reducing the burden, to Washington Headquarters Services Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget Paperwork Reduction Project (0704-0188), Washington, DC 20503.

A. CONTRACT LINE ITEM NO.		B. EXHIBIT	C. CATEGORY:						
			TOP [ ]	TM [ ]	OTHER [ ]				
D. SYSTEM/ITEM		E. CONTRACT/PR NO.			F. CONTRACTOR				
Ocean Power Technology Program		N0001402-C-0053			Ocean Power Technologies, Inc.				
1. DATA ITEM NO.	2. TITLE OF DATA ITEM		3. SUBTITLE						
A001	Progress Report		Administrative Progress Report						
4. AUTHORITY (Data Acquisition Document No.)		5. CONTRACT REFERENCE			6. REQUIRING OFFICE				
Contractor Format		SOW Task 5			ONR 334				
7. DD 250 REQ	9. DIST STATEMENT	10. FREQUENCY	12. DATE OF FIRST SUBMISSION		14. DISTRIBUTION				
LT	REQUIRED	MTHLY	28 DAC. See BLK 16						
						b. COPIES			
8. APP CODE		11. AS OF DATE		13. DATE OF SUBSEQUENT SUBMISSION		Final			
				15th of each month. See BLK 16					
						ADDRESSEE	Draft	REQ	REPRO
16. REMARKS						ONR 254		LT	
The first Administrative Progress Report shall be delivered 28 days after award of the contract. Subsequent monthly submittals shall be delivered on the 15th of each month for the previous months activities.						ONR 334		1	1
The first page shall indicate:						NFESC 52		1	1
- the title,						-----			
- the contractor's name and address,									
- the contract number and CDRL number,						15. TOTAL			
- the date of the report, and the period covered by the report.						0 2 2			
Progress payment vouchers shall be coordinated with the costs given in these reports.						=====			
Each report shall summarize the following information for the previous months reporting period:									
- Actual versus planned resource expenditures, in tabular form.									
- Actual versus planned deliverables, showing due and completion dates.									
- Resolution of previous problem areas reported on the previous report.									
- Any technical, schedule, or cost problems encountered or expected.									
If any problems are reported, then the report shall also include the following information:									
- Description of problem(s)									
- Recommended action(s)									
- Resulting impact on contract (if any)									
G. PREPARED BY		H. DATE		L. APPROVED BY		J. DATE			
R. L. Brackett		18 July 2003		P. Furman		18 July 2003			



CONTRACT DATA REQUIREMENTS LIST

Form Approved  
OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 440 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection or information, including suggestions for reducing the burden, to Washington Headquarters Services Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget Paperwork Reduction Project (0704-0188), Washington, DC 20503.

A. CONTRACT LINE ITEM NO. B. EXHIBIT C. CATEGORY:  
TOP [ ] TM [ ] OTHER [ ]

D. SYSTEM/ITEM E. CONTRACT/PR NO. F. CONTRACTOR  
Ocean Power Technology Program N0001402-C-0053 Ocean Power Technologies, Inc.

1. DATA ITEM NO. 2. TITLE OF DATA ITEM 3. SUBTITLE  
A003 Meeting Minutes

4. AUTHORITY (Data Acquisition Document No.) 5. CONTRACT REFERENCE 6. REQUIRING OFFICE  
Contractor Format SOW Task 5 ONR 334

7. DD 250 REQ 9. DIST STATEMENT 10. FREQUENCY 12. DATE OF FIRST SUBMISSION 14. DISTRIBUTION  
LT REQUIRED ASREQ 7 days after meeting

b. COPIES

8. APP CODE 11. AS OF DATE 13. DATE OF SUBSEQUENT SUBMISSION  
See BLK 16

ADDRESSEE	Final	
	Draft	REPRO
ONR 254	LT	
ONR 334	1	1
NFESC 52	1	1
15. TOTAL	0	2

16. REMARKS  
Meeting Minutes shall be submitted in Contractor format within 7 days after each Review Meeting.

- The first page shall indicate:
- the title,
  - the contractor's name and address,
  - the contract number and CDRL number,
  - the date of the meeting, and the location.

Meeting Minutes shall summarize all topics discussed and shall include resolution of any technical issues. The Minutes shall include an appendix presenting a list of Action Items, person or organization responsible for completing the task as well as the agreed completion date. The Minutes shall include a list of attendees by name, rank or position, activity, and phone number.

G. PREPARED BY H. DATE L. APPROVED BY J. DATE  
R. L. Brackett 18 July 2003 P. Furman 18 July 2003

CONTRACT DATA REQUIREMENTS LIST

Form Approved  
OMB No. 0704-0188

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A. CONTRACT LINE ITEM NO. B. EXHIBIT C. CATEGORY:  
TOP [ ] TM [ ] OTHER [ ]

D. SYSTEM/ITEM E. CONTRACT/PR NO. F. CONTRACTOR  
Ocean Power Technology Program N0001402-C-0053 Ocean Power Technologies, Inc.

1. DATA ITEM NO. 2. TITLE OF DATA ITEM 3. SUBTITLE  
A004 Presentation Material

4. AUTHORITY (Data Acquisition Document No.) 5. CONTRACT REFERENCE 6. REQUIRING OFFICE  
SOW Task 5 ONR 334

7. DD 250 REQ 9. DIST STATEMENT 10. FREQUENCY 12. DATE OF FIRST SUBMISSION 14. DISTRIBUTION  
LT REQUIRED ASREQ See BLK 16

8. APP CODE 11. AS OF DATE 13. DATE OF SUBSEQUENT SUBMISSION  
See BLK 16

16. REMARKS

ADDRESSEE	b. COPIES		
	Draft	REQ	REPRO
ONR 254		LT	
ONR 334		1	1
NFESC 52		1	1
15. TOTAL	0	2	2

G. PREPARED BY H. DATE L. APPROVED BY J. DATE  
R.L. Brackett 18 July 2003 P. Furman 18 July 2003

CONTRACT DATA REQUIREMENTS LIST

Form Approved  
OMB No. 0704-0188

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A. CONTRACT LINE ITEM NO.		B. EXHIBIT	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]					
D. SYSTEM/ITEM Ocean Power Technology Program		E. CONTRACT/PR NO. N0001402-C-0053		F. CONTRACTOR Ocean Power Technologies, Inc.				
1. DATA ITEM NO. A005	2. TITLE OF DATA ITEM Technical Report		3. SUBTITLE Hydrodynamic Model Upgrade & Validation					
4. AUTHORITY (Data Acquisition Document No.)			5. CONTRACT REFERENCE SOW Task 2.6.1		6. REQUIRING OFFICE ONR 334			
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 83 DAC - See BLK 16		14. DISTRIBUTION			
				b. COPIES				
8. APP CODE		11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION 30 June 2003		Final			
				ADDRESSEE	Draft	REQ	REPRO	
16. REMARKS				ONR 254	LT	DD		
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 14 days prior to the required submission of the Final Technical Report (see BLK 13)				ONR 334	1	1	1	
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.				NFESC 52	1	1	1	
				15. TOTAL	2	2	2	
				=====				

The Final Report shall compile all of the design criteria, assumptions, calculations performed, issues, and resolutions addressed during performance of the contract. All calculations shall be presented in a clear and logical order. The calculation sheets shall be fully annotated in such a manner that government design quality assurance engineers can independently review the assumptions, method and calculation. Each calculation sheet shall include: project title, task title, date, engineer's name, and page number. With each submittal, calculations covering the work performed shall be included. The contractor shall also deliver electronic data file(s) of any simulation model calculations or results.

The first page shall indicate:

- the title,
- the contractor's name and address,
- the contract number and CDRL number,
- the date of the report, and the period covered by the report.

All copies of this Contract Deliverable shall be provided in electronic format. Electronic copies of reports shall be submitted in one of the following formats: (a) Portable Document Format (.pdf), or (b) Microsoft Word, 2000. All embedded figures and tables in these reports must be compatible with MS-Windows95. All electronic files shall be delivered preferably on a medium compatible with a 100MB Iomega(R) zip(TM) drive or CD ROM. Electronic copies of smaller items, (less than 1 Megabyte), may be deliverable by E-mail or on 3.5" floppy discs, as mutually agreed to by the Contractor and the Government.

G. PREPARED BY R. L. Brackett	H. DATE 18 July 2003	L. APPROVED BY P. Furman	J. DATE 18 July 2003
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CONTRACT DATA REQUIREMENTS LIST

Form Approved  
OMB No. 0704-0188

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A. CONTRACT LINE ITEM NO.		B. EXHIBIT	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]						
D. SYSTEM/ITEM Ocean Power Technology Program		E. CONTRACT/PR NO. N0001402-C-0053		F. CONTRACTOR Ocean Power Technologies, Inc.					
1. DATA ITEM NO. A006	2. TITLE OF DATA ITEM Technical Report		3. SUBTITLE Operational Availability Model						
4. AUTHORITY (Data Acquisition Document No.)		5. CONTRACT REFERENCE SOW Task 2.2 & 2.6.2		6. REQUIRING OFFICE ONR 334					
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 137 DAC - See BLK 16		14. DISTRIBUTION				
						b. COPIES			
8. APP CODE	11. AS OF DATE		13. DATE OF SUBSEQUENT SUBMISSION 168 DAC - See BLK 16		Final				
						ADDRESSEE    Draft    REQ    REPRO			
16. REMARKS						ONR 254	LT	DD	
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 14 days prior to the required submission of the Final Technical Report (see BLK 13)						ONR 334	1	1	1
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.						NFESC 52	1	1	1
						15. TOTAL	2	2	2

The Final Report shall compile all of the design criteria, assumptions, calculations performed, issues, and resolutions addressed during performance of the contract. All calculations shall be presented in a clear and logical order. The calculation sheets shall be fully annotated in such a manner that government design quality assurance engineers can independently review the assumptions, method and calculation. Each calculation sheet shall include: project title, task title, date, engineer's name, and page number. With each submittal, calculations covering the work performed shall be included. The contractor shall also deliver electronic data file(s) of any simulation model calculations or results.

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- the date of the report, and the period covered by the report.

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G. PREPARED BY R. L. Brackett	H. DATE 18 July 2003	L. APPROVED BY P. Furman	J. DATE 18 July 2003
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OMB No. 0704-0188

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A. CONTRACT LINE ITEM NO.		B. EXHIBIT	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]			
D. SYSTEM/ITEM Ocean Power Technology Program			E. CONTRACT/PR NO. N0001402-C-0053		F. CONTRACTOR Ocean Power Technologies, Inc.	
1. DATA ITEM NO. A007	2. TITLE OF DATA ITEM Technical Report		3. SUBTITLE Multi-Buoy Simulation Model			
4. AUTHORITY (Data Acquisition Document No.)			5. CONTRACT REFERENCE SOW Task 2.3		6. REQUIRING OFFICE ONR 334	
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 18 April 2003 - See BLK 16		14. DISTRIBUTION	
						b. COPIES
8. APP CODE		11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION 30 June 2003 - See BLK 16		Final	
						ADDRESSEE    Draft    REQ    REPRO
16. REMARKS						ONR 254    LT    DD
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 14 days prior to the required submission of the Final Technical Report (see BLK 13)						ONR 334    1    1    1
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.						NFESC 52    1    1    1
						-----
15. TOTAL						2    2    2
						=====

The Final Report shall compile all of the design criteria, assumptions, calculations performed, issues, and resolutions addressed during performance of the contract. All calculations shall be presented in a clear and logical order. The calculation sheets shall be fully annotated in such a manner that government design quality assurance engineers can independently review the assumptions, method and calculation. Each calculation sheet shall include: project title, task title, date, engineer's name, and page number. With each submittal, calculations covering the work performed shall be included. The contractor shall also deliver electronic data file(s) of any simulation model calculations or results.

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- the contract number and CDRL number,
- the date of the report, and the period covered by the report.

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G. PREPARED BY R. L. Brackett		H. DATE 18 July 2003	L. APPROVED BY P. Furman	J. DATE 18 July 2003
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Form Approved  
OMB No. 0704-0188

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A. CONTRACT LINE ITEM NO. B. EXHIBIT C. CATEGORY:  
TOP [ ] TM [ ] OTHER [ ]

D. SYSTEM/ITEM E. CONTRACT/PR NO. F. CONTRACTOR  
Ocean Power Technology Program N0001402-C-0053 Ocean Power Technologies, Inc.

1. DATA ITEM NO. 2. TITLE OF DATA ITEM 3. SUBTITLE  
A008 Technical Report Design Requirements Update Report

4. AUTHORITY (Data Acquisition Document No.) 5. CONTRACT REFERENCE 6. REQUIRING OFFICE  
SOW Task 2.7 ONR 334

7. DD 250 REQ 9. DIST STATEMENT 10. FREQUENCY 12. DATE OF FIRST SUBMISSION 14. DISTRIBUTION  
DD REQUIRED ONE/R 14 Oct 2003 - See BLK 16

8. APP CODE 11. AS OF DATE 13. DATE OF SUBSEQUENT SUBMISSION  
4 Nov 2003 - See BLK 16

b. COPIES  
Final  
ADDRESSEE Draft REQ REPRO

16. REMARKS  
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 7 days prior to the required submission of the Final Technical Report (see BLK 13)  
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.

ONR 254	LT	DD	
ONR 334	1	1	1
NFESC 52	1	1	1
15. TOTAL	2	2	2

The Final Report shall compile all of the design criteria, assumptions, calculations performed, issues, and resolutions addressed during performance of the contract. All calculations shall be presented in a clear and logical order. The calculation sheets shall be fully annotated in such a manner that government design quality assurance engineers can independently review the assumptions, method and calculation. Each calculation sheet shall include: project title, task title, date, engineer's name, and page number. With each submittal, calculations covering the work performed shall be included. The contractor shall also deliver electronic data file(s) of any simulation model calculations or results.

- The first page shall indicate:
- the title,
  - the contractor's name and address,
  - the contract number and CDRL number,
  - the date of the report, and the period covered by the report.

All copies of this Contract Deliverable shall be provided in electronic format. Electronic copies of reports shall be submitted in one of the following formats: (a) Portable Document Format (.pdf), or (b) Microsoft Word, 2000. All embedded figures and tables in these reports must be compatible with MS-Windows95. All electronic files shall be delivered preferably on a medium compatible with a 100MB Iomega(R) zip(TM) drive or CD ROM. Electronic copies of smaller items, (less than 1 Megabyte), may be deliverable by E-mail or on 3.5" floppy discs, as mutually agreed to by the Contractor and the Government.

G. PREPARED BY H. DATE L. APPROVED BY J. DATE  
R. L. Brackett 18 July 2003 P. Furman 18 July 2003

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Form Approved  
OMB No. 0704-0188

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A. CONTRACT LINE ITEM NO.		B. EXHIBIT	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]			
D. SYSTEM/ITEM Ocean Power Technology Program		E. CONTRACT/PR NO. N0001402-C-0053		F. CONTRACTOR Ocean Power Technologies, Inc.		
1. DATA ITEM NO. A009	2. TITLE OF DATA ITEM Technical Report		3. SUBTITLE Multi Buoy Design Report			
4. AUTHORITY (Data Acquisition Document No.)		5. CONTRACT REFERENCE SOW Task 2.5		6. REQUIRING OFFICE ONR 334		
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 13 April 2004 - See BLK 16		14. DISTRIBUTION	
						b. COPIES
8. APP CODE	11. AS OF DATE		13. DATE OF SUBSEQUENT SUBMISSION 11 May 2004 - See BLK 16		Final	
						ADDRESSEE    Draft    REQ    REPRO
16. REMARKS						
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 14 days prior to the required submission of the Final Technical Report (see BLK 13)						ONR 254    LT    DD
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.						ONR 334    1    1    1
						NFESC 52    1    1    1
						-----
						15. TOTAL    2    2    2
						=====

The Final Report shall compile all of the design criteria, assumptions, calculations performed, issues, and resolutions addressed during performance of the contract. All calculations shall be presented in a clear and logical order. The calculation sheets shall be fully annotated in such a manner that government design quality assurance engineers can independently review the assumptions, method and calculation. Each calculation sheet shall include: project title, task title, date, engineer's name, and page number. With each submittal, calculations covering the work performed shall be included. The contractor shall also deliver electronic data file(s) of any simulation model calculations or results.

The first page shall indicate:

- the title,
- the contractor's name and address,
- the contract number and CDRL number,
- the date of the report, and the period covered by the report.

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G. PREPARED BY R. L. Brackett	H. DATE 18 July 2003	L. APPROVED BY P. Furman	J. DATE 18 July 2003
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CONTRACT DATA REQUIREMENTS LIST

Form Approved  
OMB No. 0704-0188

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A. CONTRACT LINE ITEM NO. B. EXHIBIT C. CATEGORY:  
TOP [ ] TM [ ] OTHER [ ]

D. SYSTEM/ITEM E. CONTRACT/PR NO. F. CONTRACTOR  
Ocean Power Technology Program N0001402-C-0053 Ocean Power Technologies, Inc.

1. DATA ITEM NO. 2. TITLE OF DATA ITEM 3. SUBTITLE  
A010 Design Drawings Multi-Buoy Design Drawings

4. AUTHORITY (Data Acquisition Document No.) 5. CONTRACT REFERENCE 6. REQUIRING OFFICE  
SOW Task 2.9 & 2.10 ONR 334

7. DD 250 REQ 9. DIST STATEMENT 10. FREQUENCY 12. DATE OF FIRST SUBMISSION 14. DISTRIBUTION  
DD REQUIRED ONE/R 13 April 2004 - See BLK 16

b. COPIES

8. APP CODE 11. AS OF DATE 13. DATE OF SUBSEQUENT SUBMISSION  
Final  
11 May 2004 - See BLK 16

ADDRESSEE Draft REQ REPRO

16. REMARKS  
BLK 12: The first submission of the Design Drawings shall be a draft of the drawings. Government comments on the draft drawings will be returned to the Contractor 14 days prior to the required submission of the Final Design Drawings (see BLK 13)  
BLK 13: The second submission of the Design Drawings shall be a final version that incorporates comments from the Government review of the draft drawings.  
ONR 254 LT DD  
ONR 334 1 1 1  
NFESC 52 1 1 1  
15. TOTAL 2 2 2

Final drawings shall be prepared in sufficient detail and presented in such a form that they could be used by an independent reviewer to report the conclusions and assessment of feasibility presented in the Final Design Report. Drawings and specifications shall be coordinated. The terminology used in specifications and drawings shall be identical. All drawings shall be delivered in electronic form and shall be compatible with either .dxf or .pfd file formats. Electronic files shall be delivered on a medium compatible with a 100MB Iomega(R) zip(TM) drive or CD ROM. The electronic drawing files shall be scaled such that when printed they produce size F, 28 x 40 inch full size design drawings

G. PREPARED BY H. DATE L. APPROVED BY J. DATE  
R.L. Brackett 18 July 2003 P. Furman 18 July 2003

CONTRACT DATA REQUIREMENTS LIST

Form Approved  
OMB No. 0704-0188

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A. CONTRACT LINE ITEM NO.		B. EXHIBIT	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]			
D. SYSTEM/ITEM Ocean Power Technology Program		E. CONTRACT/PR NO. N0001402-C-0053		F. CONTRACTOR Ocean Power Technologies, Inc.		
1. DATA ITEM NO. A011	2. TITLE OF DATA ITEM Technical Report		3. SUBTITLE Single Buoy Installation Plan			
4. AUTHORITY (Data Acquisition Document No.)		5. CONTRACT REFERENCE SOW Task 3.2		6. REQUIRING OFFICE ONR 334		
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 25 Mar. 2003 - See BLK 16		14. DISTRIBUTION	
						b. COPIES
8. APP CODE	11. AS OF DATE		13. DATE OF SUBSEQUENT SUBMISSION 30 Sept. 2003 - See BLK 16		Final	
						ADDRESSEE    Draft    REQ    REPRO
16. REMARKS						
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 14 days prior to the required submission of the Final Technical Report (see BLK 13)						ONR 254    LT    DD
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.						ONR 334    1    1    1
						NFESC 52    1    1    1
						-----
15. TOTAL						2    2    2
						=====

The Final Report shall compile all of the design criteria, assumptions, calculations performed, issues, and resolutions addressed during performance of the contract. All calculations shall be presented in a clear and logical order. The calculation sheets shall be fully annotated in such a manner that government design quality assurance engineers can independently review the assumptions, method and calculation. Each calculation sheet shall include: project title, task title, date, engineer's name, and page number. With each submittal, calculations covering the work performed shall be included. The contractor shall also deliver electronic data file(s) of any simulation model calculations or results.

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- the contractor's name and address,
- the contract number and CDRL number,
- the date of the report, and the period covered by the report.

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G. PREPARED BY R. L. Brackett	H. DATE 18 July 2003	L. APPROVED BY P. Furman	J. DATE 18 July 2003
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Form Approved  
OMB No. 0704-0188

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A. CONTRACT LINE ITEM NO. B. EXHIBIT C. CATEGORY:  
TOP [ ] TM [ ] OTHER [ ]

D. SYSTEM/ITEM E. CONTRACT/PR NO. F. CONTRACTOR  
Ocean Power Technology Program N0001402-C-0053 Ocean Power Technologies, Inc.

1. DATA ITEM NO. 2. TITLE OF DATA ITEM 3. SUBTITLE  
A012 Technical Report Single Buoy Test Plan

4. AUTHORITY (Data Acquisition Document No.) 5. CONTRACT REFERENCE 6. REQUIRING OFFICE  
SOW Task 3.2 ONR 334

7. DD 250 REQ 9. DIST STATEMENT 10. FREQUENCY 12. DATE OF FIRST SUBMISSION 14. DISTRIBUTION  
DD REQUIRED ONE/R 31 July 2003 - See BLK 16

b. COPIES

8. APP CODE 11. AS OF DATE 13. DATE OF SUBSEQUENT SUBMISSION  
30 Sept. 2003 - See BLK 16

ADDRESSEE	Final		
	Draft	REQ	REPRO
ONR 254	LT	DD	
ONR 334	1	1	1
NFESC 52	1	1	1
15. TOTAL	2	2	2

16. REMARKS  
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 14 days prior to the required submission of the Final Technical Report (see BLK 13)  
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.

The Final Report shall compile all of the design criteria, assumptions, calculations performed, issues, and resolutions addressed during performance of the contract. All calculations shall be presented in a clear and logical order. The calculation sheets shall be fully annotated in such a manner that government design quality assurance engineers can independently review the assumptions, method and calculation. Each calculation sheet shall include: project title, task title, date, engineer's name, and page number. With each submittal, calculations covering the work performed shall be included. The contractor shall also deliver electronic data file(s) of any simulation model calculations or results.

The first page shall indicate:  
- the title,  
- the contractor's name and address,  
- the contract number and CDRL number,  
- the date of the report, and the period covered by the report.

All copies of this Contract Deliverable shall be provided in electronic format. Electronic copies of reports shall be submitted in one of the following formats: (a) Portable Document Format (.pdf), or (b) Microsoft Word, 2000. All embedded figures and tables in these reports must be compatible with MS-Windows95. All electronic files shall be delivered preferably on a medium compatible with a 100MB Iomega(R) zip(TM) drive or CD ROM. Electronic copies of smaller items, (less than 1 Megabyte), may be deliverable by E-mail or on 3.5" floppy discs, as mutually agreed to by the Contractor and the Government.

G. PREPARED BY H. DATE L. APPROVED BY J. DATE  
R.L. Brackett 18 July 2003 P. Furman 18 July 2003

CONTRACT DATA REQUIREMENTS LIST

Form Approved  
OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 440 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection or information, including suggestions for reducing the burden, to Washington Headquarters Services Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget Paperwork Reduction Project (0704-0188), Washington, DC 20503.

A. CONTRACT LINE ITEM NO.		B. EXHIBIT	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]			
D. SYSTEM/ITEM Ocean Power Technology Program		E. CONTRACT/PR NO. N0001402-C-0053		F. CONTRACTOR Ocean Power Technologies, Inc.		
1. DATA ITEM NO. A013	2. TITLE OF DATA ITEM Technical Report		3. SUBTITLE Multi-Buoy Installation Plan			
4. AUTHORITY (Data Acquisition Document No.)		5. CONTRACT REFERENCE SOW Task 3.2		6. REQUIRING OFFICE ONR 334		
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 11 May 2004 - See BLK 16		14. DISTRIBUTION	
						b. COPIES
8. APP CODE	11. AS OF DATE		13. DATE OF SUBSEQUENT SUBMISSION 1 June 2004 - See BLK 16		Final	
						ADDRESSEE      Draft      REQ      REPRO
16. REMARKS						ONR 254      LT      DD
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 14 days prior to the required submission of the Final Technical Report (see BLK 13)						ONR 334      1      1      1
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.						NFESC 52      1      1      1
						-----
						15. TOTAL      2      2      2
						=====

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G. PREPARED BY R. L. Brackett	H. DATE 18 July 2003	L. APPROVED BY P. Furman	J. DATE 18 July 2003
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CONTRACT DATA REQUIREMENTS LIST

Form Approved  
OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 440 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection or information, including suggestions for reducing the burden, to Washington Headquarters Services Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget Paperwork Reduction Project (0704-0188), Washington, DC 20503.

A. CONTRACT LINE ITEM NO.			B. EXHIBIT	C. CATEGORY: TOP [ ] TM [ ] OTHER [ ]				
D. SYSTEM/ITEM Ocean Power Technology Program			E. CONTRACT/PR NO. N0001402-C-0053		F. CONTRACTOR Ocean Power Technologies, Inc.			
1. DATA ITEM NO. A014	2. TITLE OF DATA ITEM Technical Report		3. SUBTITLE Multi-Buoy Test Plan					
4. AUTHORITY (Data Acquisition Document No.)			5. CONTRACT REFERENCE SOW Task 3.2		6. REQUIRING OFFICE ONR 334			
7. DD 250 REQ DD	9. DIST STATEMENT REQUIRED	10. FREQUENCY ONE/R	12. DATE OF FIRST SUBMISSION 11 May 2004 - See BLK 16		14. DISTRIBUTION			
					b. COPIES			
8. APP CODE			11. AS OF DATE	13. DATE OF SUBSEQUENT SUBMISSION 1 June 2004 - See BLK 16		Final		
					ADDRESSEE	Draft	REQ	REPRO
16. REMARKS					ONR 254	LT	DD	
BLK 12: The first submission of the report shall be a draft of the Technical Report. Government comments on the draft report will be returned to the Contractor 14 days prior to the required submission of the Final Technical Report (see BLK 13)					ONR 334	1	1	1
BLK 13: The second submission of the Technical Report shall be a final version that incorporates comments from the Government review of the draft report.					NFESC 52	1	1	1
					15. TOTAL	2	2	2

The Final Report shall compile all of the design criteria, assumptions, calculations performed, issues, and resolutions addressed during performance of the contract. All calculations shall be presented in a clear and logical order. The calculation sheets shall be fully annotated in such a manner that government design quality assurance engineers can independently review the assumptions, method and calculation. Each calculation sheet shall include: project title, task title, date, engineer's name, and page number. With each submittal, calculations covering the work performed shall be included. The contractor shall also deliver electronic data file(s) of any simulation model calculations or results.

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G. PREPARED BY R. L. Brackett	H. DATE 18 July 2003	L. APPROVED BY P. Furman	J. DATE 18 July 2003
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FINANCIAL ACCOUNTING DATA SHEET - NAVY

1. CONTRACT NUMBER (CRITICAL) 2. SPIIN (CRITICAL) 3. MOD (CRITICAL) 4. PR NUMBER PAGE 1 OF 1  
 N0001402C0053 P00002 03PR07099-00

6. LINE OF ACCOUNTING

A. ACRN CLIN/SLIN (Critical)	B. APPROPRIATION (CRITICAL)	C. SUBHEAD (CRITICAL)	D. OBJ E. CLA PARM	F. RFM	G. SA	H. AAA (CRITICAL)	I. IT	J. PAA	K. COST CODE			7. AMOUNT (CRITICAL)	NAVY INTERNAL USE ONLY REF DOC/ACRN
									PROJ UNIT	MCC & SUF	PDLI		
AC	1721319	W3DK	255 RA	333	0	068342	2D	000000	09019	000	4KTO	[**]	PR#03PR07099-00 FRC:34KT

PAGE TOTAL \$[\*\*]

GRAND TOTAL \$[\*\*]

PREPARED/AUTHORIZED BY:

COMPTROLLER APPROVAL:  
FOR FISCAL DATA AND SIGNATURE

BY \_\_\_\_\_ for COMPTROLLER, ONR CONTRACT REVIEWED

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

2. AMENDMENT/MODIFICATION NO. 3. EFFECTIVE DATE 4. REQUISITION/PURCHASE REQ. NO. 5. PROJECT NO. (If applicable)  
P00003 SEE BLOCK 16C 03PR07099-01 N.A.

6. ISSUED BY CODE N00014 7. ADMINISTERED BY (If other than Item 6) CODE S3915A  
SCD-C

OFFICE OF NAVAL RESEARCH  
ONR 254 LEE ARBAIZA (703)696-5389  
E-mail arbaizd@onr.navy.mil  
BALLSTON CENTRE TOWER ONE  
800 NORTH QUINCY STREET  
ARLINGTON, VA 22217-5660

DCM PHILADELPHIA  
PO BOX 11427  
700 ROBBINS AVE., BLDG 4A  
PHILADELPHIA, PA 19111-0427

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State, and Zip Code) (3) 9A. AMENDMENT OF SOLICITATION NO.  
N.A.

OCEAN POWER TECHNOLOGIES INC.  
1590 REED ROAD  
PENNINGTON, NJ 08534

[ ] 9B. DATED (SEE ITEM 11)

[X] 10A. MODIFICATION OF CONTRACT/ORDER NO.  
N00014-02-C-0053

10B. DATED (SEE ITEM 13)  
11-FEB-02

CODE FACILITY CODE  
04EP7

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

[ ] The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers [ ] is extended [ ] is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)  
SEE THE ATTACHED FINANCIAL ACCOUNTING DATA (FAD) SHEET(S)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(3) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify Authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

[ ] B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

[ ] C. SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:

[X] D. OTHER (Specify type of modification and authority)  
FAR 43.103(a) MUTUAL AGREEMENT OF THE PARTIES

E. IMPORTANT: Contractor [ ] is not, [X] is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)  
SEE PAGE 2.

Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

/s/ Deborah A. Montagna  
Vice President - Program Management

/s/ Todd T. Hanson  
Contracting Officer

15B. CONTRACTOR/OFFEROR 15C. DATE SIGNED 16B. UNITED STATES OF AMERICA 16C. DATE SIGNED

Deborah A. Montagna 24 July 2003 Todd T. Hanson 25 July 2003

(Signature of person authorized to sign) (Signature of Contracting Officer)

The purposes of this modification are to: (1) provide for an expansion of the research effort; (2) increase the total amount of the estimated contract consideration in the amount of \$1,598,937; (3) modify SECTIONS C and F by extending the period of performance; (4) update SECTION I, Contract Clauses; and (5) modify SECTIONS J and K. Accordingly, the funding cited on the attached Financial Accounting Data Sheet is made available.

Effective as of the date of this Modification:

1. This modification increases the total amount of the contract by \$1,598,937, which includes \$[\*\*] allotted to estimated cost and \$[\*\*] allotted to fixed fee, from \$4,075,170 to \$5,674,107.
2. Under Section B, entitled "Supplies or Services and Prices/Costs," Item 0001 is revised as follows:

ITEM NO.	SUPPLIES/SERVICES	EST. COST	FIXED FEE	TOTAL CPFF
0001	The Contractor shall furnish the necessary personnel and facilities to conduct the research effort as described in SECTION C. 000101 ACRN: AA \$[**] 000102 ACRN: AC \$[**] 000103 ACRN: AD \$1,598,937	\$[**]	\$[**]	\$ [**]
0002	Reports and Data in accordance with Exhibit A (DD Form 1423)	[**]	[**]	[**]
0003	OPTION 1 - Wave Tank Test 2; Validate Numerical Models	\$[**]	\$[**]	\$ [**]
0004	OPTION 2- On-going Ocean Test--Continue Monitoring 000401 ACRN: AC \$[**]	\$[**]	\$[**]	\$ [**]
0005	OPTION 3- Complete System Removal 000501 ACRN: AA \$[**] 000502 ACRN: AB \$[**]	\$[**]	\$[**]	\$ [**]
TOTAL ESTIMATED CONTRACT CONSIDERATION:		---- \$[**] ====	---- \$[**] ====	----- \$5,674,107 =====

3. The funds available for performance of this contract are increased by \$1,598,937--the amount set forth in the attached Financial Accounting Data sheet(s).

4. Under SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT, revise to read as follows:

1. ITEM 0001 - The contractor shall conduct the work in accordance with the attached Statement of Work, entitled "The Wave Energy Technology (WET) Buoy 2 Program." The duration of effort will be eighteen months from the date of award of this modification.

5. Under SECTION F - DELIVERIES OR PERFORMANCE, revise paragraph 1 to extend the period of performance by eighteen (18) months as follows:

ITEM 0001 - The research effort performed under this contract shall be conducted from the date of contract execution (reference Block 20C on the first page of the contract) through eighteen (18) months after the date of execution of Modification No. P00003 (reference Block 16C on the first page of the modification). A final report will be prepared, submitted, reproduced and distributed within sixty (60) days unless the contract is extended, in which case the final report will be prepared in accordance with the terms of such extension.

6. Under SECTION G - CONTRACT ADMINISTRATION DATA, the paragraph entitled "Allotment of Funds" is revised to read as follows:

"Allotment of Funds"

It is hereby understood and agreed that this contract will not exceed a total amount of \$5,674,107, which includes \$[\*\*] allotted to estimated cost and \$[\*\*] allotted to fixed fee.

CLIN 0001 is fully funded.

CLIN 0004 is incrementally funded in the amount of \$[\*\*], which includes \$[\*\*] allotted to estimated cost and \$[\*\*] allotted to fixed fee.

CLIN 0005 is incrementally funded in the amount of \$[\*\*] which includes \$[\*\*] allotted to estimated cost and \$[\*\*] allotted to fixed fee.

7. Under SECTION I - CONTRACT CLAUSES, update as follows:

SECTION I - CONTRACT CLAUSES - COST PLUS FIXED FEE (JUNE 2002)

SECTION I-1 - CLAUSES INCORPORATED BY REFERENCE

FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES:

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:  
<http://www.arnet.gov/far/>,  
[http://farsite.hill.af.mil/farsite\\_scripthtml](http://farsite.hill.af.mil/farsite_scripthtml),  
[http://web1.deskbook.osd.mil/htmlfiles/DBY\\_far.asp](http://web1.deskbook.osd.mil/htmlfiles/DBY_far.asp), or  
[http://web1.deskbook.osd.mil/htmlfiles/DBY\\_dfars.asp](http://web1.deskbook.osd.mil/htmlfiles/DBY_dfars.asp)

(A) FAR 52.252-02 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

All of the clauses listed below are either required by regulation or are required when the circumstances of the contract warrant that they apply. For instance, a dollar threshold may trigger the applicability of the clause or a certain condition of the research may trigger the applicability of the clause. In order to provide some assistance, as to when a dollar threshold triggers a clause, we have associated certain symbols with dollar thresholds. The symbols and their appropriate dollar thresholds are as follows:

- \* Applies when contract action exceeds \$10,000
- \*\* Applies when contract action exceeds \$100,000
- + Applies when contract action exceeds \$500,000
- ++ Applies when contract action exceeds \$500,000 and subcontracting possibilities exist. Small Business Exempt.
- X (DD 250)
- XX Not applicable

The clauses that generally flow down to educational institutions when they are the subcontractors to a commercial prime contractor are indicated with the following symbol: @. The clauses in the section using the flow-down symbol indicator: @, reflect the content of a model contract award to a commercial prime contractor and identify the clauses that are to be flowed-down. An explanation as to why the clauses are flowed down to the education institution is provided in Attachment Number 1. The content of the following Attachment Number 1 model details only the clauses that flow-down to educational institutions either as required by regulation or as required when circumstances of the contract warrant that they apply. Clauses applicable to the commercial prime contractor are not included in the Attachment Number 1 model.

I. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES:

FAR SOURCE	TITLE AND DATE
-----	-----
** FAR 52.202-1	Definitions (DEC 2001)
** FAR 52.203-3	Gratuities (APR 1984)
** FAR 52.203-5	Covenant Against Contingent Fees (APR 1984)
** FAR 52.203-6	Restrictions on Subcontractor Sales to the Government (JUL 1995)
** FAR 52.203-7	Anti-Kickback Procedures (JUL 1995)
** FAR 52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)
** FAR 52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997)

FAR SOURCE	TITLE AND DATE
FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions (JUN 1997)
** FAR 52.204-4	Printing/Copying Double-Sided on Recycled Paper (AUG 2000)
FAR 52.211-15	Defense Priority and Allocation Requirements (SEP 1990)
** FAR 52.215-2	Audit and Records - Negotiation (JUN 1999) and Alternate II (APR 1998)(Alternate II is applicable with cost reimbursement contracts with State and local Governments, educational institutions, and other non-profit organizations.)
FAR 52.215-8	Order of Precedence - Uniform Contract Format (OCT 1997)
+ FAR 52.215-10	Price Reduction for the Defective Cost or Pricing Data (OCT 1997) (The clause is applicable to subcontracts over \$550,000.)
+ FAR 52.215-12	Subcontractor Cost or Pricing Data (OCT 1997) (Applicable to subcontracts over \$550,000 only)
** FAR 52.215-14	Integrity of Unit Prices (OCT 1997) and Alternate I (OCT 1997) (Alternate I is applicable if the action is contracted under Other Than Full and Open Competition)
+ FAR 52.215-15	Pension Adjustments and Asset Reversions (DEC 1998)
+ FAR 52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions (OCT 1997)
+ FAR 52.215-19	Notification of Ownership Changes (OCT 1997) (Applicable when Cost or Pricing Data is required)
FAR 52.216-7	Allowable Cost and Payment (FEB 2002)
FAR 52.216-8	Fixed Fee (MAR 1997)
** FAR 52.219-4	Notice of Price Evaluation Preference for HUBzone Small Business Concerns(JAN 1999)
** FAR 52.219-8	Utilization of Small Business Concerns (OCT 2000)
++ FAR 52.219-9	Small Business Subcontracting Plan (JAN 2002)
++ FAR 52.219-16	Liquidated Damages - Subcontracting Plan (JAN 1999)
FAR 52.222-1	Notice to the Government of Labor Disputes (FEB 1997)
** FAR 52.222-2	Payment for Overtime Premiums (JUL 1990) (Note: The word "zero" is inserted in the blank space indicated by an asterisk)
FAR 52.222-3	Convict Labor (AUG 1996) (Reserved when FAR 52.222-20 Walsh Healy Public Contracts Act is applicable)
** FAR 52.222-4	Contract Work Hours and Safety Standards Act -Overtime Compensation (SEP 2000)
FAR 52.222-21	Prohibition of Segregated Facilities (FEB 1999)

FAR SOURCE	TITLE AND DATE
FAR 52.222-26	Equal Opportunity (APR 2002)
* FAR 52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001 1998)
* FAR 52.222-36	Affirmative Action for Workers with Disabilities (JUN 1998)
* FAR 52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
** FAR 52.223-14	Toxic Chemical Release Reporting (OCT 2000)
** FAR 52.225-13	Restrictions on Certain Foreign Purchases (JUL 2000)
** FAR 52.227-1	Authorization and Consent (JUL 1995) and Alternate I (APR 1984)
** FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)
FAR 52.228-7	Insurance Liability to Third Persons (MAR 1996) (Further to paragraph (a)(3), unless otherwise stated in this contract, types and limits of insurance required are as stated in FAR 28.307-2)
FAR 52.232-9	Limitation on Withholding of Payments (APR 1984)
** FAR 52.232-17	Interest (JUN 1996)
FAR 52.232-23	Assignment of Claims (JAN 1986) and Alternate I (APR 1984)
FAR 52.232-25	Prompt Payment (FEB 2002) and Alternate I (FEB 2002) (The words "the 30th day" are inserted in lieu of "the 7th day" at (a)(5)(i). [When Alternate I is applicable (a)(5)(i) does do not apply] [Alternate I applies when awarding a cost reimbursement contract for services]
FAR 52.232-33	Payment by Electronic Funds Transfer - Central Contractor Registration (MAY 1999)
FAR 52.233-1	Disputes (JULY 2002)
FAR 52.233-3	Protest After Award (AUG 1996) and Alternate I (JUN 1985)
FAR 52.242-1	Notice of Intent to Disallow Costs (APR 1984)
+ FAR 52.242-3	Penalties for Unallowable Costs (MAY 2001)
FAR 52.242-4	Certification of Final Indirect Costs (JAN 1997)
** FAR 52.242-13	Bankruptcy (JUL 1995)
FAR 52.242-15	Stop Work Order (AUG 1989) and Alternate I (APR 1984)
FAR 52.244-2	Subcontracts (AUG 1998) and Alternate I (AUG 1998) [Insert in cost-reimbursement contracts, and letter, time-and-material, and labor-hour contracts exceeding SAP, and fixed price contracts exceeding SAP where unpriced actions are anticipated. Use Alternate I for cost-reimbursement contracts]
** FAR 52.244-5	Competition in Subcontracting (DEC 1996)

FAR SOURCE	TITLE AND DATE
FAR 52.244-6	Subcontracts for Commercial Items and Commercial Components (APR 2002)
FAR 52.245-5	Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) (JAN 1986) and ALT I (JUL 1985) (As modified by DoD Class Deviation 99-00008 dated 13 July 1999) (ALT I is applicable if the contractor is a nonprofit organization whose primary purpose is the conduct of scientific research)
** FAR 52.247-64	Preference for Privately Owned U.S. Flag Commercial Vessels (JUN 2000)
FAR 52.249-6	Termination (Cost-Reimbursement) (SEP 1996)
FAR 52.249-14	Excusable Delays (APR 1984)
FAR 52.251-1	Government Supply Sources (APR 1984)
FAR 52.253-1	Computer Generated Forms (JAN 1991)

II DEPARTMENT OF DEFENSE FAR SUPPLEMENTAL (DFARS) (48 CFR CHAPTER 2) CLAUSES:

DFARS SOURCE	TITLE AND DATE
** DFARS 252.203-7001	Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (MAR 1999)
DFARS 252.204-7003	Control of Government Work Product (APR 1992)
DFARS 252.204-7004	Required Central Contractor Registration (NOV 2001)
** DFARS 252.209-7000	Acquisition from Subcontractors subject to On-Site Inspection under the Intermediate Range Nuclear Forces (INF) Treaty (NOV 1995)
** DFARS 252.209-7004	Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country (MAR 1998)
+ DFARS 252.215-7000	Pricing Adjustments (DEC 1991)
++ DFARS 252.219-7003	Small, Small Disadvantaged and Women-owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996)
** DFARS 252.225-7012	Preference for Certain Domestic Commodities (APRIL 2002)
DFARS-252.225-7031	Secondary Arab Boycott of Israel (JUN 1992)
XX DFARS 252.227-7013	Rights in Technical Data - Noncommercial Items (NOV 1995), and Alternate I (JUN 1995)
XX DFARS 252.227-7014	Rights In Noncommercial Computer Software and Noncommercial Computer Software Documentation (JUN 1995)
DFARS 252.227-7016	Rights in Bid or Proposal Information (JUN 1995)
DFARS 252.227-7019	Validation of Asserted Restrictions --

DFARS SOURCE	TITLE AND DATE
DFARS 252.227-7025	Computer Software (JUN 1995) Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends (JUN 1995)
DFARS 252.227-7028	Technical Data or Computer Software Previously Delivered to the Government (JUN 1995)
DFARS 252.227-7030	Technical Data - Withholding of Payment (MAR 2000)
DFARS 252.227-7036	Declaration of Technical Data Conformity (JAN 1997)
DFARS 252.227-7037	Validation of Restrictive Markings on Technical Data (SEP 1999)
DFARS 252.231-7000	Supplemental Cost Principles (DEC 1991)

FAR SOURCE	TITLE AND DATE
DFARS 252.242-7000	Post-Award Conference (DEC 1991)
** DFARS 252.243-7002	Requests for Equitable Adjustment (MAR 1998)
DFARS 252.245-7001	Reports of Government Property (MAY 1994)
X DFARS 252.246-7000	Material Inspection and Receiving Report (DEC 1991)
DFARS 252.251-7000	Ordering from Government Supply Sources (OCT 2002)
** DFARS 252.247-7023	Transportation of Supplies by Sea (MAY 2000)
** DFARS 252.247-7024	Notification Of Transportation Of Supplies By Sea (MAR 2000) (Applicable when the Contractor has made a negative response to the inquiry in the representation at DFARS 252.247-7022.)

(B) ADDITIONAL FAR AND DFARS CLAUSES

This contract incorporates one or more clauses by reference as indicated by the mark of (X), with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the foil text of a clause may be accessed electronically at this address:  
<http://www.arnet.gov/far/>

FAR SOURCE	TITLE AND DATE
FAR 52.204-2	Security Requirements (AUG 1996) (Applicable if contract will generate or require access to classified information and DD Form 254, Contract Security Classification Specification, is issued to the contractor)
X FAR 52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JUL 1995) (Applicable to contracts exceeding \$25,000 in value.)
X FAR 52.215-17	Waiver of Facilities Capital Cost of Money (OCT

FAR SOURCE	TITLE AND DATE
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	1997) (Applicable if the Contractor did not propose facilities capital cost of money in the offer)
FAR 52.215-20	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data (OCT 1997) (Applicable if cost or pricing data or information other than cost or pricing data are required)
X FAR 52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data - Modifications (OCT 1997) (Applicable if cost or pricing data or information other than cost or pricing data will be required for modifications)
FAR 52.217-9	Option to Extend the Term of the Contract (MAR 2000) (In paragraph (a), insert "," and in paragraph (c), insert"") (Applicable if contract contains line item(s) for option(s))
FAR 52.219-3	Notice of Total HUBZone Set-Aside (JAN 1999)
FAR 52.219-5	Very Small Business Set-Aside (MAR 1999) (For actions between \$2,500 and \$50,000)
FAR 52.219-6	Notice of Total Small Business Set-Aside (JUL 1996), and Alternate I (OCT 1995) (Applicable to total small business set-asides, including SBIR)
FAR 52.219-7	Notice of Partial Small Business Set-Aside (JUL 1996) and Alternate I (OCT 1995)
FAR 52.219-10	Incentive Subcontracting Program (OCT 2001) (Applicable at the PCO's discretion to contract actions exceeding \$500,000 and when subcontracting possibilities exist. The clause is small business exempt) (In paragraph (b), insert the appropriate number between 0 and 10 - "0")
FAR 52.219-25	Small Disadvantaged Business Participation Program - Disadvantaged Status and Reporting (OCT 1999) (Applicable if contract includes FAR 52.219-24)
FAR 52.219-26	Small Disadvantaged Business Participation Program - Incentive Subcontracting Program (OCT 2000) (Applicable at the PCO's discretion to contract actions exceeding \$500,000 and when subcontracting possibilities exist. The clause is small business exempt) (In paragraph (b), insert the appropriate number between 0 and 10 - "0")
FAR 52.222-20	Walsh Healy Public Contracts Act (DEC 1996) (Applicable if the contract includes deliverable materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000)

FAR SOURCE	TITLE AND DATE
FAR 52.223-5	Pollution Prevention and Right-to-Know Information (APR 1998) (Applicable if contract provides for performance, in whole or in part, on a Federal facility)
X FAR 52.223-6	Drug-Free Workplace (MAY 2001) (Applies when contract action exceeds \$100,000 or at any value when the contract is awarded to an individual)
X FAR 52.227-20	Rights in Data - SBIR Program (Mar 1994)
FAR 52.230-2	Cost Accounting Standards (APR 1998) (Applicable when contract amount is over \$500,000, if contractor is subject to full CAS coverage, as set forth in 48 CFR Chapter 99, Subpart 9903.201-2(a) (FAR Appendix B)
FAR 52.230-3	Disclosure and Consistency of Cost Accounting Practices (APR 1998) (Applicable when contract amount is over \$500,000 but less than \$25 million, and the offerer certifies it is eligible for and elects to use modified CAS coverage as set forth in 48 CFR Chapter 99, Subpart 9903.201-2 (FAR Appendix B)
FAR 52.230-6	Administration of Cost Accounting Standards (NOV 1999) (Applicable if contract is subject to either clause at FAR 52.230-2, FAR 52.230-3 or FAR 52.230-5)
X FAR 52.232-20	Limitation of Cost (APR 1984) (Applicable only when contract action is fully funded)
X FAR 52.232-22	Limitation of Funds (APR 1984) (Applicable only when contract action is incrementally funded)
FAR 52.239-1	Privacy or Security Safeguards (AUG 1996) (Applicable to contracts for information technology which require security of information technology, and/or are for the design, development, or operation of a system of records using commercial information technology services or support services.)
FAR 52.245-18	Special Test Equipment (FEB 1993) Applicable when it is anticipated that the contractor will acquire or fabricate special test equipment but the exact identification of the equipment is not known)
DFARS 252.203-7002	Display of DoD Hotline Poster (DEC 1991) (Applicable only when contract action exceeds \$5 million or when any modification increases contract amount to more than \$5 million)
DFARS 252.204-7000	Disclosure of Information (DEC 1991) (Applies when Contractor will have access to or generate

FAR SOURCE	TITLE AND DATE
	unclassified information that may be sensitive and inappropriate for release to the public)
DFARS 252.204-7005	Oral Attestation of Security Responsibilities (NOV 2001) (Applicable if FAR 52.204-2, Security Requirements Applies)
X DFARS 252.205-7000	Provision of Information to Cooperative Agreement Holders (DEC 1991) (Applicable only when contract action exceeds \$500,000 or when any modification increases total contract amount to more than \$500,000)
X DFARS 252.215-7002	Cost Estimating System requirements (Oct 1998) (Applicable only to contract actions awarded on the basis of certified cost or pricing data)
DFARS 252.223-7004	Drug-Free Work Force (SEP 1988) (Applicable (a) if contract involves access to classified information: or (b) when the Contracting Officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of performance of the contract.
DFARS 252.223-7006	Prohibition on Storage and Disposal of Toxic and Hazardous Materials (APR 1993) (Applicable if work requires, may require, or permits contractor performance on a DoD installation)
DFARS 252.225-7001	Buy American Act and Balance of Payments Program (MAR 1998) (Applicable if the contract includes deliverable supplies) (This clause does not apply if an exception to the Buy American Act or Balance of Payments Program is known or if using the clause at 252.225-7007, 252.225-7021, or 252.225-7036.)
DFARS 252.225-7002	Qualifying Country Sources as Subcontractors (DEC 1991) (Applicable when clause at DFARS 252.225-7001, 252.227-7007, 252.227-7021, or 252.227-7036 applies)
DFARS 252.225-7007	Buy American Act -- Trade Agreements - Balance of Payments Program (OCT 2002) (Use instead of FAR 52.225-5, Trade Agreements (Include in contracts valued at \$186,000 or more, if the Trade Agreements Act applies (see 25.401 and 25.403) and the agency has determined that the restrictions of the Buy American Act or Balance of Payments Program are not applicable to U.S.-made end products, unless the acquisition is to be awarded and performed outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation and does not exceed the increase simplified acquisition

FAR SOURCE  
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TITLE AND DATE  
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threshold of \$200,000.) The clause need not be used where purchase from foreign sources is restricted (see 225.401 (b)(ii)). The clause may be used where the contracting officer anticipates a waiver of the restriction.)

- DFARS 252.225-7008 Supplies to be Accorded Duty-Free Entry (MAR 1998) (Applicable when the contract provides for duty-free entry and includes FAR 52.225-8 - Duty-Free Entry)
- DFARS 252.225-7009 Duty-Free Entry - Qualifying Country Supplies (End Products and Components) (AUG 2000) (Applicable if contract includes deliverable supplies)
- DFARS 252.225-7010 Duty-Free Entry - Additional Provisions (AUG 2000) (Applicable when FAR 52.225-8 - Duty-Free Entry is included in the contract.)
- DFARS 252.225-7016 Restriction On Acquisition Of Ball And Roller Bearings (DEC 2000) (Applicable if contract includes deliverable supplies, unless Contracting Officer knows that items being acquired do not contain ball or roller bearings)
- X DFARS 252.225-7026 Reporting of Contract Performance Outside the United States (JUN 2000) (Applicable only when contract value exceeds \$500,000 or when any modification increases contract value to more than \$500,000)
- DFARS 252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises (SEP 2001) [(Applicable if FAR Part 12 is not used, and for supplies and services (but not R&D) expected to exceed SAP thresholds) (This Final Rule replaces FAR 52.226-1 (JUN 2000) via DFARS Chg Ntc 200205311
- X DFARS 252.227-7018 Rights in Noncommercial Technical Data and Computer Software - Small Business Innovation Research (SBIR) Program (JUN 1995) (Applicable when technical data or computer software will be generated during performance of contracts under the SBIR Program)
- X DFARS 252.242-7004 Material Management and Accounting System (DEC 2000) (Applicable to contract actions exceeding \$100,000) (Not applicable to contracts set aside for exclusive participation by small business and small disadvantaged business concerns)

C. COST-PLUS-FIXED-FEE-RESEARCH AND DEVELOPMENT CLAUSES

The following FAR and DFARS clauses apply to Cost-Plus-Fixed-Fee Research and Development Contracts and are either required by regulation or are required when the circumstances of the contract warrant that they apply: (\*\* - applies to contract actions exceeding \$100,000)

FAR SOURCE	TITLE AND DATE
FAR 52.225-16	Sanctioned European Union Country Services (FEB 2000)
** FAR 52.227-1	Authorization and Consent (JUL 1995) and Alternate I (APR 1984)
FAR 52.243-2	Changes - Cost Reimbursement (AUG 1987) and Alternate V (APR 1984)
FAR 52.246-9	Inspection of Research and Development (Short Form) (APR 1984)
FAR 52.246-23	Limitation of Liability (FEB 1997)
DFARS 252.235-7002	Animal Welfare (DEC 1991)
DFARS 252.235-7011	Final Scientific or Technical Report (SEP 1999)

The following FAR and DFARS clauses for Cost-Plus-Fixed-Fee Research and Development Contracts only apply when specifically marked with a check (x):

FAR SOURCE	TITLE AND DATE
FAR 52.227-10	Filing of Patent Applications - Classified Subject Matter (APR 1984) (Applicable if contract is subject to FAR clause 52.204-02 and either 52.227-11 or 52.227-12)
X FAR 52.227-11	Patent Rights - Retention by the Contractor (Short Form) (JUN 1997) (Applicable if contractor is a small business or non profit organization)

OR

FAR SOURCE	TITLE AND DATE
FAR 52.227-12	Patent Rights - Retention by the Contractor (Long Form) (JAN 1997) (Applicable if contractor is a large business)
X DFARS 252.227-7034	Patents - Subcontracts (APR 1984) (Applicable when FAR 52.227-11 applies)
X DFARS 252.227-7039	Patents - Reporting of Subject Inventions (APR 1990) (Applied when FAR 52.227-11 applies)

8. Under SECTION J-LIST OF ATTACHMENTS, add the following:

- (a) ATTACHMENT NUMBER (2), entitled, "Financial Accounting Data Sheet."
- (b) ATTACHMENT NUMBER (3), entitled, "STATEMENT OF WORK - THE DIRECTED BLAST WARHEAD."

9. Under SECTION K - REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFEROR, modify as follows:

The Contractor's Representations and Certifications, dated 09 July 2003, are hereby incorporated into this contract by reference.

10. All other terms and conditions remain unchanged and in full force and effect.

FINANCIAL ACCOUNTING DATA SHEET - NAVY

1. CONTRACT NUMBER (CRITICAL) 2. SPIIN (CRITICAL) 3. MOD (CRITICAL) 4. PR NUMBER PAGE 1 OF 1  
 N0001402C0053 P00003 03PR07099-00

6. LINE OF ACCOUNTING

A. ACRN CLIN/SLN (Critical)	B. APPROPRIATION (CRITICAL)	C. SUBHEAD (CRITICAL)	D. OBJ E. CLA PARM	F. RFM	G. SA	H. AAA (CRITICAL)	I. IT	J. PAA	K. COST CODE			7. AMOUNT (CRITICAL)	NAVY INTERNAL USE ONLY REF DOC/ACRN
									PROJ UNIT	MCC	SUF		
AD	1731319	W3DK	255 RA	333	0	068342	2D	000000	09019	000	4KTO	\$1,598,937.00	PR#03PR07099-01 FRC: 34KT

PAGE TOTAL \$1,598,937.00

GRAND TOTAL \$1,598,937.00

PREPARED/AUTHORIZED BY:

COMPTROLLER APPROVAL:  
FOR FISCAL DATA AND SIGNATURE

BY \_\_\_\_\_ for COMPTROLLER, ONR CONTRACT REVIEWED

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## STATEMENT OF WORK

### TASK GROUP 1.0: DESIGN PHASE

1.1 Preparation of Design Requirements - OPT will prepare a document that states the requirements of the WEC system hardware and controls in order to guide design work. The design requirements document prepared in earlier work may be used as a template or baseline if deemed adequate or helpful in this purpose. OPT will solicit input from the project team in the preparation of the design requirements.

1.2 Preparation of Test Requirements - OPT will prepare a test requirements document that will identify what is to be tested, how it is to be tested, how the data is to be managed, and analyzed and the sampling rate. OPT will solicit input from the project team in the preparation of the test requirements.

1.3 Review of 1st Buoy Program- OPT and the project team will review the results of the work performed under the PHEPS and OP Technology Programs. Program reviews, status reports, engineering reports, engineering drawings, and simulation studies will be examined in an effort to transfer knowledge gained towards new work.

1.4 Mechanical Design and Creation of Fabrication Drawings - This task includes the design of [\*\*]. The [\*\*] and be positioned in close proximity [\*\*]. This task also includes the mechanical design time necessary to make slight modifications to the WEC as deemed appropriate by the project team. Reviews with fabricators and suppliers will be held to insure manufacturability and cost effective design. This task will include the conversion of the design to detailed fabrication drawings.

1.5 Electrical System Design - OPT will engage in engineering work to plan for the [\*\*]. OPT will determine any modifications necessary for [\*\*] system. This will focus primarily on any changes required to the [\*\*]. OPT will review the existing system design and any relevant performance information arising from the test of the [\*\*]. This engineering work will also form the basis for procedures necessary to do the connection and power-up steps during the test phase. For the [\*\*], OPT will prepare calculations and specifications for the power cables.

1.6 System Control and Data Acquisition System Modifications - OPT will develop a modified system control algorithm that encompasses the [\*\*] with its data collection and power integration features necessary for system operation and test.

1.7 Circuit Design and Hardware Specifications - Based on the electrical and control system designs, OPT will specify the [\*\*] wiring circuits to connect power and data from [\*\*] to the respective [\*\*] connections to enable an integration of the [\*\*]. Connectors and wiring specifications will be produced for these connections.

1.8 Electrical System FMEA and Review - A Failure Modes and Effects Analysis of the power and control system will be conducted. A design review of the electrical and control systems will be conducted by the project team.

### Task Group 2.0: Ocean Test Preparation

N00014-02-C0053

ATTACHMENT 3

2.1 Installation and Test Plans - Detailed plans for the installation and testing phases of the project based on plans previously developed on the existing OP Technology contract will be drafted by OPT and its contractors and circulated to the project team for feedback, leading up to a review of such plans. Installation plans will include assimilation of ocean condition persistence data for scheduling, methods and equipment suitability. The plans will be in sufficient detail to denote responsibilities, communications, methods, equipment, contingencies, and timing. The project team will participate in an installation and test plans review; necessary contractors will be involved. The purpose of the review is to insure that the ocean test and installation plans have been established to meet the objectives of the project and are within the cost budget and schedule, within appropriate risk limits, are complete to insure success, contain contingency plans, and conform to applicable safety and environmental considerations and appropriate industry practices.

2.2 System Procurement & Fabrication - This task includes activities involved in procurement, fabrication, supplier and QA management. For major expense items, where possible, requests for quote will be distributed to multiple suppliers in order to procure at the lowest possible cost. Long lead-time items will be identified and follow a staggered assembly and deployment plan to allow the final installation and ocean test schedules to be met.

2.3 [\*\*], Power Take-Off and Control System In House Test - The power take-off and control systems components will be assembled [\*\*] and pre-tested for system performance at OPT.

2.4 Final Assembly and Test at Staging Area - All power conversion equipment will be shipped to the prime fabricator for final assembly into the WEC system. Final system testing at that stage will be conducted to insure mechanical system tolerances and key moving components are to specification. Integration of the control system with cables and connectors to the WEC will be performed.

2.5 Site Preparations - Diver inspection of the sub-sea site for the anchor will be conducted during the routine inspection on the existing OP Technology contract.

2.6 Pre-deployment Review - Prior to deployment, an on-site review by members of the project team will be held that covers the objectives, methods, equipment, safety, and contingency procedures intended with respect to the installation and test plans. This will include review of any approvals by local authorities.

N00014-02-C0053

ATTACHMENT 3

## OPTION AGREEMENT FOR PURCHASE OF EMISSIONS CREDITS

This Option Agreement for Purchase of Emissions Credits (the "Agreement") is made and entered into this 24 day of November, 2000 by and between OCEAN POWER TECHNOLOGIES, INC. a New Jersey corporation, and its Affiliates (as hereinafter defined) (collectively referred to herein as "Seller"), and WOODSIDE SUSTAINABLE ENERGY SOLUTIONS PTY. LTD. (ACN 094 813 715), a company organized under the laws of Australia ("Buyer");

## WITNESSETH:

WHEREAS, Seller is in the business of developing, manufacturing, operating and selling devices that capture wave energy and convert that energy into electricity ("OPT Products");

WHEREAS, Seller may become the beneficial owner of certain Emissions Credits (as defined below) generated by the deployment of OPT Products;

WHEREAS, Buyer desires to acquire from Seller, and Seller agrees to grant to Buyer, an option to purchase such Emissions Credits upon the terms and provisions as hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the parties hereto and for the mutual covenants contained herein, Seller and Buyer hereby agree as follows:

## 1. DEFINITIONS.

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

- (a) "Affiliate" means as to any person or entity, any other person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first person or entity, with "control" being deemed to exist in the event of direct or indirect ownership of 50% or more of the voting power or other equity interest of such person or entity.
- (b) "Applicable Laws" means the Kyoto Protocol and applicable laws, rules, regulations implementing the Kyoto Protocol.
- (c) "Compliance Period" means the first quantified emission limitation and reduction commitment period, as set forth in the Kyoto Protocol, but in no event earlier than January 1, 2008 or other date as agreed to between the parties from time to time but in no event later than December 31, 2012 or such other date as agreed to between the parties from time to time..
- (d) "Convention" means the United Nations Framework Convention of Climate Change.

- (e) "Destination Convention Party" means the party to the Convention in which the activities are located for which Buyer determines to apply the Emissions Credits.
- (f) "Emissions" means (as defined in the Convention) the release of Greenhouse Gases and/or their precursors into the atmosphere over a specified area and period of time.
- (g) "Emissions Credits" means emission reduction credits, allowances, or other transferable units recognized as commodities under emissions trading systems, auctions, markets or other transfer mechanism established in conjunction with Applicable Laws.
- Emission Credits are to be designated in metric tonnes of carbon dioxide or carbon dioxide equivalent in the case of other Greenhouse Gases.
- (h) "GST" means any value added, consumption, turnover, goods and services tax or similar tax;
- (i) "Greenhouse Gases" means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation (as further defined in the Convention and the Koyoto Protocol).
- (j) "Kyoto Protocol" means the Kyoto Protocol to the Convention (Dec. 10, 1997) as amended and includes all agreements adopted in succession to or in replacement of such Protocol from time to time.
- (k) "Option Term" shall mean the period beginning on the commencement date of the Compliance Period and ending on (i) the termination date of the Compliance Period or (ii) the date on which Buyer has purchased the maximum aggregate quantity of Emissions Credits covered by the Option, whichever occurs first.
- (l) "Prevailing Market Price" means (i) the price per metric tonne agreed by Buyer and Seller from time to time as that prevailing in the public market for Emissions Credits immediately prior to the date of the applicable Exercise Notice, or (ii) absent an agreement, the price per metric tonne for Emissions Credits calculated as the arithmetic average of the closing prices in the public market for Emissions Credits during the period beginning fifteen (15) days before the date of the relevant Exercise Notice and ending fifteen (15) days following the date of the relevant Exercise Notice. In the event a public market has not been established by the date of the applicable Exercise Notice, the Prevailing Market Price shall mean a reasonable price per metric tonne as determined by an independent expert agreed to by the parties or failing agreement appointed at the request of either party by the President for the time being of the American Arbitration Association, all costs associated with such appointment and determination to be borne by the parties in equal shares.

- (m) "Purchase Price" means the price per metric tonne payable by Buyer to Seller upon exercise of the Option and purchase of Emissions Credits from time to time hereunder, being an amount equal to 70% of the Prevailing Market Price.
- (n) "Shortfall Market Price" means the price per metric tonne calculated as the arithmetic average of the monthly prices for Emissions Credits in the public market for Emissions Credits during the twelve (12) months immediately preceding the end of the Option Term. In the event a public market has not been established by the end of the Option Term, the Shortfall Market Price shall mean a reasonable price per metric tonne as determined by an independent expert agreed to by the parties or failing agreement appointed at the request of either party by the President for the time being of the American Arbitration Association, all costs associated with such appointment and determination to be borne by the parties in equal shares. . Notwithstanding anything herein to the contrary, the Shortfall Market Price shall not exceed US\$30 per metric tonne .
- (o) "Source Convention Party" means the party to the Convention in which the activities are located or under the Applicable Laws of which Seller has obtained ownership of the Emissions Credits.
- (p) "Taxable Supply" means any supply of goods and services which is, or becomes subject to, GST;
- (q) "US\$" means dollars United States of America being the lawful currency of United States of America.

## 2. GRANT OF OPTION.

For and in consideration of the Option Fee payable by Buyer to Seller as set forth herein and subject to the terms and conditions of this Agreement, Seller does hereby grant to Buyer the right and option (the "Option") to purchase, from time to time during the Option Term, at the Purchase Price, an aggregate of up to 500,000 metric tons of Emissions Credits upon the terms and conditions as set forth herein.

## 3. PAYMENT OF OPTION FEE.

The Option is granted in consideration of Buyer's payment to Seller, contemporaneous with the execution of this Agreement, of the sum of US\$600,000.00 (the "Option Fee"), by wire transfer to the account designated by Seller. If and when the Option is exercised in accordance with the terms hereof, the Option Fee paid by Buyer to Seller shall not apply toward the Purchase Price.

## 4. EXERCISE OF OPTION.

Buyer may exercise this Option, in whole or in part, at any time and from time to time during the Option Term, by giving written notice of exercise (the "Exercise Notice") to Seller, indicating in such Exercise Notice (i) the type of Emissions Credits desired to be purchased being those types or part of those types available on the register of credits maintained pursuant to

clause 6, (ii) the quantity in metric tons of Emissions Credits to be purchased being those amounts or part of those amounts available on the register of credits maintained pursuant to clause 6, and (iii) the proposed Purchase Price payable upon exercise. Subject to the provisions of Section 8 of this Agreement and the determination of the applicable Purchase Price, the giving of such Exercise Notice shall create a binding contract of purchase and sale between Buyer and Seller with respect to the Emissions Credits covered by the Exercise Notice. It is expressly understood and agreed that multiple exercises of the Option shall be permitted.

#### 5. PURCHASE OF EMISSIONS CREDITS FOLLOWING EXERCISE.

Within thirty (30) days following the date of the Exercise Notice, (a) Buyer shall pay to Seller the Purchase Price for the Emissions Credits specified in the Exercise Notice, and (b) contemporaneously therewith, Seller shall execute and deliver to Buyer an Assignment in the form attached hereto as Exhibit A (the "Assignment") transferring to Buyer legal title of the Emissions Credits purchased and warranting the validity thereof.

#### 6. REGISTER OF CREDITS.

The Seller shall at all times from the date of this Agreement until the expiration of the Option Term, maintain a current register of information useful for Buyer when electing to exercise the Option, which register shall include, without limitation, (i) the quantity and types of Emissions Credits available to Buyer pursuant to this Agreement, (ii) pricing, and (iii) a tally of Emissions Credits previously purchased by Buyer from Seller, including the date of purchase and the Purchase Price paid.

#### 7. OBLIGATION TO SECURE EMISSIONS CREDITS.

(a) At all times prior to expiration of the Option Term, Seller agrees to use its Reasonable Best Efforts (as defined in the Stock Purchase Agreement of even date herewith between Buyer and Seller), and to cause all of its Affiliates to use their Reasonable Best Efforts, to secure all available legally protectable rights to any Emissions Credits to which it may be lawfully entitled to under Applicable Law as a result of its sale of the OPT Products and/or the sale of electricity produced by Seller and/or its Affiliates through third parties within the Source Convention Party's geographic boundaries.

(b) Seller shall cause all such Emissions Credits to which Seller or its Affiliates may be lawfully entitled to under Applicable Law be made available to Buyer pursuant to the Option in the national registry (or equivalent mechanism established under Applicable Laws) of the Destination Convention Party and to be included in the register maintained by Seller pursuant to Section 6 hereof.

#### 8. FAILURE BY OPT TO SUPPLY CREDITS.

(a) (i) In the event that Seller fails or is unable for any reason, other than due to the failure of Applicable Laws to allocate Emission Credits to Seller despite (subject to sub-paragraph (ii)) Seller's Reasonable Best Efforts, to sell, transfer and assign to Buyer the full quantity of Emissions Credits (not to exceed the maximum aggregate quantity

covered by the Option) called by Buyer pursuant to all cumulative Exercise Notices received over the Option Term, Seller shall pay to Buyer, within twenty (20) days following expiration of the Option Term, by wire transfer to an account designated by Buyer, liquidated damages in an amount equal to (i) the shortfall in metric tons of Emissions Credits called for purchase by Buyer but not sold, transferred and delivered by Seller, times (ii) the Shortfall Market Price, times (iii) 30%. Upon payment of such liquidated damages, Seller and its Affiliates shall have no further obligation, liability or duty to Buyer.

(ii) Notwithstanding the provisions of this Agreement, Seller may without breaching its obligations under this Agreement, dispose of any Emission Credits entered on the register pursuant to clause 6, to a third party but in that case these Emission Credits disposed of shall be deemed to remain on the register and the provisions relating to liquidated damages specified in sub-clause (i) are to apply as though such Emission Credits had remained on the clause 6 register.

(b) In the event that Seller is unable to sell, transfer and assign to Buyer any quantity of Emissions Credits due to the failure of Applicable Laws to allocate Emissions Credits to Seller prior to expiration of the Option Term Seller shall pay to Buyer, within twenty (20) days following expiration of the Option Term, by wire transfer to an account designated by Buyer, liquidated damages in an amount equal to the Option Fee less the cumulative sum of difference between the Prevailing Market Price at the time of assignment of each Emission Credit to Buyer pursuant to this Agreement and the Purchase Price Paid by Buyer for each such Emission Credit. Upon payment of such liquidated damages, Seller and its Affiliates shall have no further obligation, liability or duty to Buyer.

#### 9. FAILURE BY BUYER TO PURCHASE.

Subject to Seller complying with its obligations under Section 6 and Section 7, including, but not limited to, recording on the Register not less than 500 000 metric tonnes of Emissions Credits, in the event that Buyer does not exercise its right to purchase the maximum aggregate quantity of Emissions Credits covered by the Option during the Option Term, or if Buyer purchases less than the maximum aggregate quantity of Emissions Credits covered by the Option during the Option Term, Seller shall be entitled to retain the Option Fee, this Agreement shall be of no further force and effect, and neither party hereto shall have any further liability, obligation or duty hereunder.

#### 10. STAMP DUTIES AND GST.

(a) Stamp Duties. Buyer and Seller shall share equally in the cost of all statutory fees and stamp duties with respect to this Agreement, and the parties shall each pay their respective costs of preparation, review and completion of this Agreement and the Assignment.

#### (b) GST INDEMNITY

(i) All payments to be made by Buyer under this agreement have been calculated without regard to GST. If any such payment constitutes the consideration for the whole

or any part of a Taxable Supply by Seller the amount of that payment must be increased such that Seller will (after paying its GST liability in respect of the Taxable Supply) receive the amount which Seller would have received in the absence of a GST.

(ii) If Seller makes any Taxable Supply to Buyer, Buyer must (save to the extent that Seller is entitled to be indemnified in respect of that GST by an increased payment under clause 10(b)(i) above) pay on demand to Seller an additional amount such that Seller will receive the amount (net of payments by it in respect of GST) which Seller would have received in the absence of a GST.

(iii) If Seller becomes liable to pay any penalty or interest as a result of late payment of GST where that late payment is as a result of the failure of Buyer to comply with the terms of this clause, then Buyer must pay on demand to Seller an additional amount equal to the amount of that penalty or interest.

#### 11. REPRESENTATIONS AND WARRANTIES.

Each Party represents and warrants to the other that:

- (a) It has all necessary corporate power and authority to execute and deliver this Agreement and all agreements, instruments and documents to be executed and delivered hereunder and to consummate the transactions contemplated hereby and thereby, and to perform all terms and conditions hereof and thereof to be performed by it. The execution, delivery and performance of this Agreement and all agreements, instruments and documents to be executed and delivered by it hereunder, the performance of all of the terms and conditions hereof and thereof to be performed by it, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action, including without limitation, all necessary action of its board of directors (or similar body) and no other corporate proceedings are necessary with respect thereto.
- (b) This Agreement has been duly executed and delivered by a duly authorized officer of such party and constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by general equity principles.

#### 12. INDEMNITY; LIMITATION ON DAMAGES

Seller hereby agrees to indemnify and hold Buyer harmless from and against any and all losses, claims, damages, liabilities, deficiencies, delinquencies, defaults, assessments, fees, penalties or related costs or expenses, including, but not limited to, court costs, reasonable attorneys' and accountants' fees and disbursements (collectively referred to herein as "Claims") incurred by Buyer in defense of claims by third parties in connection with or arising out of Seller's breach of its obligations under this Agreement and/or the Assignment, but reduced by any amount paid to Buyer on account of such loss by any insurance policies which Buyer may have available. The foregoing indemnity obligation shall expire and terminate with respect to all

Claims except for those Claims for which Seller shall have received written notice requesting indemnity prior to the expiration of two (2) years following termination of the Option Term. Under no circumstances shall Seller's and its Affiliates total liability under this Agreement exceed the amount paid by Buyer to Seller under this Agreement. In addition, under no circumstances shall Seller, its Affiliates, or their respective officers, directors, employees or agents be liable for special, consequential, punitive, exemplary, indirect or incidental damages (in tort, contract, or otherwise) under or with respect to this Agreement or the Assignment or for any failure of performance by Seller or its Affiliates however caused.

#### 13. FURTHER ASSURANCES.

Each party hereto agrees, without further consideration, to execute and deliver any and all certificates, instruments, assignments or agreements, and to take and do any and all other actions, as may be reasonably requested by the other in order to fulfill the conditions, consummate and make effective the transactions contemplated by this Agreement, including without limitation such actions as will vest, perfect or confirm of record or otherwise in Buyer or its designee all right, title and interest in and to the Option and all Emissions Credits purchased upon exercise of the Option. Nothing in this Section 13 shall be deemed to obligate either party to execute any certificate, instrument, assignment or agreement which increases its liabilities and obligations beyond that set forth in this Agreement.

#### 14. MISCELLANEOUS.

- (a) Payment of Certain Fees and Expenses. Subject to Section 10(a), each of the parties hereto shall pay the fees and expenses incurred by it in connection with the negotiation, preparation, execution and performance of this Agreement, including, without limitation, brokers' fees, attorneys' fees and accountants' fees.
- (b) Notices. All notices requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, by facsimile or by overnight courier, or if mailed, by first class mail, postage prepaid, return receipt requested, in each case addressed as follows:

If to Seller:

Ocean Power Technologies, Inc.  
1590 Reed Road  
Pennington NJ 08534 USA  
Attention: George W. Taylor  
Facsimile: 1 609 730 0404 (United States of America no.)

If to Buyer:

Woodside Sustainable Energy Solutions Pty. Ltd.  
1 Adelaide Terrace  
Perth, Western Australia 6000  
Attention: Richard Beresford  
Facsimile: 61 8 9348 4411 (Australian no.)

or to such other address as either party shall have specified by notice in writing to the other party. All such notices, requests, demands and communications shall be deemed effective on the date of delivery, transmission or deposit, as applicable, in the case of personal delivery, facsimile or overnight courier, or on the fifth business day after the mailing thereof.

- (c) Entire Agreement. This Agreement (including the Exhibits hereto) constitutes the entire agreement between the parties hereto and supersedes all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof.
- (d) Binding Effect; Benefit. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective permitted heirs, personal representatives, successors and assigns.
- (e) Assignability. This Agreement shall not be assignable by either party without the prior written consent of the other party; provided, however, that Buyer shall be entitled to assign this Agreement to an Affiliate of Buyer without the consent of Seller; provided that the Affiliate expressly agrees in writing to be bound by this Agreement by a form of deed satisfactory to Seller and to unconditionally assume all of the obligations of Buyer hereunder and Buyer unconditionally guarantees the performance hereof by the Affiliate by a form of guarantee satisfactory to the Seller.
- (f) Amendment; Waiver. This Agreement may be amended, supplemented or otherwise modified only by a written instrument executed by the parties hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and executed by the party so waiving. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.
- (g) Section Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- (h) Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect.

- (i) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
- (j) Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, U.S.A., without regard to principles of conflicts of law which would refer the matter to the laws of another jurisdiction.
- (k) Dispute Resolution. Any dispute, difference or question between Buyer and Seller with regard to this Agreement shall be resolved in accordance with the dispute resolution procedures set forth in Section 8.12 of the Stock Purchase Agreement of even date herewith between Buyer and Ocean Power Technologies, Inc.
- (l) Public Announcements. Except as may be required by applicable law, neither Buyer nor Seller shall issue any press release or otherwise make any public statements with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement on the date first above written.

SELLER:

OCEAN POWER TECHNOLOGIES, INC.

By: /s/ Charles F. Dunleavy

-----  
Name: Charles F. Dunleavy  
Title: Vice President, Finance and  
Administration

BUYER:

WOODSIDE SUSTAINABLE ENERGY  
SOLUTIONS PTY. LTD.  
(ACN 094 813 715)

By: /s/ Trevor Wilson

-----  
Name: Trevor Wilson  
Title: General Manager Woodside USA



FORM OF  
ASSIGNMENT

THIS ASSIGNMENT (this "Assignment") dated the \_\_\_\_ day of , 20 , is executed by OCEAN POWER TECHNOLOGIES, INC. a New Jersey corporation[ if assignment is by an Affiliate replace Ocean Power Technologies with name of Affiliate](referred to herein as "Seller"), in favor of WOODSIDE SUSTAINABLE ENERGY SOLUTIONS PTY. LTD. (ACN 094 813 715), a company organized under the laws of Australia ("Buyer").

WITNESETH:

WHEREAS, pursuant to an Option Agreement for Purchase of Emissions Credits dated as of November , 2000, by and between Buyer and Seller (the "Option Agreement"), Seller agreed to transfer to Buyer, upon exercise by Buyer of the option therein granted, certain Emissions Credits owned by Seller in connection with its business; and

WHEREAS, pursuant to the Option Agreement, Buyer has exercised its option to purchase certain Emissions Credits owned by Seller; and

WHEREAS, this Assignment is executed in order to evidence the transfer by Seller to Buyer of legal and beneficial title to the Emissions Credits called by Buyer pursuant to the Option Agreement (capitalized terms not defined herein being used as defined in the Option Agreement).

NOW, THEREFORE, in consideration of the premises, mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. CONVEYANCE.

Seller does hereby GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, SET OVER and DELIVER unto Buyer, its successors and assigns, effective as of the date hereof, the following Emissions Credits:

[to come]

TO HAVE AND TO HOLD the Emissions Credits, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Buyer, its successors, assigns and legal representatives forever.

2. REPRESENTATIONS AND WARRANTIES BY SELLER.

Seller hereby represents and warrants to Buyer, as follows:

(a) Authority. Seller has all necessary corporate power and authority to execute and deliver this Assignment, to effect the transfer of title intended hereby, and to perform all terms and conditions hereof to be performed by it. The execution, delivery and performance of this Assignment have been duly authorized by all necessary corporate

action, including without limitation by all necessary action of the board of directors (or similar body) of Seller, and no other corporate proceedings are necessary with respect thereto.

(b) Validity of Agreement. This Assignment has been duly executed and delivered by a duly authorized officer of Seller and constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by general equity principles.

(c) Ownership of Emissions Credits. Seller is the legal and beneficial owner of, and has good and marketable title to, the Emissions Credits, free and clear of all liens, pledges, securities interests, encumbrances, restrictions, reservations, covenants and adverse claims.

(d) No Conflicts, Consents or Approvals. Neither the execution and delivery of this Assignment by Seller, nor the transfer of legal and beneficial ownership of the Emissions Credits from Seller to Buyer hereunder, will (i) conflict with or violate (A) the organizational documents of Seller, or (B) any federal, state, local or foreign law, rule, regulation, ordinance, code, order, judgment, decree or any other requirement of law applicable to Seller, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any third party, other than those obtained as set forth in Section 2(f).

(e) Approvals of Governmental Agencies or Other Authority. Seller has obtained all approvals of all international and national regulatory agencies or treaty organizations necessary to transfer the Emissions Credits (as addressed in the Applicable Laws of the Destination Convention Party) to the national registry account (or equivalent mechanism established under Applicable Laws of the Destination Convention Party) of Buyer.

### 3. FURTHER ACTIONS.

Seller hereto agrees, without further consideration, to execute and deliver any and all certificates, instruments, assignments or agreements, and to take and do any and all other actions, as may be reasonably requested by Buyer in order to fulfill the conditions, consummate and make effective the transactions contemplated by this Assignment, including without limitation such actions as will vest, perfect or confirm of record or otherwise in Buyer or its designee all right, title and interest in and to all Emissions Credits intended to be conveyed to Buyer hereby.

### 4. INDEMNITY, LIMITATION ON DAMAGES

Seller hereby agrees to indemnify and hold Buyer harmless from and against any and all losses, claims, damages, liabilities, deficiencies, delinquencies, defaults, assessments, fees, penalties or related costs or expenses, including, but not limited to, court costs, reasonable attorneys' and accountants' fees and disbursements (collectively referred to herein as "Claims") incurred by Buyer in defense of claims by third parties in connection with or arising out of Seller's breach of its obligations under this Agreement, but reduced by any amount paid to Buyer on account of such loss by any insurance policies which Buyer may have available. The

foregoing indemnity obligation shall expire and terminate with respect to all Claims except for those Claims for which Seller shall have received written notice requesting indemnity prior to the expiration of two (2) years following termination of the Option Term. Under no circumstances shall Seller's and its Affiliates total liability under this Agreement exceed the amount paid by Buyer to Seller under this Agreement. In addition, under no circumstances shall Seller, its Affiliates, or their respective officers, directors, employees or agents be liable for special, consequential, punitive, exemplary, indirect or incidental damages (in tort, contract, or otherwise) under or with respect to this Agreement or for any failure of performance by Seller or its Affiliates however caused.

#### 5. HEADINGS.

The title headings contained in this Assignment are inserted for convenience only and shall not be deemed a part of this Assignment or considered in construing this Assignment.

#### 6. GOVERNING LAW.

This Assignment shall be governed by, and construed in accordance with, the laws of the State of New York, U.S.A., without regard to the choice of law principles thereof.



## OCEAN POWER TECHNOLOGIES, INC.

## 1994 STOCK OPTION PLAN

1. STATEMENT OF PURPOSE. The purpose of this Stock Option Plan (the "Plan") is to benefit Ocean Power Technologies, Inc., a New Jersey corporation (the "Company"), through the maintenance and development of its business by offering certain present and future key employees, directors and consultants of the Company an opportunity to become holders of stock in the Company over a period of years, thereby providing them a permanent stake in the growth and prosperity of the Company and encouraging the continuance of their involvement with the Company.

2. ADMINISTRATION. The Plan shall be administered by the Compensation Committee (the "Committee"), appointed by the Board of Directors (the "Board"), which shall also designate the Chairman of the Committee. The Committee shall hold its meetings at such times and places as it may determine. A majority of its members shall constitute a quorum, and all determinations of the committee shall be made by not less than a majority of its members. Any action may be taken by a written instrument signed by a majority of the members of the Committee and action so taken shall be as fully effective as if it had been made by a majority vote of its members at a meeting duly called and held. The Committee may designate the Secretary or other Company employees to assist the Committee in the administration of the Plan, and may grant authority to such persons to execute award agreements or other documents on behalf of the Committee and the Company. Any duly constituted committee of the Board meeting the qualifications of this Section 2 may be appointed as the Committee. The Committee's interpretation of the terms and provisions of the Plan shall be final and conclusive. The selection of specific employees, directors and consultants for participation in the Plan and all decisions concerning the timing, pricing, amount, and any and all other terms and conditions of any grant or award under the Plan shall be made solely by the Committee.

3. ELIGIBILITY. Options shall be granted only to key employees of the Company (including officers of the Company), directors of the Company and consultants of the Company selected initially and from time to time by the Committee on the basis of their importance to the business of the Company. Options may be granted to members of the Committee only with the approval of a majority of the disinterested members of the Board.

4. STOCK RESERVED FOR THE PLAN. The Committee may grant options under which a total not in excess of 500,000 shares of the no par value common stock of the Company ("Common Stock") may be purchased from the Company, subject to adjustment as provided in Section 13; provided that the Committee may not grant to any individual, options to purchase more than 100,000 shares of Common Stock or more than 40% of the total number of options to purchase shares of Common Stock granted under the Plan. Options granted under the Plan are intended not to be treated as incentive stock options as defined in Section 422 of the Internal Revenue Code of 1986, as amended (the "Code").

In the event that an option expires or is terminated or cancelled unexercised as to any shares, such released shares may again be optioned (including a grant in substitution for a cancelled option). With respect to any individual, however, in the case of an option that is

terminated or cancelled unexercised as to any shares, such released shares shall continue to count against the maximum number of shares that may be offered to such individual under the Plan. Shares subject to options shall be made available from authorized but unissued, or reacquired shares of Common Stock.

Nothing contained in the Plan or in any option granted pursuant thereto shall confer upon any optionee any right to be continued as an employee, director, or consultant of the Company, or interfere in any way with the right of the Company to terminate the optionee's position as employee, director or consultant at any time.

5. GRANT OF OPTIONS. The Committee shall have discretionary authority (i) to determine, authorize, and designate those key employees, directors, and consultants of the Company or any parent or subsidiary thereof who are to receive options under the Plan, and (ii) to determine the number of shares to be covered by such options and the terms thereof. The Committee shall thereupon grant options in accordance with such determination as evidenced by a written option agreement. Subject to the express provisions of the Plan, the Committee shall have discretionary authority to prescribe, amend and rescind rules and regulations relating to the Plan, to interpret the Plan, to prescribe and amend the terms of the option agreements (which need not be identical) and to make all other determinations deemed necessary or advisable for the administration of the Plan. Any option granted under this plan shall be granted within ten (10) years from the date set forth in Section 19.

6. OPTION PRICE. The option price per share shall be determined by the Committee and, subject to the provisions of Section 10 hereof, the purchase price may be less than the fair market value, at the time the option is granted, of the shares of Common Stock subject to the option, but not less than the par value of such shares, if any.

7. DURATION OF OPTIONS. Subject to the provisions of Section 10 hereof, each option shall be for such term of not more than ten years, as shall be determined by the Committee. The Committee may in its discretion at any time prior to the expiration or termination of any option previously granted, extend the term of any option (including such options held by officers) for such additional period as the Committee in its discretion shall determine. In no event, however, shall the aggregate option period with respect to any option, including the original term of the option and any extensions thereof, exceed ten years.

8. EXERCISE OF OPTION. An option shall be exercised by giving written notice to the Company, attention of the Secretary, specifying the number of shares to be purchased, accompanied by a cashier's check, bank draft, or postal or express money order payable to the order of the Company, or shall be preceded by a bank wire transfer, for an amount equal to the option price of such shares, and shall specify the address to which the certificates for such shares are to be mailed. An optionee shall be deemed to be a stockholder with respect to shares covered by an option on the date the Company receives such written notice and payment of such option price. As promptly as practicable after receipt of such written notification and payment, the Company shall deliver to the optionee certificates for the number of shares with respect to which such option has been so exercised, issued in the optionee's name; provided, however, that such delivery shall be deemed effected for all purposes when a stock transfer agent of the Company

shall have deposited such certificates in the United States mail, addressed to the optionee at the address specified pursuant to this Section.

At the time of the exercise of any option, the Company may, if it shall determine it necessary or desirable for any reason, require the optionee (or his heirs, legatees, or legal representative, as the case may be) as a condition upon the exercise thereof, to deliver to the Company a written representation of present intention to purchase the shares for investment and not for distribution. In the event such representation is required to be delivered, an appropriate legend may be placed upon each certificate delivered to the optionee upon his exercise of part or all of the option and a stop transfer order may be placed with the transfer agent. Each option shall also be subject to the requirement that, if at any time the Company determines, in its discretion, that the listing, registration or qualification of the shares subject to the option upon any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory body is necessary or desirable as a condition of or in connection with, the issue or purchase of shares thereunder, the option may not be exercised in whole or in part unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the Company.

At the time of the exercise of any option the Committee may require, as a condition of the exercise of such option, the optionee to (a) pay the Company an amount equal to the amount of tax the Company may be required to withhold to obtain a deduction for federal income tax purposes as a result of the exercise of such option by the optionee or (b) make such other arrangements with the Company which would enable the Company to pay such withholding tax, including, without limitation, holding back a number of shares issuable upon exercise of the option equal to the amount of such withholding tax, or permitting the optionee to deliver a promissory note in a form specified by the Committee, or (c) a combination of the foregoing.

9. STOCKHOLDER AGREEMENT. The Committee shall provide in the option agreement that prior to receiving any shares of Common Stock or other securities on the exercise of the option, the optionee or the optionee's representative upon the optionee's death shall be required to execute the Company's Stockholder Agreement.

10. TERMINATION OF RELATIONSHIP-EXERCISE THEREAFTER. In the event the relationship between the Company and an optionholder is terminated for any reason other than death, permanent disability or retirement, such optionholder's options shall expire and all rights to purchase shares pursuant thereto shall terminate immediately. The Committee may, in its sole discretion, permit any option to remain exercisable for such period after such termination as the Committee may prescribe, but in no event after the expiration date of the option. Temporary absence from employment because of illness, vacation, approved leaves of absence, and transfers of employment among the Company and its subsidiaries, shall not be considered to terminate employment or to interrupt continuous employment.

In the event of termination of said relationship because of death, permanent disability (as that term is defined in Section 22(e)(3) of the Code, as now in effect or as subsequently amended), or retirement, the option may be exercised in full, without regard to any installments established under Section 6 hereof, by the optionee or, if the optionee is not living, by the optionee's heirs, legatees or legal representatives (as the case may be), within a twelve (12)

month period after the date of death, permanent disability or retirement, or such longer period as the Committee may prescribe, but in no event after the expiration date of the option.

11. NO RIGHTS AS STOCKHOLDER. No optionee shall have any rights as a stockholder with respect to shares covered by an option until the option is exercised by the written notice accompanied by payment as provided in Section 8 above.

12. NON-ASSIGNABILITY. During the lifetime of the optionee, options shall be exercisable only by the optionee, and options shall not be assignable or transferable by the optionee otherwise than by will or by the laws of descent and distribution.

13. EXTRAORDINARY CORPORATE TRANSACTIONS. New option rights may be substituted for the option rights granted under the Plan, or the Company's duties as to options outstanding under the Plan may be assumed, by an employer corporation other than the Company, or by a parent or subsidiary of the Company or such employer corporation, in connection with any merger, consolidation, acquisition, separation, reorganization, liquidation or like occurrence in which the Company is involved. Notwithstanding any other provision of this Section, in the event such employer corporation, or parent or subsidiary of the Company or such employer corporation, does not substitute new option rights for, and substantially equivalent in terms and economic value to, the option rights granted hereunder, or assume the option rights granted hereunder, the option rights granted hereunder shall terminate and thereupon become null and void (i) upon dissolution or liquidation of the Company, or similar occurrence, (ii) upon any merger, consolidation, acquisition, separation, reorganization, or similar occurrence, where the Company will not be a surviving entity or (iii) upon a transfer of substantially all of the assets of the Company or more than 75% of the outstanding Common Stock; provided, however, that each optionee shall have the right in connection with such dissolution, liquidation, merger, consolidation, acquisition or transfer, to exercise any unexercised option rights granted hereunder, whether then otherwise immediately exercisable or not, so as to permit the optionee to participate as a holder of Common Stock in such transaction if the optionee so chooses. The Company shall give to each optionee at least twenty (20) days prior written notice of any event or transaction of the nature described in the preceding sentence.

The existence of outstanding options shall not affect in any way the right or power of the Company or its stockholders to make or authorize any or all adjustments, recapitalizations, reorganizations, exchanges, or other changes in the Company's capital structure or its business, or any merger or consolidation of the Company, or any issuance of Common Stock or other securities or subscription rights thereto, or any issuance of bonds, debentures, preferred or prior preference stock ahead of or affecting the Common Stock or the rights thereof, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise. However, if the outstanding shares of Common Stock or other securities of the Company, or both, for which the option is then exercisable shall at any time be changed or exchanged by declaration of a stock dividend, stock split, combination of shares, recapitalization or reorganization, the number and kind of shares of Common Stock or other securities which are subject to the Plan or subject to any options theretofore granted, and the option prices, shall be appropriately and equitably adjusted so as to maintain the proportionate number of shares or other securities without changing the aggregate option price.

14. NO IMPAIRMENT OF RIGHTS. Nothing contained in the Plan or any option granted pursuant to the Plan shall confer upon any optionee any right to be continued in the employment of the Company or any subsidiary of the Company or interfere in any way with the right of the Company or its subsidiaries to terminate such employment and/or to remove any optionee who is a director from service on the Board of Directors of the Company at any time in accordance with the provisions of applicable law or to terminate the Company's relationship with any optionee who is a consultant to the Company.

15. LIABILITY OF COMPANY. The Company or any affiliated entity which is in existence or hereafter comes into exercise shall not be liable to an optionee or other persons as to:

a. THE NON-ISSUANCE OF SHARES. The non-issuance or sale of shares as to which the Company has been unable to obtain from any regulatory body having jurisdiction the authority deemed by the Company's counsel to be necessary to the lawful issuance and sale of any shares hereunder; and

b. TAX CONSEQUENCES. Any tax consequence expected, but not realized, by any optionee or other person due to the exercise of any option granted hereunder.

16. AMENDMENT OR TERMINATION. The Board of Directors of the Company may amend, alter or discontinue the Plan, but no amendment or alteration shall be made which would impair the rights of any participant, without the participant's consent, under any option theretofore granted, or which, without the approval of the Stockholders of the Company, would: (i) except as is provided in Section 13 of the Plan, increase the total number of shares reserved for the purposes of the Plan; (ii) change the class of persons eligible to participate in the Plan as provided in Section 3 of the Plan; (iii) extend the applicable maximum option period provided for in Section 7 of the Plan; (iv) extend the expiration date of this Plan set forth in Section 19 of the Plan; (v) except as provided in Section 13 of the Plan, decrease to any extent the option price of any option granted under the Plan; or (vi) withdraw the administration of the Plan from the Committee.

17. COMPLIANCE WITH OTHER LAWS AND REGULATIONS. The Plan, the grant and exercise of options thereunder, and the obligation of the Company to sell and deliver shares under such options, shall be subject to all applicable federal and state laws, rules and regulations and to such approvals by any governmental or regulatory agency as may be required.

18. NON-EXCLUSIVITY OF THE PLAN. Neither the adoption by the Board nor the submission of the Plan to the Common Stockholders of the Company for approval shall be construed as creating any limitations of the power of the Board to adopt such other incentive arrangements as it may deem desirable, including without limitation, the granting of restricted stock or stock options otherwise than under the Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

19. EFFECTIVE DATE. The Plan shall be effective on the date the Board of Directors of the Company adopts the Plan. The Plan shall expire ten years after the date the Board of Directors approves the Plan and thereafter no option shall be granted pursuant to the Plan.

20. GOVERNING LAW. This Plan and any agreements hereunder, shall be interpreted and construed in accordance with the laws of the State of New Jersey and applicable federal law.

IN WITNESS WHEREOF, and as conclusive evidence of the adoption of the foregoing by the directors of the Company, Ocean Power Technologies, Inc. has caused these presents to be duly executed in its name and behalf by its proper officers thereunto duly authorized as of this 10th day of August, 1994.

OCEAN POWER TECHNOLOGIES, INC.

By: /s/ George W. Taylor

-----  
Title: President

ATTEST:

/s/ Charles F. Dunleavy

-----  
Secretary

[SEAL]

## OCEAN POWER TECHNOLOGIES, INC.

## INCENTIVE STOCK OPTION PLAN

SECTION 1. Purpose of the Plan. The purpose of the Ocean Power Technologies, Inc. Incentive Stock Option Plan (the "Plan") is to encourage ownership of the no par value common stock (the "Common Stock") of Ocean Power Technologies, Inc., a New Jersey corporation (the "Company"), by eligible key employees of the Company and to provide increased incentive for such employees to render services and to exert maximum effort for the business success of the Company. In addition, the Company expects that the Plan will further strengthen the identity of key employees with the stockholders generally. Options to be granted under this Plan are intended to qualify as incentive stock options pursuant to Section 422 of the Internal Revenue Code of 1986 as amended (the "Code") as provided in the agreements evidencing the options.

SECTION 2. Administration of the Plan. The Plan shall be administered by the Compensation Committee (the "Committee"), designated by the Board of Directors (the "Board"), which shall also designate the Chairman of the Committee. The Committee shall hold its meetings at such times and places as it may determine. A majority of its members shall constitute a quorum, and all determinations of the committee shall be made by not less than a majority of its members. Any action may be taken by a written instrument signed by a majority of the members of the Committee and action so taken shall be as fully effective as if it had been made by a majority vote of its members at a meeting duly called and held. The Committee may designate the Secretary or other Company employees to assist the Committee in the administration of the Plan, and may grant authority to such persons to execute award agreements or other documents on behalf of the Committee and the Company. Any duly constituted committee of the Board meeting the qualifications of this Section 2 may be appointed as the Committee.

SECTION 3. Stock Reserved for the Plan. Subject to adjustment as provided in Section 6(k) hereof, the aggregate number of shares of Common Stock which shall be reserved for use upon the exercise of options to be granted from time to time under the Plan is 1,500,000. The shares subject to the Plan shall consist of authorized but unissued shares of Common Stock of the Company and such number of shares shall be and is hereby reserved for sale for such purpose. Any of such shares which may remain unsold and which are not subject to outstanding options at the termination of the Plan shall cease to be reserved for the purpose of the Plan, but until termination of the Plan or the termination of the last of the options granted under the Plan, whichever last occurs, the Company shall at all times reserve a sufficient number of shares to meet the requirements of the Plan. Should any option expire or be cancelled prior to its exercise in full, the shares theretofore subject to such option may again be made subject to an option under the Plan.

SECTION 4. Eligibility. The persons eligible to participate in the Plan as recipients of options shall include only key employees (including officers and directors who are also key employees) of the Company or any parent or subsidiary corporation (as defined in Section 424 of the Code) of the Company at the time the option is granted; provided, however, that no person shall be eligible to be granted options under the Plan while that person is serving as a member of

the Committee, although membership on the Committee shall not affect or impair any member's rights under any option granted to that member while he or she was not a member of the Committee. An employee who has been granted an option hereunder shall remain eligible to receive an additional option or options, if the Committee shall so determine.

SECTION 5. Grant of Options. The Committee shall have discretionary authority (i) to determine, authorize, and designate those key employees of the Company or any parent or subsidiary thereof who are to receive options under the Plan, and (ii) to determine the number of shares to be covered by such options and the terms thereof. The Committee shall thereupon grant options in accordance with such determination as evidenced by a written option agreement. Subject to the express provisions of the Plan, the Committee shall have discretionary authority to prescribe, amend and rescind rules and regulations relating to the Plan, to interpret the Plan, to prescribe and amend the terms of the option agreements (which need not be identical) and to make all other determinations deemed necessary or advisable for the administration of the Plan. Any option granted under this plan shall be granted within ten (10) years from the date set forth in Section 11.

SECTION 6. Terms and Conditions. Each option granted under the Plan shall be evidenced by an agreement, in a form approved by the Committee, which shall be subject to the following express terms and conditions and to such other terms and conditions as the Committee may deem appropriate.

a. Option Period. The Committee shall promptly notify the optionee of the option grant and a written agreement shall promptly be executed and delivered by and on behalf of the Company and the optionee, provided that the option grant shall expire if a written agreement is not signed by said optionee (or his agent or attorney) and returned to the Company within 60 days from date of receipt by the optionee of such agreement. The date of grant shall be the date the option is actually granted by the Committee, even though the written agreement may be executed and delivered by the Company and the optionee after that date. Each option agreement shall specify the period for which the option thereunder is granted (which in no event shall exceed ten years from the date of grant) and shall provide that the option shall expire at the end of such period. If the original term of an option is less than ten years from the date of grant, the option may be amended prior to its expiration with the approval of the Committee and the optionee to extend the time; provided that the term as amended is not more than ten years from the date of grant. However, in the case of an option granted to an individual who, at the time of grant, owns stock possessing more than 10 percent of the total combined voting power of all classes of stock of the Company or its parent or its subsidiary ("Ten Percent Stockholder"), such period shall not exceed five years from the date of grant.

b. Option Price. The purchase price of each share of Common Stock subject to each option granted pursuant to the Plan shall be determined by the Committee at the time the option is granted and shall not be less than 100% of the fair market value of a share of Common Stock on the date the option is granted, as determined in good faith by the Committee. In the case of an option granted to a Ten Percent Stockholder, the option price shall not be less than 110% of the fair market value of a share of Common Stock on the date the option is granted.

c. Exercise Period. The Committee may provide in the option agreement that an option may be exercised in whole immediately or is to be exercisable in increments. However, no portion of any option may be exercisable by an optionee prior to the approval of the Plan by the stockholders of the Company.

Options shall not be granted under this Plan, which first become exercisable in any calendar year, and which permit the optionee to purchase shares of the Company having an aggregate fair market value in excess of \$100,000, determined at the time of the grant of the options. No optionee may exercise options during a calendar year for the purchase of shares having an aggregate fair market value (determined at the time of the grant of the options) exceeding \$100,000, except and to the extent that such options were first exercisable in preceding calendar years.

d. Procedures for Exercise. Options shall be exercised by the delivery of written notice to the Secretary of the Company setting forth the number of shares with respect to which the option is being exercised. Such notice shall be accompanied by a cashier's check, bank draft, or postal or express money order payable to the order of the Company, or shall be preceded by a cash wire transfer, for an amount equal to the option price of such shares, and shall specify the address to which the certificates for such shares are to be mailed. An optionee shall be deemed to be a stockholder with respect to shares covered by an option on the date the Company receives such written notice and payment of such option price. As promptly as practicable after receipt of such written notification and payment, the Company shall deliver to the optionee certificates for the number of shares with respect to which such option has been so exercised, issued in the optionee's name; provided, however, that such delivery shall be deemed effected for all purposes when a stock transfer agent of the Company shall have deposited such certificates in the United States mail, addressed to the optionee at the address specified pursuant to this Section 6(d).

At the time of the exercise of any option, the Company may, if it shall determine it necessary or desirable for any reason, require the optionee (or his heirs, legatees, or legal representative, as the case may be) as a condition upon the exercise thereof, to deliver to the Company a written representation of present intention to purchase the shares for investment and not for distribution. In the event such representation is required to be delivered, an appropriate legend may be placed upon each certificate delivered to the optionee upon his exercise of part or all of the option and a stop transfer order may be placed with the transfer agent. Each option shall also be subject to the requirement that, if at any time the Company determines, in its discretion, that the listing, registration or qualification of the shares subject to the option upon any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory body is necessary or desirable as a condition of or in connection with, the issue or purchase of shares thereunder, the option may not be exercised in whole or in part unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the Company.

e. Termination of Employment. If an employee to whom an option is granted ceases to be employed by the Company for any reason other than death or disability, the employee may exercise such option (but only to the extent the optionee would have been entitled to do so at the date of termination) during a three-month period beginning on the date of termination; provided, however, that if an optionee's employment is terminated because of the optionee's dishonesty,

theft, embezzlement from the Company, disclosing trade secrets of the Company or the commission of a willful felonious act while in the employment of the Company, then any option or unexercised portion thereof granted to said optionee shall expire upon such termination of employment.

f. Disability or Death of Optionee. In the event of the determination of disability or death of an optionee under the Plan while the optionee is employed by the Company, the options previously granted to the optionee may be exercised (to the extent the optionee would have been entitled to do so at the date of the determination of disability or the date of death) at any time and from time to time, within a twelve (12) month period after determination of the optionee's disability, or any time prior to the expiration of the option in the event of death, by the former employee, by the guardian of the employee's estate, by the executor or administrator of the employee's estate, or by the person or persons to whom his rights under the option shall pass by will or the laws of descent and distribution, but in no event may the option be exercised after its expiration under the terms of the option agreement. An employee shall be deemed to be disabled if, in the opinion of a physician selected by the Committee, the employee is incapable of performing services for the Company of the kind the employee was performing at the time the disability occurred by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long, continuous and indefinite duration. The date of determination of disability for purposes hereof shall be the date of such determination by such physician.

g. Non-Assignability. An option shall not be assignable or otherwise transferable except by will or by the laws of descent and distribution. During the lifetime of the optionee, an option granted hereunder shall be exercisable only by such optionee.

h. Incentive Stock Options. Each option agreement may contain such terms and provisions as the Committee may determine to be necessary or desirable in order to qualify an option designated as such as an incentive stock option.

i. No Rights as Stockholder. No optionee shall have any rights as a stockholder with respect to shares covered by an option until the option is exercised by the written notice accompanied by payment as provided in clause (d) above.

j. Extraordinary Corporate Transactions. New option rights may be substituted for the option rights granted under the Plan, or the Company's duties as to options outstanding under the Plan may be assumed, by an employer corporation other than the Company, or by a parent or subsidiary of the Company or such employer corporation, in connection with any merger, consolidation, acquisition, separation, reorganization, liquidation or like occurrence in which the Company is involved, so long as the substitution or assumption will allow any incentive stock options to continue to qualify as such. Notwithstanding the foregoing or the provisions of Section 6(k) hereof, in the event such employer corporation, or parent or subsidiary of the Company or such employer corporation, does not substitute new option rights for, and substantially equivalent in terms and economic value to, the option rights granted hereunder, or assume the option rights granted hereunder, the option rights granted hereunder shall terminate and thereupon become null and void (i) upon dissolution or liquidation of the Company, or similar occurrence, (ii) upon any merger, consolidation, acquisition, separation, reorganization,

or similar occurrence, where the Company will not be a surviving entity or (iii) upon a transfer of substantially all of the assets of the Company or more than 75% of the outstanding Common Stock; provided, however, that each optionee shall have the right in connection with such dissolution, liquidation, merger, consolidation, acquisition or transfer, to exercise any unexercised option rights granted hereunder, whether then otherwise immediately exercisable or not, so as to permit the optionee to participate as a holder of Common Stock in such transaction if the optionee so chooses. The Company shall give to each optionee at least twenty (20) days prior written notice of any event or transaction of the nature described in the preceding sentence.

k. Changes in Company's Capital Structure. The existence of outstanding options shall not affect in any way the right or power of the Company or its stockholders to make or authorize any or all adjustments, recapitalizations, reorganizations, exchanges, or other changes in the Company's capital structure or its business, or any merger or consolidation of the Company, or any issuance of Common Stock or other securities or subscription rights thereto, or any issuance of bonds, debentures, preferred or prior preference stock ahead of or affecting the Common Stock or the rights thereof, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise. However, if the outstanding shares of Common Stock or other securities of the Company, or both, for which the option is then exercisable shall at any time be changed or exchanged by declaration of a stock dividend, stock split, combination of shares, recapitalization or reorganization, the number and kind of shares of Common Stock or other securities which are subject to the Plan or subject to any options theretofore granted, and the option prices, shall be appropriately and equitably adjusted so as to maintain the proportionate number of shares or other securities without changing the aggregate option price.

l. Stockholder Agreement. The Committee shall provide in the option agreement that prior to receiving any shares of Common Stock or other securities on the exercise of the option, the optionee or the optionee's representative upon the optionee's death shall be required to execute the Company's Stockholder Agreement.

SECTION 7. Amendment or Termination. The Board of Directors of the Company may amend, alter or discontinue the Plan, but no amendment or alteration shall be made which would impair the rights of any participant, without the participant's consent, under any option theretofore granted, or which, without the approval of the Stockholders of the Company, would: (i) except as is provided in Section 6(k) of the Plan, increase the total number of shares reserved for the purposes of the Plan; (ii) change the class of persons eligible to participate in the Plan as provided in Section 4 of the Plan; (iii) extend the applicable maximum option period provided for in Section 6(a) of the Plan; (iv) extend the expiration date of this Plan set forth in Section 11 of the Plan; (v) except as provided in Section 6(k) of the Plan, decrease to any extent the option price of any option granted under the Plan; or (vi) withdraw the administration of the Plan from the Committee.

SECTION 8. Compliance With Other Laws and Regulations. The Plan, the grant and exercise of options thereunder, and the obligation of the Company to sell and deliver shares under such options, shall be subject to all applicable federal and state laws, rules and regulations and to such approvals by any governmental or regulatory agency as may be required.

SECTION 9. No Right to Company Employment. Nothing in this Plan or as a result of any option granted pursuant to this Plan shall confer on any individual any right to continue in the employ of the Company or interfere in any way with the right of the Company to terminate an individual's employment at any time. Options granted to an optionee that are not vested pursuant to an option agreement shall immediately terminate upon optionee's change to a position which is not that of a key employee of the Company. The option agreements may contain such provisions as the Committee may approve with reference to the effect of approved leaves of absence.

SECTION 10. Liability of Company. The Company or any affiliated entity which is in existence or hereafter comes into exercise shall not be liable to an optionee or other persons as to:

a. The Non-Issuance of Shares. The non-issuance or sale of shares as to which the Company has been unable to obtain from any regulatory body having jurisdiction the authority deemed by the Company's counsel to be necessary to the lawful issuance and sale of any shares hereunder; and

b. Tax Consequences. Any tax consequence expected, but not realized, by any optionee or other person due to the exercise of any option granted hereunder.

SECTION 11. Effectiveness and Expiration of Plan. The Plan shall be effective on the date the Board of Directors of the Company adopts the Plan. The Plan shall expire ten years after the date the Board of Directors approves the Plan and thereafter no option shall be granted pursuant to the Plan.

SECTION 12. Non-Exclusivity of the Plan. Neither the adoption by the Board nor the submission of the Plan to the Common Stockholders of the Company for approval shall be construed as creating any limitations of the power of the Board to adopt such other incentive arrangements as it may deem desirable, including without limitation, the granting of restricted stock or stock options otherwise than under the Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

SECTION 13. Governing Law. This Plan and any agreements hereunder, shall be interpreted and construed in accordance with the laws of the State of New Jersey and applicable federal law.

IN WITNESS WHEREOF, and as conclusive evidence of the adoption of the foregoing by the directors of the Company, Ocean Power Technologies, Inc. has caused these presents to be duly executed in its name and behalf by its proper officers thereunto duly authorized as of this 10th day of August, 1994.

OCEAN POWER TECHNOLOGIES, INC.

By: /s/ George W. Taylor

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Title: President

ATTEST:

/s/ Charles F. Dunleavy

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Secretary

[SEAL]

## OCEAN POWER TECHNOLOGIES, INC.

## 2001 STOCK PLAN

1. PURPOSES OF THE PLAN. The purposes of this Stock Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees, Non-Employee Directors and Consultants (sometimes referred to herein as "Participants") of the Company and its Subsidiaries and to promote the success of the Company's business.

2. CERTAIN DEFINITIONS. As used herein, the following definitions shall apply:

(a) "Award" or "Awards," except where referring to a particular category of grant under the Plan, shall include Incentive Stock Options, Nonstatutory Stock Options, Restricted Stock Awards and Stock Awards.

(b) "Board" means the Board of Directors of the Company.

(c) "Code" means the Internal Revenue Code of 1986, as amended, including any successor law thereto.

(d) "Committee" means any Committee appointed by the Board of Directors in accordance with Section 4 of the Plan.

(e) "Common Stock" means the Common Stock, without par value, of the Company.

(f) "Company" means Ocean Power Technologies, Inc., a New Jersey corporation.

(g) "Consultant" means any person, including an advisor, who is engaged by the Company or any Parent or Subsidiary to render services or provide goods and is compensated for such goods or services, and any Non-Employee Director of the Company whether compensated for such services or not.

(h) "Consulting Relationship" means the relationship established by the provision of ongoing services by a Consultant to the Company. A Consulting Relationship is terminated when the Company delivers written notice to the Consultant that the Company no longer wishes to utilize the services of such Consultant; provided, however, that in the case of any Non-Employee Director, the Consulting Relationship is terminated on the date upon which such Non-Employee Director no longer serves on the Company's Board of Directors.

(i) "Continuous Status as an Employee" means the absence of any interruption or termination of the employment relationship by the Company or any Subsidiary. Continuous Status as an Employee shall not be considered interrupted in the case of: (i) sick leave; (ii) military leave; (iii) maternity leave; (iv) any other leave of absence approved by the Board, provided that such leave is for a period of not more than ninety (90) days, unless

reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise pursuant to Company policy adopted from time to time; or (v) transfers between locations of the Company or between the Company, its Subsidiaries or its successor.

(j) "Employee" means any person, including officers and Directors, employed by the Company or any Parent or Subsidiary of the Company.

(k) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(l) "Fair Market Value" means: (i) if the Common Stock is admitted to trading on a United States securities exchange, or quotation on the Nasdaq National Market System, the Nasdaq SmallCap Market or the National Association of Securities Dealers ("NASD") OTC Bulletin Board, the Fair Market Value on any date shall be the reported closing price for the Common Stock on such exchange or system for such date (or in the absence of a reported closing price, the Fair Market Value on any given date shall be the average of the highest bid and lowest asked prices of the Common Stock reported for such date) or, if no sales were reported for such date, for the last day for which a sale was reported prior to the date for which the Fair Market Value is to be determined; (ii) notwithstanding the foregoing, the Fair Market Value of the Common Stock on the effective date of the Company's Initial Public Offering shall be the initial offering price to the public of the Common Stock on such date; and (iii) in the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Plan Administrator.

(m) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code.

(n) "Initial Public Offering" means the first underwritten public offering pursuant to an effective registration statement under the Securities Act (as defined below) covering the offer and sale of the Common Stock to the public.

(o) "Non-Employee Director(s)" means a "non-employee director" as defined within the meaning of Rule 16b-3(b)(3) promulgated under the Exchange Act.

(p) "Nonstatutory Stock Option" means an Option not intended to qualify as an Incentive Stock Option.

(q) "Option" means a stock option granted pursuant to the Plan.

(r) "Optioned Stock" means the Common Stock subject to an Option.

(s) "Optionee" means an Employee, Consultant or Non-Employee Director who receives an Option.

(t) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(u) "Plan" means this 2001 Stock Plan.

(v) "Plan Administrator" means the Board or any of its Committees appointed pursuant to Section 4 of the Plan.

(w) "Restricted Stock" means shares of Common Stock acquired pursuant to a Restricted Stock Award under Section 12 below.

(x) "Restricted Stock Award" means any Award granted pursuant to Section 12 of the Plan.

(y) "Securities Act" means the Securities Act of 1933, as amended.

(z) "Share" means a share of the Common Stock, as may be adjusted from time to time in accordance with Section 15 of the Plan.

(aa) "Stock Award" means any award granted pursuant to Section 13 of the Plan.

(bb) "Subsidiary" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code.

(cc) "Termination for Cause" shall include, but not be limited to, a finding by the Board of the Participant's: (i) performance of duties in an incompetent manner; (ii) commission of any act of fraud, insubordination, misappropriation or personal dishonesty relating to or involving the Company in any material way; (iii) gross negligence; (iv) violation of any express direction of the Company or any material violation of any rule, regulation, policy or plan established by the Company from time to time regarding the conduct of its employees or its business, if such violation is not remedied by the Participant within thirty (30) days of receiving notice of such violation from the Company; (v) violation of any obligation of Participant's Consulting Relationship or Continuous Status as an Employee with the Company that is demonstrably willful and deliberate on the Participant's part and is not remedied by the Participant within thirty (30) days after receiving notice of such violation from the Company; (vi) disclosure or use of confidential information of the Company, other than as required in the performance of the Participant's duties; (vii) actions that are clearly contrary to the best interest of the Company; (viii) conviction of a crime constituting a felony or any other crime involving moral turpitude, or if no conviction, but the substantial weight of credible evidence indicates that the Participant has committed such a crime; or (ix) the Participant's use of alcohol or any unlawful controlled substance to an extent that it interferes with the performance of the Participant's duties.

3. STOCK SUBJECT TO THE PLAN. Subject to the provisions of Section 15 of the Plan, the initial maximum number of shares of Common Stock that may be issued under the Plan shall be 1,500,000. For purposes of the foregoing limitation, the shares of Common Stock underlying any Awards which are forfeited, canceled, reacquired by the Company, satisfied without the issuance of Common Stock or otherwise terminated (other than by exercise) shall be added back to the number of shares of Common Stock available for issuance under the Plan. Common Stock

to be issued under the Plan may be either authorized and unissued shares or shares held in treasury by the Company.

4. ADMINISTRATION OF THE PLAN. The Plan shall be administered by: (i) the full Board; or (ii) a committee of the Board comprised of two or more Non-Employee Directors. Subject to the provisions of the Plan, the Plan Administrator is authorized to:

- (a) construe the Plan and any Award under the Plan;
- (b) select the Directors, officers, Employees and Consultants of the Company and its Subsidiaries to whom Awards may be granted;
- (c) determine the number of shares of Common Stock to be covered by any Award;
- (d) determine and modify from time to time the terms and conditions, including the addition and limitation of restrictions, of any Award and to approve the form of written instrument evidencing Awards;
- (e) accelerate at any time the exercisability or vesting of all or any portion of any Award and/or to include provisions in awards providing for such acceleration;
- (f) impose limitations on Awards, including limitations on transfer and repurchase provisions;
- (g) extend the exercise period within which Options may be exercised; and
- (h) determine at any time whether, to what extent, and under what circumstances Common Stock and other amounts payable with respect to an Award shall be deferred either automatically or at the election of the Participant and whether and to what extent the Company shall pay or credit amounts constituting interest (at rates determined by the Plan Administrator) or dividends or deemed dividends on such deferrals.
- (i) The determination of the Plan Administrator on any such matters shall be conclusive.

5. DELEGATION OF AUTHORITY TO GRANT AWARDS. The Plan Administrator, in its discretion, may delegate to the Chief Executive Officer of the Company all or part of the Plan Administrator's authority and duties with respect to granting Awards to individuals who are not subject to the reporting provisions of Section 16 of the Securities Act or "covered employees" within the meaning of Section 162(m) of the Code. The Plan Administrator may revoke or amend the terms of such a delegation at any time, but such revocation shall not invalidate prior actions of the Co-Chairmen that were consistent with the terms of the Plan.

## 6. ELIGIBILITY.

(a) Directors, officers, Employees and Consultants of the Company or its Subsidiaries who, in the opinion of the Plan Administrator, are mainly responsible for the continued growth and development and future financial success of the business shall be eligible to participate in the Plan.

(b) The Plan shall not confer upon any Participant any right with respect to continuation of employment or Consulting Relationship with the Company, nor shall it interfere in any way with his or her right or the Company's right to terminate his or her employment or Consulting Relationship at any time, with or without cause.

## 7. STOCK OPTIONS.

(a) Options granted pursuant to the Plan may be either Options which are Incentive Stock Options or Nonstatutory Stock Options. Incentive Stock Options and Nonstatutory Stock Options shall be granted separately hereunder. The Plan Administrator, shall determine whether and to what extent Options shall be granted under the Plan and whether such Options granted shall be Incentive Stock Options or Nonstatutory Stock Options; provided, however, that: (i) Incentive Stock Options may be granted only to Employees of the Company or any Subsidiary; and (ii) no Incentive Stock Option may be granted following the tenth (10th) anniversary of the effective date of the Plan. The provisions of the Plan and any Option Agreement pursuant to which Incentive Stock Options shall be issued shall be construed in a manner consistent with Section 422 of the Code (or any successor provision) and rules and regulations promulgated thereunder.

(b) To the extent that Options designated as Incentive Stock Options (under all plans of the Company or any Parent or Subsidiary) become exercisable by a Participant for the first time during any calendar year for Common Stock having a Fair Market Value greater than One Hundred Thousand Dollars (\$100,000), the portion of such Options which exceeds such amount shall be treated as Nonstatutory Stock Options. For purposes of this Section 7, Options designated as Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of Common Stock shall be determined as of the time the Option with respect to such Common Stock is granted. If the Code is amended to provide for a different limitation from that set forth in this Section 7, such different limitation shall be deemed incorporated herein effective as of the amendment date and with respect to such Options as required or permitted by such amendment to the Code. If an Option is treated as an Incentive Stock Option in part and as a Nonstatutory Stock Option in part by reason of the limitation set forth in this Section 7, the Participant may designate which portion of such Option the participant is exercising. In the absence of such designation, the Participant shall be deemed to have exercised the Incentive Stock Option portion of the Option first. Separate certificates representing each such portion shall be issued upon the exercise of the Option.

8. TERM OF PLAN. The Plan shall become effective on August 24, 2001, provided the Plan has been previously adopted by the Board and approved by the shareholders of the Company as described in Section 24 of the Plan. The Plan shall remain in effect until terminated under Section 20 of the Plan.

9. TERM OF OPTIONS. The term of each Option shall be the term stated in the Option Agreement; provided, however, that in the case of an Incentive Stock Option, the term shall be no more than ten (10) years from the date of grant thereof or such shorter term as may be provided in the Option Agreement. However, in the case of an Option granted to an Optionee who, at the time the Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Option shall be five (5) years from the date of grant thereof or such shorter term as may be provided in the Option Agreement.

10. OPTION EXERCISE PRICE AND CONSIDERATION.

(a) The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be such price as is determined by the Board, but shall be subject to the following:

(i) In the case of an Incentive Stock Option;

(A) granted to an Employee who, at the time of the grant of such Incentive Stock Option, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price shall be no less than one hundred ten percent (110%) of the Fair Market Value per Share on the date of grant.

(B) granted to any Employee, the per Share exercise price shall be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option granted to any person, the per Share exercise price shall be no less than eighty-five percent (85%) of the Fair Market Value per Share on the date of grant.

(b) At the discretion of the Plan Administrator, the Option exercise price of each share purchased pursuant to an Option shall be paid in full at the time of each exercise of the Option: (i) in cash; (ii) by check; (iii) by cash equivalent; (iv) by delivering to the Company a notice of exercise with an irrevocable direction to a broker-dealer registered under the Exchange Act to sell a sufficient portion of the shares and deliver the sale proceeds directly to the Company to pay the exercise price; (v) in the discretion of the Plan Administrator, through the delivery to the Company of previously-owned shares of Common Stock having an aggregate Fair Market Value equal to the Option exercise price of the shares being purchased pursuant to the exercise of the Option; provided, however, that shares of Common Stock delivered in payment of the exercise price must have been held by the Participant for at least six (6) months in order to be utilized to pay the exercise price; or (vi) in the discretion of the Plan Administrator, through any combination of the foregoing methods of payment.

11. EXERCISE OF OPTION.

(a) Procedure for Exercise; Rights as a Shareholder. Any Option granted hereunder shall be exercisable at such times and under such conditions as determined by the Plan

Administrator, including performance criteria with respect to the Company and/or the Optionee, and as shall be permissible under the terms of the Plan.

i. An Option may not be exercised for a fraction of a Share.

ii. An Option shall be deemed to be exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Option by the person entitled to exercise the Option and full payment for the Shares with respect to which the Option is exercised has been received by the Company through a method of payment allowable under Section 10(b) of the Plan. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the stock certificate evidencing such Shares, no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such stock certificate promptly upon exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 15 of the Plan.

(b) Termination of Employment. Except as set forth below, in the event of termination of an Optionee's Consulting Relationship or Continuous Status as an Employee with the Company (as the case may be), such Optionee may, but only within ninety (90) days (or such other period of time as is determined by the Board, with such determination in the case of an Incentive Stock Option being made at the time of grant of the Option and not exceeding ninety (90) days) after the date of such termination (but in no event later than the expiration date of the term of such Option as set forth in the Option Agreement), exercise his or her Option to the extent that Optionee was entitled to exercise it at the date of such termination. To the extent that Optionee was not entitled to exercise the Option at the date of such termination, or if Optionee does not exercise such Option to the extent so entitled within the time specified herein, the Option shall terminate.

(c) Disability of Optionee. Notwithstanding the provisions of Section 11(b) above, in the event of termination of an Optionee's Consulting Relationship or Continuous Status as an Employee with the Company (as the case may be) as a result of his or her total and permanent disability (as defined in Section 22(e)(3) of the Code), Optionee may, but only within twelve (12) months from the date of such termination (but in no event later than the expiration date of the term of such Option as set forth in the Option Agreement), exercise the Option to the extent the Optionee was otherwise entitled to exercise it at the date of such termination. To the extent that Optionee was not entitled to exercise the Option at the date of termination, or if Optionee does not exercise such Option to the extent so entitled within the time specified herein, the Option shall terminate.

(d) Death of Optionee.

(i) In the event of the death of an Optionee during the term of Optionee's Consulting Relationship or Continuous Status as an Employee with the Company (as the case may be), the Option may be exercised, at any time within twelve (12) months following the date of death (but in no event later than the expiration date of the term of such Option as set

forth in the Option Agreement), by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent the Optionee was entitled to exercise the Option at the date of death. To the extent that Optionee was not entitled to exercise the Option at the date of death, or if the Option is not exercised by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance to the extent so entitled within the time specified herein, the Option shall terminate.

(ii) In the event of the death of an Optionee within thirty (30) days after the termination of Optionee's Consulting Relationship or Continuous Status as an Employee with the Company (as the case may be) pursuant to Section 11(b) above, the Option may be exercised, at any time within six (6) months following the date of death (but in no event later than the expiration date of the term of such Option as set forth in the Option Agreement), by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent the Optionee was entitled to exercise the Option at the date of death. To the extent that Optionee was not entitled to exercise the Option at the date of death, or if the Option is not exercised by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance to the extent so entitled within the time specified herein, the Option shall terminate.

(e) Termination for Cause or Post-Termination Relationship with Competing Business. Notwithstanding the provisions of Section 11(b) above, in the event of "Termination for Cause" of an Optionee's Consulting Relationship or Continuous Status as an Employee with the Company (as the case may be) or in the event that such Optionee becomes an employee or consultant of a Competing Business (as defined herein), any Option held by the Optionee, whether vested or unvested, shall forthwith terminate. In addition to the immediate forfeiture of all Options upon the occurrence of the events specified in the preceding sentence, Optionee shall automatically forfeit all shares underlying any exercised portion of an Option for which the Company has not yet delivered the share certificates, upon refund by the Company of the exercise price paid by the Optionee for such Shares. For purposes of this Plan, the term "Competing Business" shall mean any person, corporation or other entity engaged in the business of: (i) designing, developing, making or having made, selling or marketing power generating equipment which utilizes ocean waves or water flows; or (ii) selling or attempting to sell any product or service which is the same as or similar to products or services sold by the Company within the last year prior to termination of such Participant's employment or Consulting Relationship, as the case may be, hereunder.

## 12. RESTRICTED STOCK AWARDS.

(a) The Plan Administrator may grant Restricted Stock Awards to any officer, Employee or Consultant of the Company and its Subsidiaries. A Restricted Stock Award entitles the recipient to acquire shares of Common Stock subject to such restrictions and conditions as the Plan Administrator may determine at the time of grant. Conditions may be based on continuing employment (or other business relationship) and/or achievement of pre-established performance goals and objectives.

(b) Upon execution of a written instrument setting forth the Restricted Stock Award and paying any applicable purchase price, a Participant shall have the rights of a

shareholder with respect to the Common Stock subject to the Restricted Stock Award, including, but not limited to, the right to vote and receive dividends with respect thereto; provided, however, that shares of Common Stock subject to Restricted Stock Awards that have not vested shall be subject to the restrictions on transferability described in Section 12(d) below. Unless the Plan Administrator shall otherwise determine, certificates evidencing the Restricted Stock shall remain in the possession of the Company until such Restricted Stock is vested as provided in Section 12(c) below.

(c) The Plan Administrator at the time of grant shall specify the date or dates and/or the attainment of pre-established performance goals, objectives and other conditions on which Restricted Stock shall become vested, subject to such further rights of the Company or its assigns as may be specified in the instrument evidencing the Restricted Stock Award. If the grantee or the Company, as the case may be, fails to achieve the designated goals or the grantee's relationship with the Company is terminated prior to the expiration of the vesting period, the grantee shall forfeit all shares of Common Stock subject to the Restricted Stock Award which have not then vested.

(d) Unvested Restricted Stock may not be sold, assigned transferred, pledged or otherwise encumbered or disposed of except as specifically provided herein or in the written instrument evidencing the Restricted Stock Award.

13. STOCK AWARDS. The Plan Administrator may, in its sole discretion, grant (or sell at a purchase price determined by the Plan Administrator) a Stock Award to any officer, Employee or Consultant of the Company or its Subsidiaries, pursuant to which such individual may receive shares of Common Stock free of any vesting restrictions (a "Stock Award") under the Plan. Stock Awards may be granted or sold as described in the preceding sentence in respect of past services or other valid consideration, or in lieu of any cash compensation due to such individual.

#### 14. WITHHOLDING TAX OBLIGATIONS.

(a) Whenever Shares are to be issued under the Plan, the Company shall have the right to require the Participant to remit to the Company an amount sufficient to satisfy applicable federal, state and local tax withholding requirements prior to the delivery of any certificate for Shares; provided, however, that in the case of a Participant who receives an Award of Shares under the Plan which is not fully vested, the Participant shall remit such amount on the first business day following the Tax Date. The "Tax Date" for purposes of this Section 14 shall be the date on which the amount of tax to be withheld is determined. If a Participant makes a disposition of shares acquired upon the exercise of an Incentive Stock Option within either two (2) years after the Option was granted or one (1) year after its exercise by the Participant, the Participant shall promptly notify the Company and the Company shall have the right to require the Participant to pay to the Company an amount sufficient to satisfy federal, state and local tax withholding requirements.

(b) A Participant who is obligated to pay the Company an amount required to be withheld under applicable tax withholding requirements may pay such amount: (i) in cash; (ii) in the discretion of the Plan Administrator, through the delivery to the Company of previously-owned shares of Common Stock having an aggregate Fair Market Value on the Tax

Date equal to the tax obligation, provided that the previously owned shares delivered in satisfaction of the withholding obligations must have been held by the Participant for at least six (6) months; or (iii) in the discretion of the Plan Administrator, through a combination of the procedures set forth in subsections (i) and (ii) of this Section 14(b).

(c) A Participant who is obligated to pay to the Company an amount required to be withheld under applicable tax withholding requirements in connection with either the exercise of a Nonstatutory Stock Option, the receipt of a Restricted Stock Award or Stock Award under the Plan may, in the discretion of the Plan Administrator, elect to satisfy this withholding obligation, in whole or in part, by requesting that the Company withhold shares of stock otherwise issued to the Participant having a Fair Market Value on the Tax Date equal to the amount of the tax required to be withheld; provided, however, that shares may be withheld by the Company only if such withheld shares have vested. Any fractional amount shall be paid to the Company by the Participant in cash or shall be withheld from the Participant's next regular paycheck.

(d) An election by a Participant to have shares of stock withheld to satisfy federal, state and local tax withholding requirements pursuant to Section 14(c) must be in writing and delivered to the Company prior to the Tax Date.

#### 15. ADJUSTMENT OF NUMBER AND PRICE OF SHARES.

Any other provision of the Plan notwithstanding:

(a) If, through or as a result of any merger, consolidation, sale of all or substantially all of the assets of the Company, reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar transaction, the outstanding shares of Common Stock are increased or decreased or are exchanged for a different number or kind of shares or other securities of the Company, or additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such shares of Common Stock or other securities, the Plan Administrator shall make an appropriate or proportionate adjustment in: (i) the number of Options that can be granted to any one individual Participant; (ii) the number and kind of shares or other securities subject to any then outstanding Awards under the Plan; (iii) the price for each share subject to any then outstanding Options under the Plan, without changing the aggregate exercise price (i.e., the exercise price multiplied by the number of shares) as to which such Options remain exercisable; and (iv) the maximum number of shares that may be issued under the Plan. The adjustment by the Plan Administrator shall be final, binding and conclusive.

(b) In the event that, by reason of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization or liquidation, the Board shall authorize the issuance or assumption of an Option or Options in a transaction to which Section 424(a) of the Code applies, then, notwithstanding any other provision of the Plan, the Plan Administrator may grant an Option or Options upon such terms and conditions as it may deem appropriate for the purpose of assumption of the old Option, or substitution of a new Option for the old Option, in conformity with the provisions of Section 424(a) of the Code and the rules and regulations thereunder, as they may be amended from time to time.

(c) No adjustment or substitution provided for in this Section 15 shall require the Company to issue or to sell a fractional share under any Option Agreement or share award agreement and the total adjustment or substitution with respect to each Option and share award agreement shall be limited accordingly.

(d) In the case of the dissolution or liquidation of the Company, the Plan and all Awards granted hereunder shall terminate. In the event of such proposed termination, each Participant shall be notified of such termination and shall be permitted to exercise for a period of at least fifteen (15) days prior to the date of such termination all Options held by such Participant which are then exercisable.

(e) In the case of: (i) a merger, reorganization or consolidation in which the Company is acquired by another person or entity (other than a holding company formed by the Company); (ii) the sale of all or substantially all of the assets of the Company to an unrelated person or entity which is not an "affiliate" (as defined in Rule 144 of the Securities Act) of the Company; or (iii) the sale of all of the capital stock of the Company to an unrelated person or entity which is not an "affiliate" of the Company (in each case, a "Fundamental Transaction"), all Options shall be assumed or equivalent options shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation. For the purposes of this paragraph, the Options shall be considered assumed if, following the Fundamental Transaction, the Options confer the right to purchase, for each Share of stock subject to the Options immediately prior to the Fundamental Transaction, the consideration (whether stock, cash, or other securities or property) received in the Fundamental Transaction by holders of Common Stock for each Share held on the effective date of the Fundamental Transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the Fundamental Transaction was not solely common stock of the successor corporation or its Parent, the Board may, with the consent of the successor corporation and the Participant, provide for the consideration to be received upon the exercise of the Options, for each Share of subject to the Options, to be solely common stock of the successor corporation or its Parent equal in Fair Market Value to the per share consideration received by holders of Common Stock in the Fundamental Transaction.

In the event that such successor corporation does not agree to assume the Options or to substitute equivalent options, the Board shall provide for each Optionee to have the right to exercise all Options then held by such Optionee, including Options which would not otherwise be exercisable. In such event, the Board shall notify each Optionee that such Options shall be fully exercisable for a period of fifteen (15) days from the date of receipt of such notice, and that such Options will terminate upon the expiration of such period.

Notwithstanding anything in the Plan to the contrary, the acceleration of exercisability in this Section shall not occur in the event that such acceleration would, in the opinion of the Company's independent auditors, make the Fundamental Transaction ineligible for pooling of interests accounting treatment and the Company intends to use such treatment with respect to such transaction. The Board shall obtain a written statement from the Company's independent auditors with respect to the effect of accelerated exercisability of outstanding Options prior to providing any Optionee with the notice contemplated by this Section.

(f) In the event that the Company shall be merged or consolidated with another corporation or entity, other than with a corporation or entity which is an "affiliate" of the Company, under the terms of which holders of capital stock of the Company will receive upon consummation thereof a cash payment for each share of capital stock of the Company surrendered pursuant to such transaction (the "Cash Purchase Price"), the Board may provide that all outstanding options shall terminate upon consummation of such transaction and each Optionee shall receive, in exchange therefor, a cash payment equal to the amount (if any) by which (i) the Cash Purchase Price multiplied by the number of shares of Capital Stock of the Company subject to outstanding options held by such optionee exceeds (ii) the aggregate exercise price of such options.

16. NONTRANSFERABILITY. A Participant's rights under the Plan, including the right to any shares or amounts payable may not be assigned, pledged, or otherwise transferred except, in the event of a Participant's death, to the Participant's designated beneficiary or, in the absence of such a designation, by will or by the laws of descent and distribution; provided, however, that the Plan Administrator may, in its discretion, at the time of grant of a Nonstatutory Stock Option or by amendment of an Option Agreement for an Incentive Stock Option or a Nonstatutory Stock Option, provide that Options granted to or held by a Participant may be transferred, in whole or in part, to one or more transferees and exercised by any such transferee, provided further that: (i) any such transfer must be without consideration; (ii) each transferee must be a member of such Participant's "immediate family" (as defined below) or a trust, family limited partnership or other estate planning vehicle established for the exclusive benefit of one or more members of the Participant's immediate family; and (iii) such transfer is specifically approved by the Plan Administrator following the receipt of a written request for approval of the transfer; and provided further that any Incentive Stock Option which is amended to permit transfers during the lifetime of the Participant shall, upon the effectiveness of such amendment, be treated thereafter as a Nonstatutory Stock Option. In the event an Option is transferred as contemplated in this Section, such transfer shall become effective when approved by the Plan Administrator and such Option may not be subsequently transferred by the transferee other than by will or the laws of descent and distribution. Any transferred Option shall continue to be governed by and subject to the terms and conditions of this Plan and the relevant Option Agreement, and the transferee shall be entitled to the same rights as the Participant as if no transfer had taken place. As used in this Section, "immediate family" shall mean, with respect to any person, any spouse, child, stepchild or grandchild, and shall include relationships arising from legal adoption.

17. TERMINATION - CERTAIN FORFEITURES. Notwithstanding any other provision of the Plan to the contrary, a Participant shall have no right to exercise any Option or vest or receive payment of any Restricted Stock Award or Stock Award if the Participant is Terminated for Cause or (b) if following the Participant's termination of employment from the Company and prior to the Company's delivery of the shares of Common Stock underlying an Award, the Participant becomes an officer or director of, a consultant to or employed by a Competing Business. Furthermore, notwithstanding any other provision of the Plan to the contrary, in the event that a Participant receives or is entitled to the delivery or vesting of Common Stock pursuant to an Award during the twelve (12) month period prior to the Participant's termination from the Company or during the twelve (12) months following the Participant's termination from the Company, the Company in its sole discretion, may require the Participant to return or forfeit the cash and/or Common Stock received with respect to such award (or its economic value as of

(i) the date of the exercise of Options; (ii) the date immediately following the end of the Restricted Period for Restricted Stock Awards; or (iii) the date of grant with respect to Stock Awards, as the case may be) in the event that the Participant becomes an officer or director of, a consultant to or employed by a Competing Business within eighteen (18) months of such Participant's termination from the Company. The Company's right to require forfeiture under this Section 17 must be exercised within ninety (90) days after the discovery of an occurrence triggering the Plan Administrator's right to require forfeiture but in no event later than twenty-four (24) months after the Participant's termination from the Company.

18. RIGHT OF FIRST REFUSAL. Prior to an Initial Public Offering, if at any time Optionee desires to sell, encumber, or otherwise dispose of the Shares, Optionee shall first offer the Shares to the Company by giving the Company written notice disclosing: (i) the name of the proposed transferee of the Shares; (ii) the certificate number and number of shares of Common Stock proposed to be transferred or encumbered; (iii) the proposed price; (iv) all other terms of the proposed transfer; and (v) a written copy of the proposed offer. Within thirty (30) days after receipt of such notice, the Company shall have the option to purchase all or part of such Shares at the same price and on the same terms as contained in such notice.

The Board, in its sole discretion, may waive all or a portion of the Company's right of first refusal pursuant to this Section and the Company's repurchase right pursuant to Section 19 below. If the Company's right of first refusal or repurchase right is so waived, the Board may, in its sole discretion, pass such right to the remaining stockholders of the Company. In such event, each stockholder may purchase that number of Shares equal to his or her proportionate share ownership in the Company, as determined by the Board. To the extent that a stockholder has been given such right and does not purchase his or her allotment, the other stockholders shall have the right to purchase such allotment on the same basis.

In the event the Company or the Company's stockholders elect to purchase less than all of the Shares, as provided above, Optionee shall have the right to sell, encumber or otherwise dispose of such Shares on the terms of the transfer set forth in the written notice to the Company, provided such transfer is effected within thirty (30) days after the expiration of the 30-day option period. If the transfer is not effected within such period, the Company must again be given an option to purchase, as provided above.

On and after an Initial Public Offering, the Company shall have no further right to purchase the Shares under this Section or Section 19 below.

19. REPURCHASE RIGHTS OF THE COMPANY. Optionee understands that the Company has the option to repurchase any Shares issued by the Company in connection with the grant of Stock Awards or upon the exercise of any portion of outstanding Options; provided, however, that such repurchases may only be made prior to the effective date of an Initial Public Offering. Such repurchases shall be at the Fair Market Value of the Shares repurchased as of the date on which the Company exercises such repurchase option.

20. AMENDMENT AND TERMINATION OF THE PLAN.

(a) Amendment and Termination. The Board may at any time amend, alter, suspend or discontinue the Plan, but no amendment, alteration, suspension or discontinuation shall be made which would impair the rights of any Optionee under any grant theretofore made, without his or her consent. In addition, to the extent necessary and desirable to comply with Rule 16b-3 under the Exchange Act or with Section 422 of the Code (or any other applicable law or regulation, including the requirements of the NASD or an established stock exchange), the Company shall obtain shareholder approval of any Plan amendment in such a manner and to such a degree as required.

(b) Effect of Amendment or Termination. Any such amendment or termination of the Plan shall not affect Options already granted and such Options shall remain in full force and effect as if this Plan had not been amended or terminated, unless mutually agreed otherwise between the Optionee and the Board, which agreement must be in writing and signed by the Optionee and the Company.

21. CONDITIONS UPON ISSUANCE OF SHARES. Shares shall not be issued pursuant to any Award under the Plan unless the issuance and delivery of such Shares pursuant thereto shall comply with all relevant provisions of law, including, without limitation, the Securities Act, the Exchange Act, the rules and regulations promulgated thereunder, and the requirements of any stock exchange upon which the Shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned relevant provisions of law.

22. RESERVATION OF SHARES. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

23. AGREEMENTS. Options and Restricted Stock Awards shall be evidenced by written agreements in such form as the Board shall approve from time to time.

24. SHAREHOLDER APPROVAL. Continuance of the Plan shall be subject to approval by the shareholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such shareholder approval shall be obtained in the degree and manner required under applicable state and federal law.

25. INFORMATION TO OPTIONEES. The Company shall provide to each Optionee, during the period for which such Optionee has one or more Options outstanding, copies of all annual reports and other information which are provided to all shareholders of the Company. The Company shall not be required to provide such information if the issuance of Options under the Plan is limited to key employees whose duties in connection with the Company assure their access to equivalent information.

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THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF IN THE US. NO SUCH SALE OR DISPOSITION IN THE US MAY BE EFFECTED WITHOUT AN EFFECTIVE US REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

NONSTATUTORY STOCK OPTION AGREEMENT  
(ENTERPRISE MANAGEMENT INCENTIVE)

DATE OF GRANT: \_\_\_\_\_

VESTING DATE: \_\_\_\_\_

OCEAN POWER TECHNOLOGIES, INC., a New Jersey corporation (the "Company"), on [\_\_\_\_\_] granted to [\_\_\_\_\_] (the "Optionee") an Option to purchase a total of [\_\_\_\_\_] shares of Common Stock (the "Shares"), at the price determined as provided herein, and in all respects subject to the terms, definitions and provisions of the 2001 Stock Plan (the "Plan") adopted by the Company, which is incorporated herein by reference. Unless otherwise defined herein, capitalized terms shall have the same defined meanings as set forth in the Plan.

1. NATURE OF THE OPTION. This Option is a Nonstatutory Stock Option for the purposes of the Plan and is granted under Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 (Enterprise Management Incentives) ("Schedule 5"). The Optionee is an employee of the Company or any of its Subsidiaries and satisfies the employment and working time requirements set out in paragraphs 25 and 26 of Schedule 5. The Option is being granted for commercial reasons in order to recruit or retain the Optionee and not as part of a scheme or arrangement the main purpose (or one of the main purposes) of which is the avoidance of tax.

2. EXERCISE PRICE. The exercise price is US \$\_\_\_\_\_ for each share of Common Stock, and is not less than eighty five percent (85%) of the Fair Market Value per share of Common Stock on the date of grant, as determined by the Board.

3. CONDITIONS.

(i.) (i) Declaration. The Optionee shall within 30 days (or such longer period as permitted by the Board) immediately following the date of grant give a declaration to the Company or any Subsidiary of the Company (in the form determined by the Board) that he meets the requirements of paragraph 26 of Schedule 5 (commitment of working time) in relation to this Option. If the Optionee fails to provide the declaration referred to above within such period, the Board shall give at least seven days' notice to the Optionee requiring him to provide such declaration and if the Optionee fails to provide that declaration by the expiry of the notice, the Board may, in its absolute discretion, determine that this Option shall lapse immediately and be deemed never to have been granted.

4. EXERCISE OF OPTION. This Option shall be exercisable during its term in accordance with the provisions of Section 10 of the Plan as follows:

(i) Right to Exercise.

(a) Subject to subsections 4(i)(b), (c), (d), (e) and (f) below, shares subject to this Option shall become exercisable based upon the following schedule until all of such shares are exercisable:

Months from Vesting Date	Percentage Exercisable
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(b) This Option may not be exercised for a fraction of a Share.

(c) In the event of Optionee's death, disability or termination, the exercisability of this Option is governed by Sections 8, 9, 10 and 13 below, subject to the limitations and conditions contained in subsections 4(i)(d), (e) and (f) hereof.

(d) In no event may this Option be exercised after the date of expiration of the term of this Option as set forth in Section 13 below.

(e) This Option may not be exercised unless and until the Company (or any Subsidiary of the Company) has received from the Optionee a duly completed joint election with the Company, his employer or other company (in the form prescribed by the Board) to the effect that the Optionee will become liable for the whole of any secondary Class 1 national insurance contributions which may arise in connection with this Option.

(f) If the Board so determines, this Option may not be exercised unless and until the Optionee enters into a joint election under Section 431(1) of the Income Tax (Earnings and Pensions) Act 2003 (in the form prescribed by the Board) for the full disapplication of Chapter 2 of Part 7 of that Act.

(ii) Method of Exercise. This Option shall be exercisable by written notice in the form attached as Exhibit A, which shall state the election to exercise the Option, the number of Shares in respect of which the Option is being exercised, and such other representations and agreements as to the holder's investment intent with respect to such shares of Common Stock as may be required by the Company pursuant to the provisions of the Plan. Such written notice shall be signed by Optionee and shall be delivered in person or by certified mail to the President, Secretary or Chief Financial Officer of the Company or such other agent designated in writing by the Company. The written notice shall be accompanied by payment of the exercise price. This Option shall be deemed to be exercised upon receipt by the Company of such written notice accompanied by the exercise price. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the stock certificate evidencing such Shares, no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the

Option. The Company shall issue (or cause to be issued) such stock certificate promptly upon exercise of the Option.

No shares will be issued pursuant to the exercise of an Option unless such issuance and such exercise shall comply with all relevant provisions of law and the requirements of any stock exchange upon which the Shares may then be listed. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to the Optionee on the date on which the Option is exercised with respect to such Shares.

#### 5. INVESTMENT REPRESENTATIONS; RESTRICTIONS ON TRANSFER

(i) By receipt of this Option, by its execution and by its exercise in whole or in part, Optionee represents to the Company the following as they pertain to sales of Shares in the US:

(a) Optionee understands that this Option and any Shares purchased upon its exercise are securities, the issuance of which requires compliance with US federal and US state securities laws.

(b) Optionee is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the securities. Optionee is acquiring these securities for investment for Optionee's own account only and not with a view to, or for resale in the US in connection with, any "distribution" thereof within the meaning of the US Securities Act of 1933, as amended (the "Securities Act").

(c) Optionee acknowledges and understands that the securities constitute "restricted securities" under the US Securities Act and cannot be sold in the US unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Optionee further acknowledges and understands that the Company is under no obligation to register the securities in the US. Optionee understands that the certificate evidencing the securities in the US will be imprinted with a legend which prohibits the transfer of the securities unless they are registered or such registration is not required in the opinion of counsel satisfactory to the Company and any other legend required under applicable state securities laws.

(d) Optionee is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the US Securities Act, which, in substance, permit limited public resale in the US of "restricted securities" acquired, directly or indirectly, from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of exercise of the Option by the Optionee, such exercise will be exempt from registration under the US Securities Act. In the event the Company later becomes subject to the reporting requirements of Section 13 or 15(d) of the US Securities Exchange Act of 1934, ninety (90) days thereafter the securities exempt under Rule 701 may be resold in the US, subject to the satisfaction of certain of the conditions specified by Rule 144, including among other things: (1) the sale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under

the US Securities Exchange Act of 1934); and, in the case of an affiliate, (2) the availability of certain public information about the Company, and the amount of securities being sold during any three-month period not exceeding the limitations specified in Rule 144(e), if applicable. Notwithstanding this paragraph 5(i)(d), the Optionee acknowledges and agrees to the restrictions set forth in paragraph 5(ii) below.

In the event that the Company does not qualify under Rule 701 at the time of exercise of the Option, then the securities may be resold in the US in certain limited circumstances subject to the provisions of Rule 144, which requires among other things: (1) the availability of certain public information about the Company; (2) the resale occurring not earlier than the time period prescribed by Rule 144 after the party has purchased, and made full payment for, within the meaning of Rule 144, the securities to be sold; and (3) in the case of an affiliate, or of a non-affiliate who has held the securities less than the time period prescribed by Rule 144, the sale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the US Securities Exchange Act of 1934) and the amount of securities being sold during any three month period not exceeding the specified limitations stated therein, if applicable.

(ii) Optionee agrees, in connection with an underwritten public offering of the Company's securities in the US, (1) not to sell, make short sale of, loan, grant any options for the purchase of, or otherwise dispose of any shares of Common Stock of the Company held by Optionee (other than those shares included in the registration) without the prior written consent of the underwriters managing such underwritten public offering of the Company's securities for a period of one hundred eighty (180) days from the effective date of such registration (the "Lock Up Period"), and (2) further agrees to execute any agreement reflecting clause (1) above, or extending the Lock Up Period, as may be requested by the underwriters at the time of the US public offering.

6. METHOD OF PAYMENT. Payment of the exercise price for each Share shall be paid in full at the time of each exercise of the Option: (i) in cash; (ii) by check; (iii) by cash equivalent; (iv) in the discretion of the Plan Administrator, by delivering to the Company a notice of exercise with an irrevocable direction to a broker-dealer registered under the Exchange Act to sell a sufficient portion of the shares and deliver the sale proceeds directly to the Company to pay the exercise price; (v) in the discretion of the Plan Administrator, through the delivery to the Company of previously-owned shares of Common Stock having an aggregate Fair Market Value equal to the Option exercise price of the shares being purchased pursuant to the exercise of the Option; provided, however, that shares of Common Stock delivered in payment of the exercise price must have been held by the Optionee for at least six (6) months in order to be utilized to pay the exercise price; or (vi) in the discretion of the Plan Administrator, through any combination of the foregoing methods of payment.

7. RESTRICTIONS ON EXERCISE. This Option may not be exercised if the issuance of such Shares upon such exercise or the method of payment of consideration for such shares would constitute a violation of any applicable federal or state securities or other law or regulation. As a condition to the exercise of this option, the Company may require Optionee to make any

representation and warranty to the Company as may be required by any applicable law or regulation.

8. **TERMINATION OF STATUS AS AN EMPLOYEE.** Except as set forth below, in the event of termination of Optionee's Continuous Status as an Employee with the Company or any Subsidiary of the Company (as the case may be), Optionee may, but only within ninety (90) days after the date of such termination (but in no event later than the date of expiration of the term of this Option as set forth in Section 13 below), exercise this Option to the extent that Optionee was entitled to exercise it at the date of such termination. To the extent that Optionee was not entitled to exercise this Option at the date of such termination, or if Optionee does not exercise this Option within the time specified herein, this Option shall terminate.

9. **DISABILITY OF OPTIONEE.** Notwithstanding the provisions of Section 8 above, in the event of termination of Optionee's Continuous Status as an Employee with the Company or any Subsidiary of the Company (as the case may be) as a result of Optionee's total and permanent disability (as defined in Section 22(e)(3) of the Code), Optionee may, but only within twelve (12) months from the date of Optionee's termination of employment (but in no event later than the date of expiration of the term of this Option as set forth in Section 13 below), exercise this Option to the extent Optionee was entitled to exercise it at the date of such termination. To the extent that Optionee was not entitled to exercise this Option at the date of termination, or if Optionee does not exercise such Option (which Optionee was entitled to exercise) within the time specified herein, this Option shall terminate.

10. **DEATH OF OPTIONEE.** In the event of the death of Optionee:

(i) during the term of this Option while an Employee of the Company or any Subsidiary of the Company (as the case may be) and having been in Continuous Status as an Employee since the date of grant of this Option, this Option may be exercised, at any time within twelve (12) months following the date of death (but in no event later than the date of expiration of the term of this Option as set forth in Section 13 below), by Optionee's Personal Representatives, but only to the extent the Optionee was entitled to exercise the Option at the date of death; or

(ii) in the event of Optionee's death within thirty (30) days after the termination of Optionee's Continuous Status as an Employee pursuant to Section 8 above, this Option may be exercised, at any time within six (6) months following the date of death (but in no event later than the date of expiration of the term of this Option as set forth in Section 13 below), by Optionee's Personal Representatives, but only to the extent of the right to exercise that had accrued at the date of termination.

11. **NONTRANSFERABILITY OF OPTION.** This Option may not be transferred in any manner other than to Optionee's Personal Representatives on his death and may be exercised during the lifetime of Optionee only by Optionee. The terms of this Option shall be binding upon Optionee's Personal Representatives.

12. **PERSONAL REPRESENTATIVES.** For the purposes of Sections 10 and 11, the term "Personal Representatives" shall mean the legal personal representatives of Optionee (being

either the executors of his will to whom a valid grant of probate has been made or, if he dies intestate, the duly appointed administrator(s) of his estate) who have produced to the Company evidence of their appointment as such.

13. TERM OF OPTION. Notwithstanding anything herein to the contrary, this Option may not be exercised more than \_\_\_ years from the date of grant of this Option, and may be exercised during such term only in accordance with the Plan and the terms of this Option.

14. TAXATION.

(i) Withholding. No Shares will be issued or transferred pursuant to the exercise of this Option unless and until Optionee pays to the Company, or makes provision satisfactory to the Company for payment of, any federal, national, foreign, state or local taxes (including any social security or national insurance contributions) required by law to be withheld in respect of this Option or which Optionee has agreed or elected to bear.

(ii) EMI status. Neither the Company nor any Subsidiary of the Company shall have any liability to Optionee if this Option (or any part thereof) does not qualify or ceases to qualify as an enterprise management incentive option under Schedule 5.

15. TAX CONSEQUENCES. The Optionee understands that any of the foregoing references to taxation are based on tax, national insurance and social security laws and regulations now in effect. The Optionee has reviewed with the Optionee's own tax advisors the federal, state, local and foreign tax, social security and national insurance consequences of the transactions contemplated by this Agreement. The Optionee is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Optionee understands that the Optionee (and not the Company) shall be responsible for the Optionee's own tax, social security and national insurance liability that may arise as a result of the transactions contemplated by this Agreement together with any secondary Class 1 national insurance contributions which Optionee has elected to bear.

16. NO EMPLOYMENT CLAIMS. The rights and obligations of Optionee under the terms of his office or employment with the Company, any past or present Subsidiary of the Company, or associated or affiliate company of the Company shall not be affected by his participation in the Plan or the grant of this Option or any right which he may have to participate therein, and Optionee hereby waives all and any rights to compensation or damages in consequence of the termination of his office or employment with any such company for any reasons whatsoever (whether lawful or unlawful and including, without prejudice to the generality of the foregoing, in circumstances giving rise to a claim for wrongful dismissal) insofar as those rights arise or may arise from his ceasing to have rights under or being entitled to exercise this option in whole or in part as a result of such termination, or from the loss or diminution in value of such rights or entitlements.

17. DATA PROTECTION. Optionee agrees to the receipt, holding and processing of information in connection with the grant, vesting, exercise, taxation and general administration of the Plan and this Option by the Company or any Subsidiary of the Company and any of their advisers or agents and to the transmission or transfer of such information outside of the European Economic Area for this purpose and, in particular, the transmission or transfer of such information to the Company in the USA.

18. THIRD PARTY RIGHTS. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Option and no person other than parties hereto shall have any rights under it nor shall it be enforceable under that Act by any person other than the parties to it.

19. OPTIONEE ACKNOWLEDGEMENT.

(i) Optionee acknowledges and agrees that the vesting of shares pursuant to Section 4 hereof is earned only by continuing service as an employee of the Company or any Subsidiary of the Company (not through the act of being hired, being granted this Option or acquiring shares hereunder). Optionee further acknowledges and agrees that this Option, the Plan which is incorporated herein by reference, the transactions contemplated hereunder and the vesting schedule set forth herein do not constitute an express or implied promise of continued engagement as an employee for the vesting period, for any period, or at all, and shall not interfere with Optionee's right or the company's right to terminate Optionee's employment at any time, with or without cause.

(ii) Optionee acknowledges receipt of a copy of the Plan, a copy of which is annexed hereto, represents that Optionee is familiar with the terms and provisions thereof, and hereby accepts this Option subject to all of the terms and provisions thereof. Optionee has reviewed the Plan and this Option in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Option and fully understands all provisions of the Option. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Board or of the Committee upon any questions arising under the Plan. Optionee further agrees to notify the Company upon any change in his residence address.

IN WITNESS WHEREOF the parties have executed this document as a Deed and the Company has caused this option to be executed under its corporate seal by its duly authorised officer on the following date. This option shall take effect as a deed and sealed instrument.

DATED: \_\_\_\_\_, \_\_\_\_\_

OCEAN POWER TECHNOLOGIES INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXECUTED as a DEED by OPTIONEE:

By: -----

(Signature of Optionee)

Name: -----

(Printed Name of Optionee)

In the presence of:

Witness signature: -----

Witness name: -----

Witness address: -----

-----

Witness occupation: -----

EXHIBIT A

NOTICE OF EXERCISE OF STOCK OPTION

TO: \_\_\_\_\_

FROM: \_\_\_\_\_

DATE: \_\_\_\_\_

RE: Exercise of Stock Option

I hereby exercise my option to purchase \_\_\_\_\_ shares of Common Stock at \$ \_\_\_\_\_ per share (total exercise price of \$ \_\_\_\_\_), effective today's date. This notice is given in accordance with the terms of my Stock Option Agreement dated \_\_\_\_\_. The option price and vested amount is in accordance with Sections 2 and 4 of the Stock Option Agreement.

Attached is a check payable to Ocean Power Technologies, Inc. for the total exercise price of the shares being purchased. The undersigned confirms the representations made in Section 5 of the Stock Option Agreement.

Please prepare the stock certificate in the following name(s):

\_\_\_\_\_  
\_\_\_\_\_

If the stock is to be registered in a name other than your name, please so advise the Company. The Stock Option Agreement requires the Company's approval for registration in a name other than your name and requires certain agreements from any joint owner.

Sincerely,

-----  
(Signature)

-----  
(Print or Type Name)

Letter and consideration

Received on \_\_\_\_\_, 20\_\_.

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

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

INCENTIVE STOCK OPTION AGREEMENT

DATE OF GRANT: \_\_\_\_\_

OCEAN POWER TECHNOLOGIES, INC., a New Jersey corporation (the "Company"), hereby grants to [\_\_\_\_\_] (the "Optionee") an Option to purchase a total of [\_\_\_\_\_] shares of Common Stock (the "Shares"), at the price determined as provided herein, and in all respects subject to the terms, definitions and provisions of the 2001 Stock Plan (the "Plan") adopted by the Company, which is incorporated herein by reference. Unless otherwise defined herein, capitalized terms shall have the same defined meanings as set forth in the Plan.

1. NATURE OF THE OPTION. This Option is intended to qualify as an Incentive Stock Option and may only be granted to an Employee of the Company.

2. EXERCISE PRICE. The exercise price is \$\_\_\_\_\_ for each share of Common Stock, which price is not less than the fair market value per share of Common Stock on the date of grant, as determined by the Board; provided, however, in the event Optionee owns stock representing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of its Parent or Subsidiary corporations immediately before this Option is granted, said exercise price is not less than one hundred ten percent (110%) of the Fair Market Value per share of Common Stock on the date of grant as determined by the Board.

3. EXERCISE OF OPTION. This Option shall be exercisable during its term in accordance with the provisions of Section 10 of the Plan as follows:

(i) Right to Exercise.

(a) Subject to subsections 3(i)(b), (c), (d) and (e) below, shares subject to this Option shall become exercisable based upon the following schedule until all of such shares are exercisable:

Months from Grant Date	Percentage Exercisable
-----	-----
12	20%
24	40
36	60
48	80
60	100

(b) This Option may not be exercised for a fraction of a Share.

(c) In the event of Optionee's death, disability or other termination of employment, the exercisability of the option is governed by Sections 7, 8, 9 and 11 below, subject to the limitations contained in subsections 3(i)(d) and (e) hereof.

(d) In no event may this Option be exercised after the date of expiration of the term of this Option as set forth in Section 11 below.

(e) To the extent that options designated as Incentive Stock Options (under all plans of the Company or any Parent or Subsidiary) become exercisable by Optionee for the first time during any calendar year for Common Stock having a Fair Market Value greater than One Hundred Thousand Dollars (\$100,000) (determined for each share as of the date of grant of the option covering such share), the portion of such options which exceeds such amount shall be treated as Nonstatutory Stock Options.

(ii) Method of Exercise. This Option shall be exercisable by written notice in the form attached as Exhibit A, which shall state the election to exercise the Option, the number of Shares in respect of which the Option is being exercised, and such other representations and agreements as to the holder's investment intent with respect to such shares of Common Stock as may be required by the Company pursuant to the provisions of the Plan. Such written notice shall be signed by Optionee and shall be delivered in person or by certified mail to the President, Secretary or Chief Financial Officer of the Company or such other agent designated in writing by the Company. The written notice shall be accompanied by payment of the exercise price. This Option shall be deemed to be exercised upon receipt by the Company of such written notice accompanied by the exercise price. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the stock certificate evidencing such Shares, no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such stock certificate promptly upon exercise of the Option.

No shares will be issued pursuant to the exercise of an Option unless such issuance and such exercise shall comply with all relevant provisions of law and the requirements of any stock exchange upon which the Shares may then be listed. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to the Optionee on the date on which the Option is exercised with respect to such Shares.

#### 4. Investment Representations; Restrictions on Transfer.

(i) By receipt of this Option, by its execution and by its exercise in whole or in part, Optionee represents to the Company the following:

(a) Optionee understands that this Option and any Shares purchased upon its exercise are securities, the issuance of which requires compliance with federal and state securities laws.

(b) Optionee is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the securities. Optionee is acquiring

these securities for investment for Optionee's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act").

(c) Optionee acknowledges and understands that the securities constitute "restricted securities" under the Securities Act and must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Optionee further acknowledges and understands that the Company is under no obligation to register the securities. Optionee understands that the certificate evidencing the securities will be imprinted with a legend which prohibits the transfer of the securities unless they are registered or such registration is not required in the opinion of counsel satisfactory to the Company and any other legend required under applicable state securities laws.

(d) Optionee is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of exercise of the Option by the Optionee, such exercise will be exempt from registration under the Securities Act. In the event the Company later becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, ninety (90) days thereafter the securities exempt under Rule 701 may be resold, subject to the satisfaction of certain of the conditions specified by Rule 144, including among other things: (1) the sale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the Securities Exchange Act of 1934); and, in the case of an affiliate, (2) the availability of certain public information about the Company, and the amount of securities being sold during any three-month period not exceeding the limitations specified in Rule 144(e), if applicable. Notwithstanding this paragraph 4(i)(d), the Optionee acknowledges and agrees to the restrictions set forth in paragraph 4(ii) below.

In the event that the Company does not qualify under Rule 701 at the time of exercise of the Option, then the securities may be resold in certain limited circumstances subject to the provisions of Rule 144, which requires among other things: (1) the availability of certain public information about the Company; (2) the resale occurring not earlier than the time period prescribed by Rule 144 after the party has purchased, and made full payment for, within the meaning of Rule 144, the securities to be sold; and (3) in the case of an affiliate, or of a non-affiliate who has held the securities less than the time period prescribed by Rule 144, the sale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the Securities Exchange Act of 1934) and the amount of securities being sold during any three month period not exceeding the specified limitations stated therein, if applicable.

(ii) Optionee agrees, in connection with an underwritten public offering of the Company's securities, (1) not to sell, make short sale of, loan, grant any options for the purchase

of, or otherwise dispose of any shares of Common Stock of the Company held by Optionee (other than those shares included in the registration) without the prior written consent of the underwriters managing such underwritten public offering of the Company's securities for a period of one hundred eighty (180) days from the effective date of such registration (the "Lock Up Period"), and (2) further agrees to execute any agreement reflecting clause (1) above, or extending the Lock Up Period, as may be requested by the underwriters at the time of the public offering.

5. METHOD OF PAYMENT. Payment of the exercise price for each Share shall be paid in full at the time of each exercise of the Option: (i) in cash; (ii) by check; (iii) by cash equivalent; (iv) by delivering to the Company a notice of exercise with an irrevocable direction to a broker-dealer registered under the Exchange Act to sell a sufficient portion of the shares and deliver the sale proceeds directly to the Company to pay the exercise price; (v) in the discretion of the Plan Administrator, through the delivery to the Company of previously-owned shares of Common Stock having an aggregate Fair Market Value equal to the Option exercise price of the shares being purchased pursuant to the exercise of the Option; provided, however, that shares of Common Stock delivered in payment of the exercise price must have been held by the Optionee for at least six (6) months in order to be utilized to pay the exercise price; or (vi) in the discretion of the Plan Administrator, through any combination of the foregoing methods of payment.

6. RESTRICTIONS ON EXERCISE. This Option may not be exercised if the issuance of such Shares upon such exercise or the method of payment of consideration for such shares would constitute a violation of any applicable federal or state securities or other law or regulation. As a condition to the exercise of this option, the Company may require Optionee to make any representation and warranty to the Company as may be required by any applicable law or regulation.

7. TERMINATION OF STATUS AS AN EMPLOYEE. Except as set forth below, in the event of termination of Optionee's Continuous Status as an Employee, Optionee may, but only within ninety (90) days after the date of such termination (but in no event later than the date of expiration of the term of this Option as set forth in Section 11 below), exercise this Option to the extent that Optionee was entitled to exercise it at the date of such termination. To the extent that Optionee was not entitled to exercise this Option at the date of such termination, or if Optionee does not exercise this Option within the time specified herein, this Option shall terminate.

8. DISABILITY OF OPTIONEE. Notwithstanding the provisions of Section 7 above, in the event of termination of Optionee's Continuous Status as an Employee as a result of Optionee's total and permanent disability (as defined in Section 22(e)(3) of the Code), Optionee may, but only within twelve (12) months from the date of Optionee's termination of employment (but in no event later than the date of expiration of the term of this Option as set forth in Section 11 below), exercise this Option to the extent Optionee was entitled to exercise it at the date of such termination. To the extent that Optionee was not entitled to exercise this Option at the date of termination, or if Optionee does not exercise such Option (which Optionee was entitled to exercise) within the time specified herein, this Option shall terminate.

9. DEATH OF OPTIONEE. In the event of the death of Optionee:

(i) during the term of this Option while an Employee of the Company and having been in Continuous Status as an Employee since the date of grant of this Option, this Option may be exercised, at any time within twelve (12) months following the date of death (but in no event later than the date of expiration of the term of this Option as set forth in Section 11 below), by Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent the Optionee was entitled to exercise the Option at the date of death, subject to the limitations contained in Section 3(i)(e) above; or

(ii) in the event of Optionee's death within thirty (30) days after the termination of Optionee's Continuous Status as an Employee pursuant to Section 7 above, this Option may be exercised, at any time within six (6) months following the date of death (but in no event later than the date of expiration of the term of this Option as set forth in Section 11 below), by Optionee's estate or by a person who acquired the right to exercise this Option by bequest or inheritance, but only to the extent of the right to exercise that had accrued at the date of termination.

10. NON-TRANSFERABILITY OF OPTION. This Option may not be transferred in any manner other than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee only by Optionee. The terms of this Option shall be binding upon the executors, administrators, heirs, successors and assigns of Optionee.

11. TERM OF OPTION. Notwithstanding anything herein to the contrary, this Option may not be exercised more than ten (10) years from the date of grant of this Option, and may be exercised during such term only in accordance with the Plan and the terms of this Option.

12. RIGHT OF FIRST REFUSAL. Prior to an Initial Public Offering, if at any time Optionee desires to sell, encumber, or otherwise dispose of the Shares, Optionee shall first offer the Shares to the Company by giving the Company written notice disclosing: (i) the name of the proposed transferee of the Shares; (ii) the certificate number and number of shares of Common Stock proposed to be transferred or encumbered; (iii) the proposed price; (iv) all other terms of the proposed transfer; and (v) a written copy of the proposed offer. Within thirty (30) days after receipt of such notice, the Company shall have the option to purchase all or part of such Shares at the same price and on the same terms as contained in such notice.

The Board, in its sole discretion may waive all or a portion of the Company's right of first refusal pursuant to this Section and the Company's repurchase right pursuant to Section 13 below. If the Company's right of first refusal or repurchase right is so waived, the Board may, in its sole discretion, pass such right to the remaining stockholders of the Company. In such event, each stockholder may purchase that number of Shares equal to his or her proportionate share ownership in the Company, as determined by the Board. To the extent that a stockholder has been given such right and does not purchase his or her allotment, the other stockholders shall have the right to purchase such allotment on the same basis.

In the event the Company or the Company's stockholders elect to purchase less than all of the Shares, as provided above, Optionee shall have the right to sell, encumber or otherwise dispose of such Shares on the terms of the transfer set forth in the written notice to the Company, provided such transfer is effected within thirty (30) days after the expiration of the 30-day option

period. If the transfer is not effected within such period, the Company must again be given an option to purchase, as provided above.

On and after an Initial Public Offering, the Company shall have no further right to purchase the Shares under this Section or Section 13 below.

13. REPURCHASE RIGHTS OF THE COMPANY. Optionee understands that the Company has the option to repurchase any Shares issued by the Company upon the exercise of any portion of this Agreement, provided, however, that such repurchases shall be made prior to the effective date of an Initial Public Offering. Such repurchases shall be at the Fair Market Value of the Shares repurchased as of the date on which the Company exercises such option.

14. EARLY DISPOSITION OF STOCK. Optionee understands that, if Optionee disposes of any Shares received under this Option within two (2) years after the date of this Agreement or within one (1) year after such Shares were transferred to Optionee, Optionee will be treated for federal income tax purposes as having received ordinary income at the time of such disposition in an amount generally measured as the difference between the price paid for the Shares and the lower of the Fair Market Value of the Shares at the date of exercise or the fair market value of the Shares at the date of disposition. Any gain recognized on such a premature sale of the Shares in excess of the amount treated as ordinary income will be characterized as capital gain. Optionee hereby agrees to notify the Company in writing within thirty (30) days after the date of any such disposition. Optionee understands that if Optionee disposes of such Shares at any time after the expiration of such two-year and one-year holding periods, any gain on such sale will be treated as long-term capital gain.

15. TAX CONSEQUENCES. The Optionee understands that any of the foregoing references to taxation are based on federal income tax laws and regulations now in effect. The Optionee has reviewed with the Optionee's own tax advisors the federal, state, local and foreign tax consequences of the transactions contemplated by this Agreement. The Optionee is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Optionee understands that the Optionee (and not the Company) shall be responsible for the Optionee's own tax liability that may arise as a result of the transactions contemplated by this Agreement.

Ocean Power Technologies, Inc.

By:

-----  
Name: Dr. George W. Taylor  
Title: Chief Executive Officer

EXHIBIT A

NOTICE OF EXERCISE OF STOCK OPTION

TO: \_\_\_\_\_

FROM: \_\_\_\_\_

DATE: \_\_\_\_\_

RE: Exercise of Stock Option

I hereby exercise my option to purchase \_\_\_\_\_ shares of Common Stock at \$\_\_\_\_\_ per share (total exercise price of \$\_\_\_\_\_), effective today's date. This notice is given in accordance with the terms of my Stock Option Agreement with a Grant Date of \_\_\_\_\_. The option price and vested amount is in accordance with Sections 2 and 3 of the Stock Option Agreement.

Attached is a check payable to Ocean Power Technologies, Inc. for the total exercise price of the shares being purchased. The undersigned confirms the representations made in Section 4 of the Stock Option Agreement.

Please prepare the stock certificate in the following name(s):

\_\_\_\_\_  
\_\_\_\_\_

If the stock is to be registered in a name other than your name, please so advise the Company. The Stock Option Agreement requires the Company's approval for registration in a name other than your name and requires certain agreements from any joint owner.

Sincerely,

-----  
(Signature)

-----  
(Print or Type Name)

Letter and consideration  
Received on \_\_\_\_\_, 20\_\_.

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

OPTIONEE ACKNOWLEDGEMENT

OPTIONEE ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO SECTION 3 HEREOF IS EARNED ONLY BY CONTINUING SERVICE AS AN EMPLOYEE AT THE WILL OF THE COMPANY (NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER). OPTIONEE FURTHER ACKNOWLEDGES AND AGREES THAT THIS OPTION, THE COMPANY'S PLAN WHICH IS INCORPORATED HEREIN BY REFERENCE, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS AN EMPLOYEE FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE WITH OPTIONEE'S RIGHT OR THE COMPANY'S RIGHT TO TERMINATE OPTIONEE'S EMPLOYMENT AT ANY TIME, WITH OR WITHOUT CAUSE.

Optionee acknowledges receipt of a copy of the Plan, a copy of which is annexed hereto, represents that Optionee is familiar with the terms and provisions thereof, and hereby accepts this Option for \_\_\_\_\_ shares, and with a Grant Date of \_\_\_\_\_, subject to all of the terms and provisions thereof. Optionee has reviewed the Plan and this Option in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Option and fully understands all provisions of the Option. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Board or of the Committee upon any questions arising under the Plan. Optionee further agrees to notify the Company upon any change in the residence address indicated below.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[NAME]

Residence Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Social Security No. \_\_\_\_\_

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

NONSTATUTORY STOCK OPTION AGREEMENT

DATE OF GRANT: \_\_\_\_\_

OCEAN POWER TECHNOLOGIES, INC., a New Jersey corporation (the "Company"), hereby grants to [\_\_\_\_\_] (the "Optionee") an Option to purchase a total of [\_\_\_\_\_] shares of Common Stock (the "Shares"), at the price determined as provided herein, and in all respects subject to the terms, definitions and provisions of the 2001 Stock Plan (the "Plan") adopted by the Company, which is incorporated herein by reference. Unless otherwise defined herein, capitalized terms shall have the same defined meanings as set forth in the Plan.

1. NATURE OF THE OPTION. This Option is a Nonstatutory Stock Option, is not intended to qualify for any special tax benefits to the Optionee and may be granted to Employees, Consultants and Directors of the Company.

2. EXERCISE PRICE. The exercise price is \$\_\_\_\_\_ for each share of Common Stock, which price is not less than eighty five percent (85%) of the Fair Market Value per share of Common Stock on the date of grant, as determined by the Board.

3. EXERCISE OF OPTION. This Option shall be exercisable during its term in accordance with the provisions of Section 10 of the Plan as follows:

(i) Right to Exercise.

(a) Subject to subsections 3(i)(b), (c) and (d) below, shares subject to this Option shall become exercisable based upon the following schedule until all of such shares are exercisable:

Months from Grant Date	Percentage Exercisable
-----	-----

(b) This Option may not be exercised for a fraction of a Share.

(c) In the event of Optionee's death, disability or termination, the exercisability of the option is governed by Sections 7, 8, 9 and 11 below, subject to the limitations contained in subsections 3(i)(d) hereof.

(d) In no event may this Option be exercised after the date of expiration of the term of this Option as set forth in Section 11 below.

(ii) Method of Exercise. This Option shall be exercisable by written notice in the form attached as Exhibit A, which shall state the election to exercise the Option, the number of Shares in respect of which the Option is being exercised, and such other representations and agreements as to the holder's investment intent with respect to such shares of Common Stock as may be required by the Company pursuant to the provisions of the Plan. Such written notice shall be signed by Optionee and shall be delivered in person or by certified mail to the President, Secretary or Chief Financial Officer of the Company or such other agent designated in writing by the Company. The written notice shall be accompanied by payment of the exercise price. This Option shall be deemed to be exercised upon receipt by the Company of such written notice accompanied by the exercise price. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the stock certificate evidencing such Shares, no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such stock certificate promptly upon exercise of the Option.

No shares will be issued pursuant to the exercise of an Option unless such issuance and such exercise shall comply with all relevant provisions of law and the requirements of any stock exchange upon which the Shares may then be listed. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to the Optionee on the date on which the Option is exercised with respect to such Shares.

#### 4. INVESTMENT REPRESENTATIONS; RESTRICTIONS ON TRANSFER.

(i) By receipt of this Option, by its execution and by its exercise in whole or in part, Optionee represents to the Company the following:

(a) Optionee understands that this Option and any Shares purchased upon its exercise are securities, the issuance of which requires compliance with federal and state securities laws.

(b) Optionee is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the securities. Optionee is acquiring these securities for investment for Optionee's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act").

(c) Optionee acknowledges and understands that the securities constitute "restricted securities" under the Securities Act and must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Optionee further acknowledges and understands that the Company is under no obligation to register the securities. Optionee understands that the certificate evidencing the securities will be imprinted with a legend which prohibits the

transfer of the securities unless they are registered or such registration is not required in the opinion of counsel satisfactory to the Company and any other legend required under applicable state securities laws.

(d) Optionee is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of exercise of the Option by the Optionee, such exercise will be exempt from registration under the Securities Act. In the event the Company later becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, ninety (90) days thereafter the securities exempt under Rule 701 may be resold, subject to the satisfaction of certain of the conditions specified by Rule 144, including among other things: (1) the sale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the Securities Exchange Act of 1934); and, in the case of an affiliate, (2) the availability of certain public information about the Company, and the amount of securities being sold during any three-month period not exceeding the limitations specified in Rule 144(e), if applicable. Notwithstanding this paragraph 4(i)(d), the Optionee acknowledges and agrees to the restrictions set forth in paragraph 4(ii) below.

In the event that the Company does not qualify under Rule 701 at the time of exercise of the Option, then the securities may be resold in certain limited circumstances subject to the provisions of Rule 144, which requires among other things: (1) the availability of certain public information about the Company; (2) the resale occurring not earlier than the time period prescribed by Rule 144 after the party has purchased, and made full payment for, within the meaning of Rule 144, the securities to be sold; and (3) in the case of an affiliate, or of a non-affiliate who has held the securities less than the time period prescribed by Rule 144, the sale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the Securities Exchange Act of 1934) and the amount of securities being sold during any three month period not exceeding the specified limitations stated therein, if applicable.

(ii) Optionee agrees, in connection with an underwritten public offering of the Company's securities, (1) not to sell, make short sale of, loan, grant any options for the purchase of, or otherwise dispose of any shares of Common Stock of the Company held by Optionee (other than those shares included in the registration) without the prior written consent of the underwriters managing such underwritten public offering of the Company's securities for a period of one hundred eighty (180) days from the effective date of such registration (the "Lock Up Period"), and (2) further agrees to execute any agreement reflecting clause (1) above, or extending the Lock Up Period, as may be requested by the underwriters at the time of the public offering.

5. METHOD OF PAYMENT. Payment of the exercise price for each Share shall be paid in full at the time of each exercise of the Option: (i) in cash; (ii) by check; (iii) by cash

equivalent; (iv) by delivering to the Company a notice of exercise with an irrevocable direction to a broker-dealer registered under the Exchange Act to sell a sufficient portion of the shares and deliver the sale proceeds directly to the Company to pay the exercise price; (v) in the discretion of the Plan Administrator, through the delivery to the Company of previously-owned shares of Common Stock having an aggregate Fair Market Value equal to the Option exercise price of the shares being purchased pursuant to the exercise of the Option; provided, however, that shares of Common Stock delivered in payment of the exercise price must have been held by the Optionee for at least six (6) months in order to be utilized to pay the exercise price; or (vi) in the discretion of the Plan Administrator, through any combination of the foregoing methods of payment.

6. RESTRICTIONS ON EXERCISE. This Option may not be exercised if the issuance of such Shares upon such exercise or the method of payment of consideration for such shares would constitute a violation of any applicable federal or state securities or other law or regulation. As a condition to the exercise of this option, the Company may require Optionee to make any representation and warranty to the Company as may be required by any applicable law or regulation.

7. TERMINATION OF STATUS AS AN EMPLOYEE, CONSULTANT OR DIRECTOR. Except as set forth below, in the event of termination of Optionee's Continuous Status as an Employee, consulting relationship or Director status with the Company (as the case may be), Optionee may, but only within ninety (90) days after the date of such termination (but in no event later than the date of expiration of the term of this Option as set forth in Section 11 below), exercise this Option to the extent that Optionee was entitled to exercise it at the date of such termination. To the extent that Optionee was not entitled to exercise this Option at the date of such termination, or if Optionee does not exercise this Option within the time specified herein, this Option shall terminate.

8. DISABILITY OF OPTIONEE. Notwithstanding the provisions of Section 7 above, in the event of termination of Optionee's Continuous Status as an Employee, consulting relationship or Director status with the Company (as the case may be) as a result of Optionee's total and permanent disability (as defined in Section 22(e)(3) of the Code), Optionee may, but only within twelve (12) months from the date of Optionee's termination of employment or consulting relationship or Director status (but in no event later than the date of expiration of the term of this Option as set forth in Section 11 below), exercise this Option to the extent Optionee was entitled to exercise it at the date of such termination. To the extent that Optionee was not entitled to exercise this Option at the date of termination, or if Optionee does not exercise such Option (which Optionee was entitled to exercise) within the time specified herein, this Option shall terminate.

9. DEATH OF OPTIONEE. In the event of the death of Optionee:

(i) during the term of this Option while an Employee, Consultant or Director of the Company (as the case may be) and having been in Continuous Status as an Employee, Consultant or Director since the date of grant of this Option, this Option may be exercised, at any time within twelve (12) months following the date of death (but in no event later than the date of expiration of the term of this Option as set forth in Section 11 below), by Optionee's estate or by

a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent the Optionee was entitled to exercise the Option at the date of death; or

(ii) in the event of Optionee's death within thirty (30) days after the termination of Optionee's Continuous Status as an Employee, consulting relationship or Director status (as the case may be) pursuant to Section 7 above, this Option may be exercised, at any time within six (6) months following the date of death (but in no event later than the date of expiration of the term of this Option as set forth in Section 11 below), by Optionee's estate or by a person who acquired the right to exercise this Option by bequest or inheritance, but only to the extent of the right to exercise that had accrued at the date of termination.

10. **NONTRANSFERABILITY OF OPTION.** This Option may not be transferred in any manner other than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee only by Optionee. The terms of this Option shall be binding upon the executors, administrators, heirs, successors and assigns of Optionee.

11. **TERM OF OPTION.** Notwithstanding anything herein to the contrary, this Option may not be exercised more than \_\_\_\_ years from the date of grant of this Option, and may be exercised during such term only in accordance with the Plan and the terms of this Option.

12. **RIGHT OF FIRST REFUSAL.** Prior to an Initial Public Offering, if at any time Optionee desires to sell, encumber, or otherwise dispose of the Shares, Optionee shall first offer the Shares to the Company by giving the Company written notice disclosing: (i) the name of the proposed transferee of the Shares; (ii) the certificate number and number of shares of Common Stock proposed to be transferred or encumbered; (iii) the proposed price; (iv) all other terms of the proposed transfer; and (v) a written copy of the proposed offer. Within thirty (30) days after receipt of such notice, the Company shall have the option to purchase all or part of such Shares at the same price and on the same terms as contained in such notice.

The Board, in its sole discretion may waive all or a portion of the Company's right of first refusal pursuant to this Section and the Company's repurchase right pursuant to Section 13 below. If the Company's right of first refusal or repurchase right is so waived, the Board may, in its sole discretion, pass such right to the remaining stockholders of the Company. In such event, each stockholder may purchase that number of Shares equal to his or her proportionate share ownership in the Company, as determined by the Board. To the extent that a stockholder has been given such right and does not purchase his or her allotment, the other stockholders shall have the right to purchase such allotment on the same basis.

In the event the Company or the Company's stockholders elect to purchase less than all of the Shares, as provided above, Optionee shall have the right to sell, encumber or otherwise dispose of such Shares on the terms of the transfer set forth in the written notice to the Company, provided such transfer is effected within thirty (30) days after the expiration of the 30-day option period. If the transfer is not effected within such period, the Company must again be given an option to purchase, as provided above.

On and after an Initial Public Offering, the Company shall have no further right to purchase the Shares under this Section or Section 13 below.

13. REPURCHASE RIGHTS OF THE COMPANY. Optionee understands that the Company has the option to repurchase any Shares issued by the Company upon the exercise of any portion of this Agreement, provided, however, that such repurchases shall be made prior to the effective date of an Initial Public Offering. Such repurchases shall be at the Fair Market Value of the Shares repurchased as of the date on which the Company exercises such option.

14. TAXATION UPON EXERCISE OF OPTION. Optionee understands that, upon exercise of this Option, Optionee will recognize income for tax purposes in an amount equal to the excess of the then fair market value of the Shares over the exercise price. Optionee hereby agrees to notify the Company in writing within thirty (30) days after the date of any such disposition. Upon a resale of such Shares by the Optionee, any difference between the sale price and the fair market value of the Shares on the date of exercise of the option will be treated as capital gain or loss.

15. TAX CONSEQUENCES. The Optionee understands that any of the foregoing references to taxation are based on federal income tax laws and regulations now in effect. The Optionee has reviewed with the Optionee's own tax advisors the federal, state, local and foreign tax consequences of the transactions contemplated by this Agreement. The Optionee is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Optionee understands that the Optionee (and not the Company) shall be responsible for the Optionee's own tax liability that may arise as a result of the transactions contemplated by this Agreement.

Ocean Power Technologies, Inc.

By: \_\_\_\_\_  
Name: Dr. George W. Taylor  
Title: Chief Executive Officer

EXHIBIT A

NOTICE OF EXERCISE OF STOCK OPTION

TO: \_\_\_\_\_

FROM: \_\_\_\_\_

DATE: \_\_\_\_\_

RE: Exercise of Stock Option

I hereby exercise my option to purchase \_\_\_\_\_ shares of Common Stock at \$\_\_\_\_\_ per share (total exercise price of \$\_\_\_\_\_), effective today's date. This notice is given in accordance with the terms of my Stock Option Agreement with a Grant Date of \_\_\_\_\_. The option price and vested amount is in accordance with Sections 2 and 3 of the Stock Option Agreement.

Attached is a check payable to Ocean Power Technologies, Inc. for the total exercise price of the shares being purchased. The undersigned confirms the representations made in Section 4 of the Stock Option Agreement.

Please prepare the stock certificate in the following name(s):

\_\_\_\_\_  
\_\_\_\_\_

If the stock is to be registered in a name other than your name, please so advise the Company. The Stock Option Agreement requires the Company's approval for registration in a name other than your name and requires certain agreements from any joint owner.

Sincerely,

-----  
(Signature)

-----  
(Print or Type Name)

Letter and consideration  
Received on \_\_\_\_\_, 20\_\_.

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

OPTIONEE ACKNOWLEDGEMENT

OPTIONEE ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO SECTION 3 HEREOF IS EARNED ONLY BY CONTINUING SERVICE AS AN EMPLOYEE, CONSULTANT OR DIRECTOR OF THE COMPANY (NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER). OPTIONEE FURTHER ACKNOWLEDGES AND AGREES THAT THIS OPTION, THE COMPANY'S PLAN WHICH IS INCORPORATED HEREIN BY REFERENCE, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS AN EMPLOYEE, CONSULTANT OR DIRECTOR FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE WITH OPTIONEE'S RIGHT OR THE COMPANY'S RIGHT TO TERMINATE OPTIONEE'S EMPLOYMENT, CONSULTING RELATIONSHIP OR POSITION AS A DIRECTOR AT ANY TIME, WITH OR WITHOUT CAUSE.

Optionee acknowledges receipt of a copy of the Plan, a copy of which is annexed hereto, represents that Optionee is familiar with the terms and provisions thereof, and hereby accepts this Option for \_\_\_\_\_ shares and with Grant Date of \_\_\_\_\_, subject to all of the terms and provisions thereof. Optionee has reviewed the Plan and this Option in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Option and fully understands all provisions of the Option. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Board or of the Committee upon any questions arising under the Plan. Optionee further agrees to notify the Company upon any change in the residence address indicated below.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Residence Address:

\_\_\_\_\_  
\_\_\_\_\_

Social Security No. \_\_\_\_\_

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF IN THE US. NO SUCH SALE OR DISPOSITION IN THE US MAY BE EFFECTED WITHOUT AN EFFECTIVE US REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

NONSTATUTORY STOCK OPTION AGREEMENT  
(UK NON-TAX QUALIFIED)

DATE OF GRANT: \_\_\_\_\_

VESTING DATE: \_\_\_\_\_

OCEAN POWER TECHNOLOGIES, INC., a New Jersey corporation (the "Company"), on [\_\_\_\_\_] granted to [\_\_\_\_\_] (the "Optionee") an Option to purchase a total of [\_\_\_\_\_] shares of Common Stock (the "Shares"), at the price determined as provided herein, and in all respects subject to the terms, definitions and provisions of the 2001 Stock Plan (the "Plan") adopted by the Company, which is incorporated herein by reference. Unless otherwise defined herein, capitalized terms shall have the same defined meanings as set forth in the Plan.

1. NATURE OF THE OPTION. This Option is a Nonstatutory Stock Option, is not intended to qualify for any special tax benefits to the Optionee and may be granted to Employees, Consultants and Directors of the Company.

2. EXERCISE PRICE. The exercise price is US \$\_\_\_\_\_ for each share of Common Stock, and is not less than eighty five percent (85%) of the Fair Market Value per share of Common Stock on the date of grant, as determined by the Board.

3. EXERCISE OF OPTION. This Option shall be exercisable during its term in accordance with the provisions of Section 10 of the Plan as follows:

(i) Right to Exercise.

(a) Subject to subsections 4(i)(b), (c), (d), (e) and (f) below, shares subject to this Option shall become exercisable based upon the following schedule until all of such shares are exercisable:

Months from Vesting Date	Percentage Exercisable
-----	-----

(b) This Option may not be exercised for a fraction of a Share.

(c) In the event of Optionee's death, disability or termination, the exercisability of this Option is governed by Sections 8, 9, 10 and 12 below, subject to the limitations and conditions contained in subsections 4(i)(d), (e) and (f) hereof.

(d) In no event may this Option be exercised after the date of expiration of the term of this Option as set forth in Section 12 below.

(e) This Option may not be exercised unless and until the Company (or any Subsidiary of the Company) has received from the Optionee a duly completed joint election with the Company, his employer or other company (in the form prescribed by the Board) to the effect that the Optionee will become liable for the whole of any secondary Class 1 national insurance contributions which may arise in connection with this Option.

(f) This Option may not be exercised unless and until the Optionee enters into a joint election under Section 431(1) of the Income Tax (Earnings and Pensions) Act 2003 (in the form prescribed by the Board) for the full disapplication of Chapter 2 of Part 7 of that Act.

(ii) Method of Exercise. This Option shall be exercisable by written notice in the form attached as Exhibit A, which shall state the election to exercise the Option, the number of Shares in respect of which the Option is being exercised, and such other representations and agreements as to the holder's investment intent with respect to such shares of Common Stock as may be required by the Company pursuant to the provisions of the Plan. Such written notice shall be signed by Optionee and shall be delivered in person or by certified mail to the President, Secretary or Chief Financial Officer of the Company or such other agent designated in writing by the Company. The written notice shall be accompanied by payment of the exercise price. This Option shall be deemed to be exercised upon receipt by the Company of such written notice accompanied by the exercise price. Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the stock certificate evidencing such Shares, no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such stock certificate promptly upon exercise of the Option.

No shares will be issued pursuant to the exercise of an Option unless such issuance and such exercise shall comply with all relevant provisions of law and the requirements of any stock exchange upon which the Shares may then be listed. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to the Optionee on the date on which the Option is exercised with respect to such Shares.

#### 4. INVESTMENT REPRESENTATIONS; RESTRICTIONS ON TRANSFER.

(i) By receipt of this Option, by its execution and by its exercise in whole or in part, Optionee represents to the Company the following as they pertain to sales of Shares in the US:

(a) Optionee understands that this Option and any Shares purchased upon its exercise are securities, the issuance of which requires compliance with US federal and US state securities laws.

(b) Optionee is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the securities. Optionee is acquiring these securities for investment for Optionee's own account only and not with a view to, or for resale in the US in connection with, any "distribution" thereof within the meaning of the US Securities Act of 1933, as amended (the "Securities Act").

(c) Optionee acknowledges and understands that the securities constitute "restricted securities" under the Securities Act and cannot be sold in the US unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Optionee further acknowledges and understands that the Company is under no obligation to register the securities in the US. Optionee understands that the certificate evidencing the securities will be imprinted with a legend which prohibits the transfer of the securities in the US unless they are registered or such registration is not required in the opinion of counsel satisfactory to the Company and any other legend required under applicable state securities laws.

(d) Optionee is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the Securities Act, which, in substance, permit limited public resale in the US of "restricted securities" acquired, directly or indirectly, from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of exercise of the Option by the Optionee, such exercise will be exempt from registration under the Securities Act. In the event the Company later becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, ninety (90) days thereafter the securities exempt under Rule 701 may be resold in the US, subject to the satisfaction of certain of the conditions specified by Rule 144, including among other things: (1) the sale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the Securities Exchange Act of 1934); and, in the case of an affiliate, (2) the availability of certain public information about the Company, and the amount of securities being sold during any three-month period not exceeding the limitations specified in Rule 144(e), if applicable. Notwithstanding this paragraph 5(i)(d), the Optionee acknowledges and agrees to the restrictions set forth in paragraph 5(ii) below.

In the event that the Company does not qualify under Rule 701 at the time of exercise of the Option, then the securities may be resold in the US in certain limited circumstances subject to the provisions of Rule 144, which requires among other things: (1) the availability of certain public information about the Company; (2) the resale occurring not earlier than the time period prescribed by Rule 144 after the party has purchased, and made full payment for, within the meaning of Rule 144, the securities to be sold; and (3) in the case of an affiliate, or of a non-affiliate who has held the securities less than the time period prescribed by Rule 144, the sale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the Securities Exchange Act of 1934) and the amount of securities being sold during any three month period not exceeding the specified limitations stated therein, if applicable.

(ii) Optionee agrees, in connection with an underwritten public offering of the Company's securities in the US, (1) not to sell, make short sale of, loan, grant any options for the purchase of, or otherwise dispose of any shares of Common Stock of the Company held by Optionee (other than those shares included in the registration) without the prior written consent of the underwriters managing such underwritten public offering of the Company's securities for a period of one hundred eighty (180) days from the effective date of such registration (the "Lock Up Period"), and (2) further agrees to execute any agreement reflecting clause (1) above, or extending the Lock Up Period, as may be requested by the underwriters at the time of the US public offering.

5. METHOD OF PAYMENT. Payment of the exercise price for each Share shall be paid in full at the time of each exercise of the Option: (i) in cash; (ii) by check; (iii) by cash equivalent; (iv) in the discretion of the Plan Administrator, by delivering to the Company a notice of exercise with an irrevocable direction to a broker-dealer registered under the Exchange Act to sell a sufficient portion of the shares and deliver the sale proceeds directly to the Company to pay the exercise price; (v) in the discretion of the Plan Administrator, through the delivery to the Company of previously-owned shares of Common Stock having an aggregate Fair Market Value equal to the Option exercise price of the shares being purchased pursuant to the exercise of the Option; provided, however, that shares of Common Stock delivered in payment of the exercise price must have been held by the Optionee for at least six (6) months in order to be utilized to pay the exercise price; or (vi) in the discretion of the Plan Administrator, through any combination of the foregoing methods of payment.

6. RESTRICTIONS ON EXERCISE. This Option may not be exercised if the issuance of such Shares upon such exercise or the method of payment of consideration for such shares would constitute a violation of any applicable federal or state securities or other law or regulation. As a condition to the exercise of this option, the Company may require Optionee to make any representation and warranty to the Company as may be required by any applicable law or regulation.

7. TERMINATION OF STATUS AS AN EMPLOYEE, CONSULTANT OR DIRECTOR. Except as set forth below, in the event of termination of Optionee's Continuous Status as an Employee, consulting relationship or Director status with the Company (as the case may be), Optionee may, but only within ninety (90) days after the date of such termination (but in no event later than the date of expiration of the term of this Option as set forth in Section 12 below), exercise this Option to the extent that Optionee was entitled to exercise it at the date of such termination. To the extent that Optionee was not entitled to exercise this Option at the date of such termination, or if Optionee does not exercise this Option within the time specified herein, this Option shall terminate.

8. DISABILITY OF OPTIONEE. Notwithstanding the provisions of Section 8 above, in the event of termination of Optionee's Continuous Status as an Employee, consulting relationship or Director status with the Company (as the case may be) as a result of Optionee's total and permanent disability (as defined in Section 22(e)(3) of the Code), Optionee may, but only within twelve (12) months from the date of Optionee's termination of employment, consulting relationship or Director status (but in no event later than the date of expiration of the term of this Option as set forth in Section 12 below), exercise this Option to the extent Optionee was entitled

to exercise it at the date of such termination. To the extent that Optionee was not entitled to exercise this Option at the date of termination, or if Optionee does not exercise such Option (which Optionee was entitled to exercise) within the time specified herein, this Option shall terminate.

9. DEATH OF OPTIONEE. In the event of the death of Optionee:

(i) during the term of this Option while an Employee, Consultant or Director of the Company (as the case may be) and having been in Continuous Status as an Employee, Consultant or Director since the date of grant of this Option, this Option may be exercised, at any time within twelve (12) months following the date of death (but in no event later than the date of expiration of the term of this Option as set forth in Section 12 below), by Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent the Optionee was entitled to exercise the Option at the date of death; or

(ii) in the event of Optionee's death within thirty (30) days after the termination of Optionee's Continuous Status as an Employee, consulting relationship or Director status (as the case may be) pursuant to Section 8 above, this Option may be exercised, at any time within six (6) months following the date of death (but in no event later than the date of expiration of the term of this Option as set forth in Section 12 below), by Optionee's estate or by a person who acquired the right to exercise this Option by bequest or inheritance, but only to the extent of the right to exercise that had accrued at the date of termination.

10. NONTRANSFERABILITY OF OPTION. This Option may not be transferred in any manner other than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee only by Optionee. The terms of this Option shall be binding upon the executors, administrators, heirs, successors and assigns of Optionee.

11. TERM OF OPTION. Notwithstanding anything herein to the contrary, this Option may not be exercised more than \_\_\_ years from the date of grant of this Option, and may be exercised during such term only in accordance with the Plan and the terms of this Option.

12. TAXATION. No shares will be issued or transferred pursuant to the exercise of this Option unless and until Optionee pays to the Company, or makes provision satisfactory to the Company for payment of, any federal, national, foreign, state or local taxes (including any social security or national insurance contributions) required by law to be withheld in respect of this Option or which Optionee has agreed or elected to bear.

13. TAX CONSEQUENCES. The Optionee understands that any of the foregoing references to taxation are based on tax, national insurance and social security laws and regulations now in effect. The Optionee has reviewed with the Optionee's own tax advisors the federal, state, local and foreign tax, social security and national insurance consequences of the transactions contemplated by this Agreement. The Optionee is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. The Optionee understands that the Optionee (and not the Company) shall be responsible for the Optionee's own tax, social security and national insurance liability that may arise as a result of the

transactions contemplated by this Agreement together with any secondary Class 1 national insurance contributions which Optionee has elected to bear.

14. NO EMPLOYMENT CLAIMS. The rights and obligations of Optionee under the terms of his office or employment with the Company, any past or present Subsidiary of the Company, or associated or affiliate company of the Company shall not be affected by his participation in the Plan or the grant of this Option or any right which he may have to participate therein, and Optionee hereby waives all and any rights to compensation or damages in consequence of the termination of his office or employment with any such company for any reasons whatsoever (whether lawful or unlawful and including, without prejudice to the generality of the foregoing, in circumstances giving rise to a claim for wrongful dismissal) insofar as those rights arise or may arise from his ceasing to have rights under or being entitled to exercise this option in whole or in part as a result of such termination, or from the loss or diminution in value of such rights or entitlements.

15. DATA PROTECTION. Optionee agrees to the receipt, holding and processing of information in connection with the grant, vesting, exercise, taxation and general administration of the Plan and this Option by the Company or any Subsidiary of the Company and any of their advisers or agents and to the transmission or transfer of such information outside of the European Economic Area for this purpose and, in particular, the transmission or transfer of such information to the Company in the USA.

16. THIRD PARTY RIGHTS. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Option and no person other than parties hereto shall have any rights under it nor shall it be enforceable under that Act by any person other than the parties to it.

17. OPTIONEE ACKNOWLEDGEMENT.

(i) Optionee acknowledges and agrees that the vesting of shares pursuant to Section 4 hereof is earned only by continuing service as an employee of the Company or any Subsidiary of the Company (not through the act of being hired, being granted this Option or acquiring shares hereunder). Optionee further acknowledges and agrees that this Option, the Plan which is incorporated herein by reference, the transactions contemplated hereunder and the vesting schedule set forth herein do not constitute an express or implied promise of continued engagement as an employee for the vesting period, for any period, or at all, and shall not interfere with Optionee's right or the company's right to terminate Optionee's employment at any time, with or without cause.

(ii) Optionee acknowledges receipt of a copy of the Plan, a copy of which is annexed hereto, represents that Optionee is familiar with the terms and provisions thereof, and hereby accepts this Option subject to all of the terms and provisions thereof. Optionee has reviewed the Plan and this Option in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Option and fully understands all provisions of the Option. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Board or of the Committee upon any questions arising under the Plan. Optionee further agrees to notify the Company upon any change in his residence address.

IN WITNESS WHEREOF the parties have executed this document as a Deed and the Company has caused this option to be executed under its corporate seal by its duly authorised officer on the following date. This option shall take effect as a deed and sealed instrument.

DATED: \_\_\_\_\_, \_\_\_\_\_

OCEAN POWER TECHNOLOGIES INC.: By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXECUTED as a DEED by OPTIONEE: By: \_\_\_\_\_  
(Signature of Optionee)  
Name: \_\_\_\_\_  
(Printed Name of Optionee)

In the presence of:

Witness signature: \_\_\_\_\_

Witness name: \_\_\_\_\_

Witness address: \_\_\_\_\_

Witness occupation: \_\_\_\_\_

EXHIBIT A

NOTICE OF EXERCISE OF STOCK OPTION

TO: \_\_\_\_\_

FROM: \_\_\_\_\_

DATE: \_\_\_\_\_

RE: Exercise of Stock Option

I hereby exercise my option to purchase \_\_\_\_\_ shares of Common Stock at \$ \_\_\_\_\_ per share (total exercise price of \$ \_\_\_\_\_), effective today's date. This notice is given in accordance with the terms of my Stock Option Agreement dated \_\_\_\_\_. The option price and vested amount is in accordance with Sections 2 and 4 of the Stock Option Agreement.

Attached is a check payable to Ocean Power Technologies, Inc. for the total exercise price of the shares being purchased. The undersigned confirms the representations made in Section 5 of the Stock Option Agreement.

Please prepare the stock certificate in the following name(s):

\_\_\_\_\_  
\_\_\_\_\_

If the stock is to be registered in a name other than your name, please so advise the Company. The Stock Option Agreement requires the Company's approval for registration in a name other than your name and requires certain agreements from any joint owner.

Sincerely,

-----  
(Signature)

-----  
(Print or Type Name)

Letter and consideration  
Received on \_\_\_\_\_, 20\_\_.

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

AMENDED AND RESTATED  
VOTING AND RIGHT OF FIRST REFUSAL AGREEMENT

AMENDED AND RESTATED VOTING AND RIGHT OF FIRST REFUSAL AGREEMENT dated as of April 18, 2005, by and among Ocean Power Technologies, Inc., a New Jersey corporation (the "Company") (as to paragraphs 1.1, 1.7, 1.9, 2.1 and 2.2 only), George W. Taylor ("Dr. Taylor") and Joanne Burns ("Ms. Burns").

## WITNESSETH:

WHEREAS, Dr. Taylor and Ms. Burns were parties to that certain Voting and Right of First Refusal Agreement, dated September 27, 2003 (the "Prior Agreement"), granting Dr. Taylor certain voting and other rights with respect to Ms. Burns' holdings of the Company's common stock, no par value per share (the "Common Stock"); and

WHEREAS, as of the date hereof, Ms. Burns is the record and beneficial owner of 6,425,746 shares of the Common Stock (the "Current Shares");

WHEREAS, pursuant to the Prior Agreement for a limited period of time, Ms. Burns formerly desired to irrevocably constitute and appoint Dr. Taylor as her lawful agent and proxy to vote all of the Current Shares held by Ms. Burns, as well as any other shares resulting from a stock split, reverse stock split, stock dividend, combination, reclassification or conversion of such shares, or any other increase or decrease in the number of such shares effected without the receipt of further consideration by the Company (all such shares, together with the Current Shares, being referred to herein collectively as the "Shares");

WHEREAS, Dr. Taylor and Ms. Burns intend to amend certain provisions of the Prior Agreement to provide for, among other things, an extension of the term of the agreement and to release Ms. Burns from the voting, transfer and all other restrictions provided in the Prior Agreement relating to fifty percent (50%) (3,212,873) of the Shares (the "Released Shares");

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

## 1. Voting and Transfer Rights.

1.1 With respect to fifty percent (50%) (3,212,873) of the Shares (the "Proxy Shares"), Ms. Burns hereby irrevocably constitutes and appoints Dr. Taylor as her true and lawful agent and proxy, with absolute discretion and authority to: (a) represent, vote, give consents and in all other ways to act in her place and stead, on any matter at any meeting of the shareholders (whether regular, general, special or otherwise) of the Company to the same extent as Ms. Burns could if personally present at any such meeting; and (b) express consent or dissent to any and all corporate action in writing without a meeting on behalf of Ms. Burns. Dr. Taylor hereby releases his existing proxy and all other rights and restrictions granted under the Prior Agreement related to the Released Shares. Ms. Burns, or any successor holder, shall be entitled to vote the Released Shares on any matter duly brought before the Company's shareholders and

Ms. Burns shall be free to transfer any or all of the Released Shares at her discretion relating to the proxy and contractual transfer restrictions. The Company shall use commercially reasonable efforts to promptly remove the restrictive legends (relating to the contractual voting rights and transfer restrictions granted to Dr. Taylor) upon all certificates evidencing the Released Shares.

1.2 In furtherance of the foregoing, Ms. Burns hereby acknowledges that she has executed an Irrevocable Proxy, in the form attached hereto as Exhibit A (the "Irrevocable Proxy"), granting to Dr. Taylor an irrevocable proxy pursuant to the provisions of Section 14A:5-19 of the New Jersey Business Corporation Act to vote at meetings, or execute and deliver written consents or otherwise act with respect to, all of the Proxy Shares owned by Ms. Burns as fully, to the same extent, and with the same effect as Ms. Burns might or could do under any applicable laws or regulations governing the rights and powers of shareholders of a New Jersey corporation. Any prior proxy executed by Ms. Burns in favor of Dr. Taylor or any other party is hereby terminated.

1.3 Ms. Burns agrees that Dr. Taylor (a) may vote the Proxy Shares solely in his own discretion and in his own best interests as if he was the sole owner of the Proxy Shares, and (b) shall not have any fiduciary or other duty to Ms. Burns arising solely with respect to the voting of the Proxy Shares. Except as provided herein, Dr. Taylor shall not have any liability whatsoever to Ms. Burns under the terms and provisions of this Agreement or the proxy delivered simultaneously herewith by Ms. Burns.

1.4 The irrevocable proxy provided for in this Agreement is a proxy related to the Proxy Shares only and only of the right of a shareholder to vote for or against, or consent or dissent from, matters submitted to a vote of shareholders, and does not and shall not be deemed to transfer, waive or otherwise limit any other right or powers accruing to the shareholder.

1.5 Ms. Burns hereby acknowledges and affirms that this proxy is coupled with an interest and is irrevocable until April 18, 2008 or sooner termination of this Agreement, at which point, it shall automatically expire without the need for further documentation, although Dr. Taylor agrees to promptly execute and deliver to Ms. Burns any documentation evidencing such termination as reasonably requested by Ms. Burns.

1.6 Ms. Burns hereby represents and warrants that she is the legal and beneficial owner of the Current Shares.

1.7 The parties hereto shall do and perform or cause to be done and performed all such further acts and things and shall execute and deliver all such other agreements, certificates, instruments or documents as shall be necessary or desirable in order to carry out the intent and purposes of this Agreement including, without limitation, the execution of any such documents required to be executed by the Company's stock transfer agent.

1.8 THIS AMENDED AND RESTATED VOTING AND RIGHT OF FIRST REFUSAL AGREEMENT AND THE ATTACHED PROXY SHALL REMAIN IN FULL FORCE AND EFFECT AND BE ENFORCEABLE AGAINST ANY PERMITTED DONEE, TRANSFEREE OR ASSIGNEE OF THE SHARES IN ACCORDANCE WITH THEIR TERMS AS TO THE PROXY SHARES UNTIL APRIL 18, 2008.

1.9 Upon execution of this Agreement, the Company shall be required to imprint or otherwise place, on certificates representing the Proxy Shares the following legend (the "Legend"):

"THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A IRREVOCABLE PROXY AND THE TERMS AND CONDITIONS OF AN AMENDED AND RESTATED VOTING AND RIGHT OF FIRST REFUSAL AGREEMENT (THE "VOTING AGREEMENT") WHICH PLACES CERTAIN RESTRICTIONS ON THE VOTING OF THE SHARES REPRESENTED HEREBY. ANY PERSON ACCEPTING ANY INTEREST IN SUCH SHARES SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF SUCH PROXY AND VOTING AGREEMENT. A COPY OF SUCH VOTING AGREEMENT WILL BE FURNISHED TO THE RECORD HOLDER OF THIS CERTIFICATE WITHOUT CHARGE UPON WRITTEN REQUEST TO THE COMPANY AT ITS PRINCIPAL PLACE OF BUSINESS."

The Company agrees that, while Ms. Burns is bound by the terms of this Agreement, it will not remove, and will not permit to be removed, the Legend from any certificate representing Ms. Burns' Proxy Shares and will place or cause to be placed the Legend on any new certificate issued to represent the Proxy Shares theretofore represented by a certificate carrying the Legend. Once Ms. Burns is no longer bound by this Agreement, the Company shall reasonably promptly remove the restrictive legend relating to the contractual restrictions set forth herein from Ms. Burns' certificate(s) representing the Proxy Shares. The Company will reasonably promptly remove the existing legend relating to the contractual restrictions from the Released Shares.

## 2. Restrictions on Transfer.

2.1 Any sale, transfer or other disposition, whether voluntarily or by operation of law ("Transfer") of any of the Proxy Shares by Ms. Burns, other than according to the terms of this Agreement, shall be void and transfer no right, title, or interest in or to any of such Proxy Shares to the purported transferee.

2.2 An original copy of this Agreement, duly executed by each of the parties hereto, shall be delivered to the Secretary of the Company and maintained at the principal executive office of the Company and made available for inspection by any person requesting it.

3. Offer of Sale: Notice of Proposed Sale. If Ms. Burns desires to Transfer any of her Proxy Shares, or any interest in such Proxy Shares, Ms. Burns shall first deliver written notice of her desire to do so (the "Notice") to Dr. Taylor and the Company, in the manner prescribed in Section 7.4 of this Agreement. The Notice must specify: (a) the name and address of the party to which Ms. Burns proposes to sell or otherwise dispose of the Proxy Shares or an interest in the Proxy Shares (the "Offeror"), (b) the number of Proxy Shares Ms. Burns proposes to sell, transfer or otherwise dispose of (the "Offered Shares"), (c) the consideration per Share to be delivered to Ms. Burns for the proposed sale, transfer or disposition, and (d) all other material terms and conditions of the proposed transaction. For purposes of clarity, Ms. Burns shall be entitled to transfer the Released Shares free of restriction by this Agreement or any predecessor agreement between the parties, subject to applicable securities and other laws.

4. Dr. Taylor's Option to Purchase.

4.1 Dr. Taylor shall have the first option to purchase all or any part of the Offered Shares for the consideration per share and on the terms and conditions specified in the Notice. Dr. Taylor must exercise such option, no later than 30 days (the "Option Period") after such Notice is deemed under Section 7.4 hereof to have been delivered to it, by written notice to Ms. Burns.

4.2 In the event Dr. Taylor duly exercises his option to purchase all or part of the Offered Shares, the closing of such purchase shall take place at the offices of the Company on the date five days after the expiration of the Option Period.

4.3 To the extent that the consideration proposed to be paid by the Offeror for the Offered Shares consists of property other than cash or a promissory note, the consideration required to be paid by Dr. Taylor under Sections 3 and 4 hereof may consist of cash equal to the value of such property, as determined in good faith by agreement of Ms. Burns and Dr. Taylor acquiring such Offered Shares.

5. Failure to Fully Exercise Option. If Dr. Taylor does not elect to purchase the full number of Offered Shares, Ms. Burns shall be entitled to sell to the Offeror, according to the terms set forth in the Notice, that number of her own Shares which equals the difference between the number of Shares desired to be purchased by the Offeror and the number of Shares Dr. Taylor purchases pursuant to Section 4. If Ms. Burns wishes to Transfer any such Shares at a price per Share which differs from that set forth in the Notice, upon terms different from those previously offered to Dr. Taylor, or more than 60 days after the expiration of the Option Period, then, as a condition precedent to such transaction, such Shares must first be offered to Dr. Taylor on the same terms and conditions as given the Offeror, and in accordance with the procedures and time periods set forth above.

6. Termination and Exceptions.

6.1 This Agreement and all rights of Dr. Taylor and restrictions upon Ms. Burns hereunder and the Proxy Shares shall terminate on the earlier of the following: (a) April 18, 2008; (b) the termination thereof by the written consent of Ms. Burns and Dr. Taylor; (c) the death of Dr. Taylor; (d) the permanent mental incapacity of Dr. Taylor (determined by the consensus of three qualified physicians, one of whom shall be selected by Dr. Taylor's family, one of whom shall be selected by Ms. Burns and the third physician shall be selected by the other two physicians); (e) the consummation of an initial public offering by the Company of its Common Stock pursuant to an effective Registration Statement filed with the U.S. Securities and Exchange Commission with gross proceeds to the Company of at least \$25 million; (f) the consummation of the sale of all, or substantially all, of the assets or stock of the Company; and (g) the sale by Dr. Taylor to an unaffiliated third party of more than 3,212,873 shares of the Company's Common Stock, adjusted for stock splits and similar events.

6.2 Transfer Restriction Exception. Notwithstanding Section 3 hereof, during the term of this Agreement, in the event Dr. Taylor sells more than 2,000,000 shares (as adjusted for stock splits and similar events) of his current holdings (the "Threshold Amount"), Ms. Burns

shall be entitled to sell one share for each share sold by Dr. Taylor in excess of the Threshold Amount free of the transfer restrictions set forth herein. Dr. Taylor shall provide Ms. Burns with reasonably prompt notice of each sale he makes.

#### 7. General.

7.1 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

7.2 Specific Performance. In addition to any and all other remedies that may be available at law in the event of any breach of this Agreement, each party shall be entitled to specific performance of the agreements and obligations of the Company, Ms. Burns and Dr. Taylor hereunder and to such other injunctive or other equitable relief as may be granted by a court of competent jurisdiction.

7.3 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New Jersey (without reference to the conflicts of law provisions thereof).

7.4 Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed delivered (i) three business days after being sent by registered or certified mail, return receipt requested, postage prepaid or (ii) one business day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, in each case to the intended recipient as set forth below:

(a) If to the Company, at 1590 Reed Road, Pennington, New Jersey 08534, Attention: President, or at such other address as may have been furnished in writing by the Company to the other parties hereto, with a copy to Morgan, Lewis & Bockius LLP, 502 Carnegie Center, Princeton, New Jersey 08540, Attention: Andrew Gilbert, Esq.;

(b) If to Dr. Taylor, at c/o Ocean Power Technologies, Inc. 1590 Reed Road, Pennington, New Jersey 08534, or at such other address as may have been furnished in writing by Dr. Taylor to the other parties hereto; or

(c) If to Ms. Burns, at 222 Jackson Street, Trenton, New Jersey 08611, or at such other address as may have been furnished in writing by Ms. Burns to the other parties hereto, with a copy to Mason, Griffin & Pierson, PC, 101 Poor Farm Road, Princeton, New Jersey 08540, Attention: Shawn M. Neufeld, Esq.

Any party may give any notice, request, consent or other communication under this Agreement using any other means (including, without limitation, personal delivery, messenger service, telecopy, first class mail or electronic mail), but no such notice, request, consent or other communication shall be deemed to have been duly given unless and until it is actually received by the party for whom it is intended. Any party may change the address to which notices, requests, consents or other communications hereunder are to be delivered by giving the other parties notice in the manner set forth in this Section.

7.5 Complete Agreement; Termination of Prior Agreement. This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter, including without limitation, the Prior Agreement which is expressly superseded by this Agreement and is of no further force and effect.

7.6 Amendments and Waivers. This Agreement may only be amended or terminated and the observance of any term of this Agreement may be waived with respect to all parties to this Agreement (either generally or in a particular instance and either retroactively or prospectively), with the written consent of the Company, Dr. Taylor, and Ms. Burns. No waivers of or exceptions to any term, condition or provision of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

7.7 Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same document. This Agreement may be executed by facsimile signatures.

7.8 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their successors and assigns and shall inure to the benefit of the estate, heirs, executors, administrators and personal representatives of Ms. Burns.

7.9 Additional Parties. Persons or entities that, after the date hereof, purchase Shares or are transferred Shares pursuant to a valid Transfer hereunder shall become parties to this Agreement by executing and delivering a counterpart signature page and execute the attached Irrevocable Proxy, and shall be deemed to be subject to the voting restrictions and transfer restrictions set forth in Sections 1 and 2 hereunder.

7.10 Representations. Dr. Taylor represents that he understands and acknowledges that the shares of Common Stock of the Company which may be distributed to him, pursuant to this Agreement have not been registered under the Securities Act of 1933(the "Act") or any other act and have been issued by reason of specific exemption for the Act, and various state securities laws, which exemptions depend upon, among other things, the bona fide nature of the undersigned's representations as expressed herein.

The undersigned represents that he understands and acknowledges that the shares of common stock of the Company must be held indefinitely unless they are subsequently registered under the Act or any exemption from said registration is available, and that there is not a market for these shares and that none may be developed in the future. The undersigned represents that he is receiving or acquiring the shares of common stock of the Company for investment for its account only, not with a view to, or for resale in connection with a "distribution" within the meaning of the Act.

The undersigned represents that the certificate representing the shares of common stock of the Company shall be stamped or otherwise imprinted with a legend in the following form, in addition to any legend required under applicable state law:

"These securities have not been registered under the Securities Act of 1933, or any state securities laws. They may not be sold or offered for sale in the absence of an effective registration statement as to the securities under said Act and any applicable state securities laws or an opinion of counsel satisfactory to the Company that such registration is not required."

\* \* \* \* \*

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Voting and Right of First Refusal Agreement to be executed as of the date first above written.

OCEAN POWER TECHNOLOGIES, INC.

By: /s/ Charles F. Dunleavy

-----  
Name: Charles F. Dunleavy  
Title: C.F.O.  
[as to paragraphs 1.1, 1.7, 1.9,  
2.1 and 2.2 only]

/s/ George W. Taylor

-----  
George W. Taylor

/s/ Joanne Burns

-----  
Joanne Burns

EXHIBIT A

IRREVOCABLE PROXY

The undersigned shareholder of Ocean Power Technologies, Inc., a New Jersey corporation (the "Company"), hereby irrevocably constitutes and appoints George W. Taylor ("Dr. Taylor") her true and lawful agent and proxy, with absolute discretion and authority to: (a) represent, vote, give consents and in all other ways to act in her place and stead, on any matter at any meeting of the shareholders (whether regular, general, special or otherwise) of the Company to the same extent as the undersigned could if personally present at any such meeting, and (b) express consent or dissent to any and all corporate action in writing without a meeting on behalf of the undersigned, with respect to all shares of the Common Stock of the Company which the undersigned is now entitled to vote.

This Irrevocable Proxy is issued under and subject to the terms of an Amended and Restated Voting and Right of First Refusal Agreement dated as of the date hereof entered into by and among the Company, Dr. Taylor and Joanne Burns, and shall terminate upon the earlier of: (a) April 18, 2008; (b) the termination thereof by the written consent of Ms. Burns and Dr. Taylor; (c) the death of Dr. Taylor; (d) the permanent mental incapacity of Dr. Taylor (determined by the consensus of three qualified physicians, one of whom shall be selected by Dr. Taylor's family, one of whom shall be selected by Ms. Burns and the third physician shall be selected by the other two physicians); (e) the consummation of an initial public offering by the Company of its Common Stock pursuant to an effective Registration Statement filed with the U.S. Securities and Exchange Commission with gross proceeds to the Company of at least \$25 million; (f) the consummation of the sale of all, or substantially all, of the assets or stock of the Company; and (g) the sale by Dr. Taylor to an unaffiliated third party of more than 3,212,873 shares of the Company's Common Stock, adjusted for stock splits and similar events. The undersigned hereby acknowledges that this proxy shall be irrevocable and is coupled with an interest.

IN WITNESS WHEREOF, the parties hereto have caused this Irrevocable Proxy to be executed as of the 18th day of April, 2005.

/s/ Joanne Burns

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Joanne Burns

Number of Proxy Shares of Common Stock  
Held by Ms. Burns:  
3,212,873

AGREEMENT TO REFINANCE

THIS AGREEMENT made this 14th day of November, 1993, by and between Joseph R. Burns, Michael Y. Epstein and George W. Taylor, all residents of New Jersey, (hereinafter referred to as "Patent Holders") and Ocean Power Technologies, Inc., a New Jersey Corporation, located at P.O. Box 211, Princeton, New Jersey, 08542 (hereinafter referred to as "OPT").

WITNESSETH:

WHEREAS OPT and the Patent Holders previously agreed to the sale of U.S. Patent #4-404-409 (the "Patent") by the Patent Holders to OPT for \$500,000, to be paid in full before June 30, 1986 from the proceeds of certain financings accomplished by OPT;

WHEREAS that original agreement for payment was deferred by subsequent Assignment Agreement Modifications dated June 1, 1985 and January 20, 1989;

WHEREAS no payments nor any interest have, to the date set forth above, ever been made by OPT to the Patent Holders for U.S. patent #4-404-490;

NOW, THEREFORE, it is covenanted and mutually agreed by and between the parties as follows:

SECTION 1

Refinancing. Patent Holders and OPT hereby agree to refinance the payment for the Patent, giving recognition to the original sale price of \$500,000 and the delay in the performance by OPT under the terms of the original sale agreement, and that no rights or privileges are retained in the U.S. patent #4-404-490, except as provided herein below, by the Patent Holders.

SECTION 2

Terms of Payment. The terms and conditions of payment by OPT for U.S. patent #4-404-490 are as follows:

- 2.01 The purchase price is \$500,000.
- 2.02 A Note of \$25,000 will be issued by OPT to each of the three Patent Holders (the "Notes"), effective with the signing of this document by the Patent Holders and OPT Treasurer, in the form attached hereto. The terms of these Notes will provide for interest at 8% per annum, compounded annually. Interest and principal shall be payable upon receipt by OPT of its next round of equity financing in excess of \$1,499,900.
- 2.03 The next \$425,000 of original purchase price shall be paid by OPT based upon royalty payments made by OPT to the Patent Holders. The base of such royalties will be revenues earned by and paid to OPT for sales of products, licenses and development contracts which are based on the piezoelectric generation of power. The amount of the royalty paid out will equal six percent (6%) of paid revenues from licenses sold and four percent (4%) of paid revenues from product sales and development contracts.
- 2.04 Up to an additional \$500,000 of royalty payments will be made by OPT to the Patent Holders on the same royalty base as noted in 2.03 above. Such additional payments are in recognition of the time value of the purchase price which heretofore has not been paid within the time frame originally anticipated.
- 2.05 Under the terms of this refinancing agreement, a maximum amount of \$1,000,000 (excluding interest on the Notes set forth in 2.02 above) will be paid to the Patent Holders in connection with the sale and refinancing of patent #4-404-490.
- 2.06 Patent Holders understand that all payments provided hereunder are contingent upon the realization of:
- (a) An equity financing in excess of \$1,499,900, as referenced in 2.02 above, and
  - (b) The realization of paid revenues by OPT, as referenced in 2.03 and 2.04 above.

### SECTION 3

Controlling Law. This agreement shall be controlled and enforced solely in accordance with the laws of the State of New Jersey and shall be governed by the laws of said State.

SECTION 4

Amendment. This Agreement may be amended, modified, superseded or supplemented only by an instrument in writing executed and delivered by each of the parties hereto, which instrument when so executed and delivered shall thereupon become a part of this Agreement and the provisions thereof shall be given affect as if contained in this Agreement as of the date hereof.

SECTION 5

Waiver. The representations, warranties, covenants or conditions set forth in this Agreement may be waived only by a written instrument executed by the parties who are waiving. The failure of any party at any time or times to require performance of any provision herein shall in no matter affect the right of such party at a later time to enforce the same. No waiver by any party of any condition, or breach of any terms, covenant, agreement, any condition, or breach of any terms, covenant, agreement, representation or warranty contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of any other condition or of the breach of any other term, covenant, agreement, representation or warranty contained in this Agreement.

SECTION 6

Entire Agreement. This Agreement, together with the documents and instruments referred to herein, sets forth the entire agreement and understanding of the parties hereto in respect of the transaction contemplated hereby, and supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof.

SECTION 7

Section Headings. All section headings are inserted for convenience only and shall not control or effect the meaning or construction of any provision of this Agreement.

SECTION 8

Binding Effect. All the terms and conditions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the legal representatives, successors and assigns of the parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set this hands and seals or caused this instrument to be signed by their proper corporate officers and their proper corporate seals to be hereto affixed the day and year first above written.

WITNESS: OCEAN POWER TECHNOLOGIES, INC.

/s/ Charles F. Dunleavy

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Charles F. Dunleavy, Treasurer

WITNESS:

/s/ Joseph R. Burns

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Joseph R. Burns, Patent Holder

WITNESS:

/s/ Michael Y. Epstein

-----  
Michael Y. Epstein, Patent Holder

WITNESS:

/s/ George W. Taylor

-----  
George W. Taylor, Patent Holder

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the "Agreement"), made this 23 day of October 2003 (the "Effective Date"), is entered into by Ocean Power Technologies, Inc., a New Jersey corporation with a principal place of business at 1590 Reed Road, Pennington, New Jersey 08534 (the "Company"), and Charles F. Dunleavy, an individual with his primary residence at 3 Waterford Place, Newton, Pennsylvania (the "Employee").

WHEREAS, the Company and the Employee entered into an Employment Agreement on May 25, 2001 (the "Original Agreement"); and

WHEREAS, the Company and the Employee desire to amend and restate and supersede the Original Agreement in its entirety; and

WHEREAS, the Company desires to continue the employment of the Employee, and the Employee desires to be employed by the Company pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Term of Employment. The Company hereby agrees to employ the Employee, and the Employee hereby agrees to accept employment with the Company pursuant to the terms and conditions of this Agreement, for the period commencing on the Effective Date and expiring on the day before the first anniversary thereof, unless sooner terminated (the "Initial Term"). On the expiration of the Initial Term and on each anniversary thereof, the Agreement shall renew automatically for additional one-year periods (the "Renewal Term"), unless sooner terminated or unless either party notifies the other party in writing of his or its intentions not to renew this Agreement not less than sixty (60) days prior to the expiration of the then current term ("Notice

of Nonrenewal"). A Notice of Nonrenewal by the Company of its intent not to renew this Agreement shall constitute "Good Reason" for termination of this Agreement by the Employee, pursuant to Section 4(d) hereof. Upon a termination by either party for any reason and at any time, the payments or other benefits stated in Section 5 hereof shall be the exclusive remedy available to the Employee under this Agreement.

2. Position and Duties. The Employee shall serve as Senior Vice President and Chief Financial Officer of the Company. The Employee shall be subject to the supervision of, and shall have such authority and duties to the Company or its subsidiaries or affiliates, as are reasonably delegated to him, by the Board of Directors of the Company (the "Board") and such duties and responsibilities common to Senior Vice Presidents and Chief Financial Officers of companies of like size and purpose. The Employee shall devote his full working time, energy and skill (reasonable absences for vacations and illness excepted) to the business of the Company during the term of this Agreement as is necessary to perform the Employee's duties faithfully, competently and diligently. The Employee agrees to abide by the rules, regulations, instructions, personnel practices and policies of the Company and any Company affiliate or subsidiary for or with which the Employee conducts any business, as they may be changed, amended or adopted from time to time. Upon approval by the Board, which approval shall not be unreasonably withheld, the Employee may devote reasonable periods of time to serving on the Boards of Directors of other companies or organizations, so long as such service does not unreasonably interfere with his duties to the Company and does not constitute a conflict of the Company's interests.

3. Compensation. During the term of this Agreement, the Employee shall receive, for all services rendered to the Company hereunder, the following salary, compensation and benefits (hereinafter referred to as "Compensation"):

(a) Base Salary. Commencing on the Effective Date, the Employee shall be paid a base salary at the annualized rate of One Hundred Seventy Thousand Dollars (\$170,000.00). Base salary will be payable in accordance with the Company's normal payroll procedures. The Employee's base salary shall be reviewed on an annual basis, and positive adjustments may be made by the Compensation Committee of the Board (the "Compensation Committee") in its sole discretion. The base salary shall not be subject to decrease without the written consent of the Employee.

(b) Bonuses. The Employee may be eligible for bonuses pursuant to any bonus program designed for employees of the Company. Such bonuses, if any, shall be at the sole discretion of the Compensation Committee.

(c) Incentive Compensation. The Employee may be eligible for incentive compensation, including stock options, pursuant to any incentive compensation program designed for employees of the Company. Such incentive compensation, if any, shall be determined by the Compensation Committee in the exercise of its sole discretion.

(d) Benefits. The Employee shall be eligible to participate in all benefits programs, if any, that the Company establishes and makes available to its employees and executives, in accordance with and subject to the terms and conditions of such benefits programs. Such programs may include health and dental insurance plans, long-term disability insurance plans, life insurance plans, and other benefits made available to the Company's employees from time to time.

(e) Reimbursement of Expenses. The Company shall reimburse the Employee for all reasonable and necessary business-related expenses incurred or paid by the Employee in the performance of the Employee's duties, responsibilities or services under this Agreement, provided that the Employee provides documentation, receipts, vouchers, and/or such other supporting information as the Company may request.

(f) Deductions. The Company shall deduct and withhold from the Employee's compensation all necessary or required taxes, including, but not limited to, social security, withholding and otherwise, and any other applicable amounts required by law or any taxing authority, as well as such other deductions properly authorized in writing by the Employee.

(g) Absences. The Employee shall be entitled to a minimum of 20 days of paid vacation time per calendar year, as well as sick leave, and such other absences in accordance with and subject to the Company's current policies and procedures regarding such paid absences. Such policies may be amended, modified, or rescinded in the Company's sole discretion.

4. Termination. The employment of the Employee by the Company shall terminate upon the occurrence of any of the following:

(a) The Company may terminate the Employee's employment hereunder for Cause immediately and with prompt notice to the Employee, which Cause shall be determined in good faith by the Board. The Employee shall be provided a reasonable opportunity to be heard by the Board, before his employment is terminated for Cause hereunder. "Cause" for termination shall include the following conduct of the Employee:

(i) Material breach of any provision of this Agreement by the Employee causing a material detrimental effect on the Company;

(ii) Material misconduct as an employee which has a material detrimental effect on the Company, including: misappropriating any funds or property of the Company, or attempting to willfully obtain any substantial personal profit from any transaction in which the Employee has an interest which is adverse to the interests of the Company;

(iii) Gross negligence or knowing refusal to perform the reasonable duties assigned to the Employee under or pursuant to this Agreement;

(iv) Conviction of a felony or plea of no lo contendre to a felony;

(v) Acts of dishonesty or moral turpitude by the Employee that are materially detrimental to the Company; or

(vi) Alcohol or drug use which impairs the Employee's ability to perform his duties hereunder.

(b) Immediately upon the death of the Employee;

(c) Thirty days after the Disability of the Employee. As used in this Agreement, the term "Disability" shall mean the inability of the Employee with reasonable accommodation as may be required by State or Federal law, due to a physical or mental disability, for a period of ninety (90) days, whether or not consecutive, during any 360-day period to perform the services contemplated under this Agreement. A determination of Disability shall be made by a physician satisfactory to both the Employee and the Company, provided that if the Employee and the Company do not agree on a physician, the Employee and

the Company shall each select a physician and these two together shall select a third physician, whose determination as to Disability shall be binding on all parties;

(d) The Employee may terminate his employment hereunder for "Good Reason" if, after thirty (30) days written notice, the Company fails to cure the following conduct:

(i) Material breach of any provision of this Agreement by the Company;

(ii) Failure to maintain the Employee in a position commensurate with that referred to in Section 2 of this Agreement; or

(iii) The assignment to the Employee of any duties inconsistent with the Employee's position, authority, duties or responsibilities as contemplated by Section 2 of this Agreement;

(iv) Relocation of the Employee's main office more than 50 miles from Pennington, New Jersey;

(v) Material reduction in the Employee's base salary; or

(vi) A Notice of Nonrenewal from the Company, informing the employee of the Company's intent not to renew the Initial Term or any Renewal Term.

(e) At the election of the Employee, without Good Reason, upon not less than thirty (30) days prior written notice of termination to the Company;

(f) At the election of the Company, without Cause, immediately upon thirty (30) days prior written notice of termination to the Employee.

5. Effect of Termination. Upon termination of this Agreement at any time, the payments and remedies stated in this Section 5 shall be exclusive and Employee shall not be eligible for any further payment or other benefits from the Company.

(a) Termination for Cause or at Election of the Employee without Good Reason. In the event the Employee's employment is terminated for Cause pursuant to Section 4(a), or at the election of the Employee pursuant to Section 4(e), the Company shall pay to the Employee the base salary and benefits due and owing to him under Section 3 through the last day of the Employee's actual employment by the Company.

(b) Termination for Death or Disability. If the Employee's employment is terminated by death or because of disability pursuant to Section 4(b) or 4(c), the Company shall pay to the estate of the Employee or to the Employee, as the case may be, the base salary and benefits which would otherwise be payable to the Employee through the end of the month in which the termination of employment because of death or disability occurs. In addition, the Company will make a one-time payment of \$10,000.00 to the estate of the Employee or to the Employee, as the case may be. If the payment is made due to disability, the Employee will be required to sign a release of claims as in Section 5(c) prior to receiving the payment under this section.

(c) Termination by the Company Without Cause; Termination by the Employee for Good Reason. If the Employee's employment is terminated without Cause

pursuant to Section 4(f) or if the Employee terminates his own employment for Good Reason pursuant to Section 4(d), and if, and only if, the Employee first executes a general release drafted by and satisfactory to counsel for the Company releasing the Company, along with its directors, officers, employees, agents and affiliate company's from any and all liability to the Employee (the "Release Agreement"), the Company shall pay and provide to the Employee, or to his estate if he were to die after termination and prior to such payment: (i) the Employee's then current base salary, as severance pay, for a period equal to the Severance Period, as defined below, to be paid, at the Employee's sole discretion, either in one lump sum payment within thirty (30) days of termination or monthly for the entire Severance Period, in accordance with the Company's regular payroll practices; and (ii) continuation of the Employee's health, medical and long term disability insurance during the Severance Period, as defined below, at the Company's expense, until such time as the Employee becomes eligible for such coverage through a subsequent employer and only to the extent permitted pursuant to the Company's applicable benefit insurance policies. The payments pursuant to Section 5(c)(i) shall be paid regardless of whether the Employee seeks or obtains any employment subsequent to his employment with the Company. In addition, regardless of whether the Employee signs the Release Agreement, the Company shall pay to the Employee the salary and benefits due and owing to him under Section 3 through the last day of the Employee's actual employment by the Company. The term "Severance Period" as used herein shall mean the following: (i) during the first year of this agreement, the balance of time remaining in the Initial Term plus an additional twelve (12) months; and (ii) after the first year of this agreement, twelve (12) months.

(d) Survival. The provisions of Sections 6, 7 and 8 of this Agreement shall survive the termination of this Agreement.

6. Restrictive Covenants.

(a) During the term of this Agreement and for a period of one (1) year after the termination or expiration thereof, the Employee will not directly or indirectly:

(i) as an individual proprietor, partner, stockholder, officer, employee, director, joint venturer, investor, lender, or in any other capacity whatsoever (other than as the holder of not more than one percent (1%) of the total outstanding stock of a publicly held company), engage in the business of developing, producing, marketing or selling services of the kind or type developed or being developed, produced, marketed or sold by the Company while the Employee was employed by the Company; or

(ii) hire, engage, recruit, solicit or induce, or attempt to induce, any current or prospective employee, officer, director, contractor or other business associate of the Company to terminate their employment with, or otherwise cease their business relationship with, the Company; or

(iii) solicit, divert or take away, or attempt to divert or to take away, the business or patronage of any of the clients, customers or accounts, or prospective clients, customers or accounts, of the Company which were contacted, solicited or served by the Employee while employed by the Company.

(iv) For the purposes of these restrictions, the word "prospective" shall apply to any individual or entity with which the Company has had substantive contact within the twelve month period prior to any potential hiring, solicitation, recruiting, diversion or otherwise. In addition a "current" employee shall include

any employee who was employed by the Company within the three (3) months preceding any potential solicitation or hiring.

(b) If any restriction set forth in this Section 6 is found by any court of competent jurisdiction to be unenforceable because it extends for too long a period of time or over too great a range of activities or in too broad a geographic area, it shall be interpreted to extend only over the maximum period of time, range of activities or geographic area as to which it may be enforceable.

(c) The restrictions contained in Sections 6, 7 and 8 are necessary for the protection of the business and goodwill of the Company and are considered by the Employee to be reasonable for such purpose. The Employee agrees that any breach of Sections 6, 7 or 8 will cause the Company substantial and irrevocable damage and therefore, in the event of any such breach, in addition to such other remedies which may be available, the Company shall have the right to seek specific performance and injunctive relief in any court of competent jurisdiction, regardless of any statement to the contrary herein.

#### 7. Proprietary Information.

(a) The Employee agrees that all information and know-how, whether or not in writing, of a private, secret or confidential nature concerning the Company's business or financial affairs (collectively, "Proprietary Information") is and shall be the exclusive property of the Company. By way of illustration, but not limitation, Proprietary Information may include inventions, products, processes, methods, techniques, formulas, compositions, compounds, projects, developments, plans, research data, clinical data, financial data, personnel data, computer programs, and customer and supplier lists. The Employee will not disclose any Proprietary Information to others outside the Company or use the same for any unauthorized

purposes without written approval by an officer of the Company, either during or after his employment, unless and until such Proprietary Information has become public knowledge without fault by the Employee.

(b) The Employee agrees that all files, letters, memoranda, reports, records, data, sketches, drawings, laboratory notebooks, program listings, or other written, photographic, or other tangible material containing Proprietary Information, whether created by the Employee or others, which shall come into his custody or possession, shall be and are the exclusive property of the Company to be used by the Employee only in the performance of his duties for the Company.

(c) The Employee agrees that his obligation not to disclose or use information, know-how and records of the types set forth in paragraphs (a) and (b) above, also extends to such types of information, know-how, records and tangible property of customers of the Company or suppliers to the Company or other third parties who may have disclosed or entrusted the same to the Company or to the Employee in the course of the Company's business.

(d) The Employee agrees that, immediately upon the termination of his employment with the Company for any reason, he shall return all Proprietary Information and other property of the Company that is in his possession or control.

#### 8. Developments.

(a) The Employee will make full and prompt disclosure to the Company of all inventions, improvements, discoveries, methods, developments, software, and works of authorship, whether patentable or not, which are created, made, conceived or reduced to practice by the Employee or under his direction or jointly with others during his employment by the

Company, whether or not during normal working hours or on the premises of the Company (all of which are collectively referred to as "Developments").

(b) The Employee agrees to assign and does hereby assign to the Company (or any person or entity designated by the Company) all his right, title and interest in and to all Developments and all related patents, patent applications, copyrights, copyright applications, design rights (registered or unregistered) and all rights of a similar or equivalent nature in any jurisdiction. However, this Section 8(b) shall not apply to Developments which do not relate to the present or planned business or research and development of the Company and which are made and conceived by the Employee not during normal working hours, not on the Company's premises and not using the Company's tools, devices, equipment or Proprietary Information.

(c) The Employee agrees to cooperate fully with the Company, both during and after his employment with the Company, with respect to the procurement, maintenance and enforcement of copyrights and patents (both in the United States and foreign countries) relating to Developments. The Employee shall sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignment of priority rights, and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Development. The Employee unconditionally and irrevocably waives all moral rights he may have in relation to the Developments.

9. Other Agreements. The Employee hereby represents that he is not bound by the terms of any agreement with any previous employer or other party to refrain from using or disclosing any trade secret or confidential or proprietary information in the course of his employment with the Company or to refrain from competing, directly or indirectly, with the business of such previous employer or any other party. The Employee further represents that his

performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by him in confidence or in trust prior to his employment with the Company or otherwise violate any agreement or other obligation that the Employee may have to any other party.

10. Indemnification Agreement and Invention Assignment Confidentiality Agreement. Nothing in this Agreement is intended to supercede: (i) the Indemnification Agreement signed by the Employee on March 24, 1995; or (ii) any stock option agreement between the Employee and the Company. The parties intend to provide the Employee with the greatest level of protection under each of the agreements. To the extent that the Employee is eligible for severance pay or other post termination benefits pursuant to more than one agreement, the provisions of this agreement shall supercede all other agreements (post termination treatment of equity positions shall not be considered "severance" for the purpose of this Section). Nothing herein is intended to supercede any rights the Company may have pursuant to any invention assignment, confidentiality, non-competition or non-solicitation agreement between the Employee and the Company and it is intended that the Company shall receive the greatest protection provided pursuant to any such agreement, this agreement or common law.

11. Resolution of Disputes. Any disputes arising under or in connection with this Agreement or otherwise arising pursuant to the Employee's employment with the Company shall be resolved by binding arbitration to be held in the State of New Jersey, in accordance with the applicable arbitration rules of the American Arbitration Association before a panel of three arbitrators. Judgment upon the award rendered by the arbitrator(s) may be entered in any court

having jurisdiction thereof. Each party shall bear his or its own costs of the arbitration or, if applicable, litigation; however, the prevailing party shall be reimbursed for his or its costs and expenses, including attorneys' fees to the extent the dispute involves rights arising under a statute providing costs and fees to a prevailing party and to the extent such prevailing party has proven a material breach of this Agreement by the other party. Nothing in this Section shall in any way limit the Company's right to seek injunctive or other equitable relief in any court of competent jurisdiction, to enforce the provisions of Sections 6, 7 and 8 hereof. Each party agrees to waive his or its right to a trial by jury on any claims arising out of their relationship and agree that the arbitrators shall be empowered to award damages to the same extent a court of competent jurisdiction would have had.

12. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon personal delivery or upon deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to the other party at the address shown above, or at such other address or addresses as either party shall designate to the other in accordance with this Section 12.

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement, including but not limited to the Original Agreement and the Change in Control Severance Pay Agreement signed by the Employee on or about January 12, 2000, except as stated to the contrary in Section 10.

14. Amendment. This Agreement may be amended or modified only by a writing executed by both the Employee and a representative of the Company acting on express authority from the Board.

15. Governing Law. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of New Jersey.

16. Successors and Assigns; Binding Agreement.

(a) This Agreement shall be binding upon and inure to the benefit of both parties and their respective successors and assigns, including any corporation with which or into which the Company may be merged or which may succeed to its assets or business, provided however, that the obligations of the Employee are personal and shall not be assigned by him. The Company specifically reserves the right to assign its rights under this Agreement, including but limited to, any covenants by the Employee contained in Sections 6, 7 and 8 hereof.

(b) The Employer will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Employer, to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Employer would be required to perform it if no such succession had taken place, unless such assumption occurs automatically by operation of law.

17. Acknowledgement. The Employee states and represents that he has had an opportunity to fully discuss and review the terms of this Agreement with an attorney. The Employee further states and represents that he has carefully read this Agreement, understands the contents herein, freely and voluntarily assents to all of the terms and conditions hereof, and signs his name as his own free act.

18. No Waiver. No delay or omission by the Company in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Company on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.

19. Captions. The captions of the Sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any Section of this Agreement.

20. Severability. In case any provision of this Agreement shall be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth above.

CHARLES F. DUNLEAVY

OCEAN POWER TECHNOLOGIES, INC.

/s/ Charles F. Dunleavy

By: /s/ Eric A. Ash

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Title: Chairman

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## AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the "Agreement"), made this 23 day of October 2003 (the "Effective Date"), is entered into by Ocean Power Technologies, Inc., a New Jersey corporation with a principal place of business at 1590 Reed Road, Pennington, New Jersey 08534 (the "Company"), and George W. Taylor, an individual with his primary residence at 325 Ridge Blvd., Princeton, New Jersey (the "Employee").

WHEREAS, the Company and the Employee entered into an Employment Agreement on May 25, 2001 (the "Original Agreement"); and

WHEREAS, the Company and the Employee desire to amend and restate and supersede the Original Agreement in its entirety; and

WHEREAS, the Company desires to continue the employment of the Employee, and the Employee desires to be employed by the Company pursuant to the terms of this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Term of Employment. The Company hereby agrees to employ the Employee, and the Employee hereby agrees to accept employment with the Company pursuant to the terms and conditions of this Agreement, for the period commencing on the Effective Date and expiring on the day before the first anniversary thereof, unless sooner terminated (the "Initial Term"). On the expiration of the Initial Term and on each anniversary thereof, the Agreement shall renew automatically for additional one-year periods (the "Renewal Term"), unless sooner terminated or unless either party notifies the other party in writing of his or its intentions not to renew this Agreement not less than sixty (60) days prior to the expiration of the then current term ("Notice

of Nonrenewal"). A Notice of Nonrenewal by the Company of its intent not to renew this Agreement shall constitute "Good Reason" for termination of this Agreement by the Employee, pursuant to Section 4(d) hereof. Upon a termination by either party for any reason and at any time, the payments or other benefits stated in Section 5 hereof shall be the exclusive remedy available to the Employee under this Agreement.

2. Position and Duties. The Employee shall serve as President and Chief Executive Officer of the Company. The Employee acknowledges that the Company, with the approval of a majority of the Board of Directors, may hire a new President and such hiring shall not constitute a breach of this Agreement by the Company or constitute Good Reason. The Employee shall be subject to the supervision of, and shall have such authority and duties to the Company or its subsidiaries or affiliates, as are reasonably delegated to him, by the Board of Directors of the Company (the "Board") and such duties and responsibilities shall include those duties and responsibilities common to Presidents and Chief Executive Officers of companies of like size and purpose. The Employee shall devote his full working time, energy and skill (reasonable absences for vacations and illness excepted) to the business of the Company during the term of this Agreement as is necessary to perform the Employee's duties faithfully, competently and diligently. The Employee agrees to abide by the rules, regulations, instructions, personnel practices and policies of the Company and any Company affiliate or subsidiary for or with which the Employee conducts any business, as they may be changed, amended or adopted from time to time. Upon approval by the Board, which approval shall not be unreasonably withheld, the Employee may devote reasonable periods of time to serving on the Boards of Directors of other companies or organizations, so long as such service does not unreasonably interfere with his duties to the Company and does not constitute a conflict of the Company's interests.

3. Compensation. During the term of this Agreement, the Employee shall receive, for all services rendered to the Company hereunder, the following salary, compensation and benefits (hereinafter referred to as "Compensation"):

(a) Base Salary. Commencing on the Effective Date, the Employee shall be paid a base salary at the annualized rate of Two Hundred Fifty Thousand Dollars (\$250,000.00). Base salary will be payable in accordance with the Company's normal payroll procedures. The Employee's base salary shall be reviewed on an annual basis, and positive adjustments may be made by the Compensation Committee of the Board (the "Compensation Committee") in its sole discretion. The base salary shall not be subject to decrease without the written consent of the Employee.

(b) Bonuses. The Employee may be eligible for bonuses pursuant to any bonus program designed for employees of the Company. Such bonuses, if any, shall be at the sole discretion of the Compensation Committee.

(c) Incentive Compensation. The Employee may be eligible for incentive compensation, including stock options, pursuant to any incentive compensation program designed for employees of the Company. Such incentive compensation, if any, shall be determined by the Compensation Committee in the exercise of its sole discretion.

(d) Benefits. The Employee shall be eligible to participate in all benefits programs, if any, that the Company establishes and makes available to its employees and executives, in accordance with and subject to the terms and conditions of such benefits programs. Such programs may include health and dental insurance plans, long-term disability insurance plans, life insurance plans, and other benefits made available to the Company's employees from time to time.

(e) Reimbursement of Expenses. The Company shall reimburse the Employee for all reasonable and necessary business-related expenses incurred or paid by the Employee in the performance of the Employee's duties, responsibilities or services under this Agreement, provided that the Employee provides documentation, receipts, vouchers, and/or such other supporting information as the Company may request.

(f) Deductions. The Company shall deduct and withhold from the Employee's compensation all necessary or required taxes, including, but not limited to, social security, withholding and otherwise, and any other applicable amounts required by law or any taxing authority, as well as such other deductions properly authorized in writing by the Employee.

(g) Absences. The Employee shall be entitled to a minimum of 20 days of paid vacation time per calendar year, as well as sick leave, and such other absences in accordance with and subject to the Company's current policies and procedures regarding such paid absences. Such policies may be amended, modified, or rescinded in the Company's sole discretion.

4. Termination. The employment of the Employee by the Company shall terminate upon the occurrence of any of the following:

(a) The Company may terminate the Employee's employment hereunder for Cause immediately and with prompt notice to the Employee, which Cause shall be determined in good faith by the Board. The Employee shall be provided a reasonable opportunity to be heard by the Board, before his employment is terminated for Cause hereunder. "Cause" for termination shall include the following conduct of the Employee:

(i) Material breach of any provision of this Agreement by the Employee causing a material detrimental effect on the Company;

(ii) Material misconduct as an employee which has a material detrimental effect on the Company, including: misappropriating any funds or property of the Company, or attempting to willfully obtain any substantial personal profit from any transaction in which the Employee has an interest which is adverse to the interests of the Company;

(iii) Gross negligence or knowing refusal to perform the reasonable duties assigned to the Employee under or pursuant to this Agreement;

(iv) Conviction of a felony or plea of no lo contendre to a felony;

(v) Acts of dishonesty or moral turpitude by the Employee that are materially detrimental to the Company; or

(vi) Alcohol or drug use which impairs the Employee's ability to perform his duties hereunder.

(b) Immediately upon the death of the Employee;

(c) Thirty days after the Disability of the Employee. As used in this Agreement, the term "Disability" shall mean the inability of the Employee with reasonable accommodation as may be required by State or Federal law, due to a physical or mental disability, for a period of ninety (90) days, whether or not consecutive, during any 360-day period to perform the services contemplated under this Agreement. A determination of Disability shall be made by a physician satisfactory to both the Employee and the Company, provided that if the Employee and the Company do not agree on a physician, the Employee and

the Company shall each select a physician and these two together shall select a third physician, whose determination as to Disability shall be binding on all parties;

(d) The Employee may terminate his employment hereunder for "Good Reason" if, after thirty (30) days written notice, the Company fails to cure the following conduct:

(i) Material breach of any provision of this Agreement by the Company;

(ii) Failure to maintain the Employee in a position commensurate with that referred to in Section 2 of this Agreement, except that the Company's hiring of a President other than the Employee shall not constitute Good Reason hereunder; or

(iii) The assignment to the Employee of any duties inconsistent with the Employee's position, authority, duties or responsibilities as contemplated by Section 2 of this Agreement;

(iv) Relocation of the Employee's main office more than 50 miles from Pennington, New Jersey;

(v) Material reduction in the Employee's base salary; or

(vi) A Notice of Nonrenewal from the Company, informing the employee of the Company's intent not to renew the Initial Term or any Renewal Term.

(e) At the election of the Employee, without Good Reason, upon not less than thirty (30) days prior written notice of termination to the Company;

(f) At the election of the Company, without Cause, immediately upon thirty (30) days prior written notice of termination to the Employee.

5. Effect of Termination. Upon termination of this Agreement at any time, the payments and remedies stated in this Section 5 shall be exclusive and Employee shall not be eligible for any further payment or other benefits from the Company.

(a) Termination for Cause or at Election of the Employee without Good Reason. In the event the Employee's employment is terminated for Cause pursuant to Section 4(a), or at the election of the Employee pursuant to Section 4(e), the Company shall pay to the Employee the base salary and benefits due and owing to him under Section 3 through the last day of the Employee's actual employment by the Company.

(b) Termination for Death or Disability. If the Employee's employment is terminated by death or because of disability pursuant to Section 4(b) or 4(c), the Company shall pay to the estate of the Employee or to the Employee, as the case may be, the base salary and benefits which would otherwise be payable to the Employee through the end of the month in which the termination of employment because of death or disability occurs. In addition, the Company will make a one-time payment of \$10,000.00 to the estate of the Employee or to the Employee, as the case may be. If the payment is made due to disability, the Employee will be required to sign a release of claims as in Section 5(c) prior to receiving the payment under this section.

(c) Termination by the Company Without Cause; Termination by the Employee for Good Reason. If the Employee's employment is terminated without Cause pursuant to Section 4(f) or if the Employee terminates his own employment for Good Reason pursuant to Section 4(d), and if, and only if, the Employee first executes a general release drafted by and satisfactory to counsel for the Company releasing the Company, along with its directors, officers, employees, agents and affiliate company's from any and all liability to the Employee (the "Release Agreement"), the Company shall pay and provide to the Employee, or to his estate if he were to die after termination and prior to such payment: (i) the Employee's then current base salary, as severance pay, for a period equal to the Severance Period, as defined below, to be

paid, at the Employee's sole discretion, either in one lump sum payment within thirty (30) days of termination or monthly for the entire Severance Period, in accordance with the Company's regular payroll practices; and (ii) continuation of the Employee's health, medical and long term disability insurance during the Severance Period, as defined below, at the Company's expense, until such time as the Employee becomes eligible for such coverage through a subsequent employer and only to the extent permitted pursuant to the Company's applicable benefit insurance policies. The payments pursuant to Section 5(c)(i) shall be paid regardless of whether the Employee seeks or obtains any employment subsequent to his employment with the Company. In addition, regardless of whether the Employee signs the Release Agreement, the Company shall pay to the Employee the salary and benefits due and owing to him under Section 3 through the last day of the Employee's actual employment by the Company. The term "Severance Period" as used herein shall mean the following: (i) during the first year of this agreement, the balance of time remaining in the Initial Term plus an additional twelve (12) months; and (ii) after the first year of this agreement, twelve (12) months.

(d) Survival. The provisions of Sections 6, 7 and 8 of this Agreement shall survive the termination of this Agreement.

#### 6. Restrictive Covenants.

(a) During the term of this Agreement and for a period of one (1) year after the termination or expiration thereof, the Employee will not directly or indirectly:

(i) as an individual proprietor, partner, stockholder, officer, employee, director, joint venturer, investor, lender, or in any other capacity whatsoever (other than as the holder of not more than one percent (1%) of the total outstanding stock of a publicly held company), engage in the business of

developing, producing, marketing or selling services of the kind or type developed or being developed, produced, marketed or sold by the Company while the Employee was employed by the Company; or

(ii) hire, engage, recruit, solicit or induce, or attempt to induce, any current or prospective employee, officer, director, contractor or other business associate of the Company to terminate their employment with, or otherwise cease their business relationship with, the Company; or

(iii) solicit, divert or take away, or attempt to divert or to take away, the business or patronage of any of the clients, customers or accounts, or prospective clients, customers or accounts, of the Company which were contacted, solicited or served by the Employee while employed by the Company.

(iv) For the purposes of these restrictions, the word "prospective" shall apply to any individual or entity with which the Company has had substantive contact within the twelve month period prior to any potential hiring, solicitation, recruiting, diversion or otherwise. In addition a "current" employee shall include any employee who was employed by the Company within the three (3) months preceding any potential solicitation or hiring.

(b) If any restriction set forth in this Section 6 is found by any court of competent jurisdiction to be unenforceable because it extends for too long a period of time or over too great a range of activities or in too broad a geographic area, it shall be interpreted to extend only over the maximum period of time, range of activities or geographic area as to which it may be enforceable.

(c) The restrictions contained in Sections 6, 7 and 8 are necessary for the protection of the business and goodwill of the Company and are considered by the Employee to be reasonable for such purpose. The Employee agrees that any breach of Sections 6, 7 or 8 will cause the Company substantial and irrevocable damage and therefore, in the event of any such breach, in addition to such other remedies which may be available, the Company shall have the right to seek specific performance and injunctive relief in any court of competent jurisdiction, regardless of any statement to the contrary herein.

#### 7. Proprietary Information.

(a) The Employee agrees that all information and know-how, whether or not in writing, of a private, secret or confidential nature concerning the Company's business or financial affairs (collectively, "Proprietary Information") is and shall be the exclusive property of the Company. By way of illustration, but not limitation, Proprietary Information may include inventions, products, processes, methods, techniques, formulas, compositions, compounds, projects, developments, plans, research data, clinical data, financial data, personnel data, computer programs, and customer and supplier lists. The Employee will not disclose any Proprietary Information to others outside the Company or use the same for any unauthorized purposes without written approval by an officer of the Company, either during or after his employment, unless and until such Proprietary Information has become public knowledge without fault by the Employee.

(b) The Employee agrees that all files, letters, memoranda, reports, records, data, sketches, drawings, laboratory notebooks, program listings, or other written, photographic, or other tangible material containing Proprietary Information, whether created by the Employee or others, which shall come into his custody or possession, shall be and are the exclusive

property of the Company to be used by the Employee only in the performance of his duties for the Company.

(c) The Employee agrees that his obligation not to disclose or use information, know-how and records of the types set forth in paragraphs (a) and (b) above, also extends to such types of information, know-how, records and tangible property of customers of the Company or suppliers to the Company or other third parties who may have disclosed or entrusted the same to the Company or to the Employee in the course of the Company's business.

(d) The Employee agrees that, immediately upon the termination of his employment with the Company for any reason, he shall return all Proprietary Information and other property of the Company that is in his possession or control.

#### 8. Developments.

(a) The Employee will make full and prompt disclosure to the Company of all inventions, improvements, discoveries, methods, developments, software, and works of authorship, whether patentable or not, which are created, made, conceived or reduced to practice by the Employee or under his direction or jointly with others during his employment by the Company, whether or not during normal working hours or on the premises of the Company (all of which are collectively referred to as "Developments").

(b) The Employee agrees to assign and does hereby assign to the Company (or any person or entity designated by the Company) all his right, title and interest in and to all Developments and all related patents, patent applications, copyrights, copyright applications, design rights (registered or unregistered) and all rights of a similar or equivalent nature in any jurisdiction. However, this Section 8(b) shall not apply to Developments which do not relate to the present or planned business or research and development of the Company and which are

made and conceived by the Employee not during normal working hours, not on the Company's premises and not using the Company's tools, devices, equipment or Proprietary Information.

(c) The Employee agrees to cooperate fully with the Company, both during and after his employment with the Company, with respect to the procurement, maintenance and enforcement of copyrights and patents (both in the United States and foreign countries) relating to Developments. The Employee shall sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignment of priority rights, and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Development. The Employee unconditionally and irrevocably waives all moral rights he may have in relation to the Developments.

9. Other Agreements. The Employee hereby represents that he is not bound by the terms of any agreement with any previous employer or other party to refrain from using or disclosing any trade secret or confidential or proprietary information in the course of his employment with the Company or to refrain from competing, directly or indirectly, with the business of such previous employer or any other party. The Employee further represents that his performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by him in confidence or in trust prior to his employment with the Company or otherwise violate any agreement or other obligation that the Employee may have to any other party.

10. Indemnification Agreement and Invention Assignment Confidentiality Agreement. Nothing in this Agreement is intended to supercede: (i) the Indemnification Agreement signed by the Employee on March 24, 1995; or (ii) any stock option agreement

between the Employee and the Company. The parties intend to provide the Employee with the greatest level of protection under each of the agreements. To the extent that the Employee is eligible for severance pay or other post termination benefits pursuant to more than one agreement, the provisions of this agreement shall supercede all other agreements (post termination treatment of equity positions shall not be considered "severance" for the purpose of this Section). Nothing herein is intended to supercede any rights the Company may have pursuant to any invention assignment, confidentiality, non-competition or non-solicitation agreement between the Employee and the Company and it is intended that the Company shall receive the greatest protection provided pursuant to any such agreement, this agreement or common law.

11. Resolution of Disputes. Any disputes arising under or in connection with this Agreement or otherwise arising pursuant to the Employee's employment with the Company shall be resolved by binding arbitration to be held in the State of New Jersey, in accordance with the applicable arbitration rules of the American Arbitration Association before a panel of three arbitrators. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Each party shall bear his or its own costs of the arbitration or, if applicable, litigation; however, the prevailing party shall be reimbursed for his or its costs and expenses, including attorneys' fees to the extent the dispute involves rights arising under a statute providing costs and fees to a prevailing party and to the extent such prevailing party has proven a material breach of this Agreement by the other party. Nothing in this Section shall in any way limit the Company's right to seek injunctive or other equitable relief in any court of competent jurisdiction, to enforce the provisions of Sections 6, 7 and 8 hereof. Each party agrees to waive his or its right to a trial by jury on any claims arising out of their relationship and agree

that the arbitrators shall be empowered to award damages to the same extent a court of competent jurisdiction would have had.

12. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon personal delivery or upon deposit in the United States Post Office, by registered or certified mail, postage prepaid, addressed to the other party at the address shown above, or at such other address or addresses as either party shall designate to the other in accordance with this Section 12.

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement, including but not limited to the Original Agreement and the Change in Control Severance Pay Agreement signed by the Employee on or about January 12, 2000, except as stated to the contrary in Section 10.

14. Amendment. This Agreement may be amended or modified only by a writing executed by both the Employee and a representative of the Company acting on express authority from the Board.

15. Governing Law. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of New Jersey.

16. Successors and Assigns; Binding Agreement.

(a) This Agreement shall be binding upon and inure to the benefit of both parties and their respective successors and assigns, including any corporation with which or into which the Company may be merged or which may succeed to its assets or business, provided however, that the obligations of the Employee are personal and shall not be assigned by him.

The Company specifically reserves the right to assign its rights under this Agreement, including but limited to, any covenants by the Employee contained in Sections 6, 7 and 8 hereof.

(b) The Employer will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Employer, to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Employer would be required to perform it if no such succession had taken place, unless such assumption occurs automatically by operation of law.

17. Acknowledgement. The Employee states and represents that he has had an opportunity to fully discuss and review the terms of this Agreement with an attorney. The Employee further states and represents that he has carefully read this Agreement, understands the contents herein, freely and voluntarily assents to all of the terms and conditions hereof, and signs his name as his own free act.

18. No Waiver. No delay or omission by the Company in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by the Company on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.

19. Captions. The captions of the Sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any Section of this Agreement.

20. Severability. In case any provision of this Agreement shall be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth above.

GEORGE W. TAYLOR

OCEAN POWER TECHNOLOGIES, INC.

/s/ George W Taylor

By: /s/ Enc A. Ash

Title: Chairman

Ocean Power Technologies, Inc.  
1590 Reed Road  
Pennington, NJ 08534

Re: Engagement of Thomas Meaney

CONSULTANT AGREEMENT ("AGREEMENT")  
REVISION DATED AUGUST 1, 1999

Gentlemen:

I am pleased to advise you that I, Thomas Meaney, ("Consultant") am prepared to act as a consultant and an advisor to Ocean Power Technologies, Inc. ("OPT" or the "Company").

1. Services. The services to be performed by the Consultant for and on behalf of the Company hereunder are in relation to marketing effort directed towards the U.S. Department of Defense and other U.S. Government Agencies for potential funded projects for the development of the Company's technology, and will include:

- (a) Outlining the range of technology tasks, proposed performance goals, timetable and cost characteristics with OPT.
- (b) Identifying appropriate targets within the various agencies with possible budgets via telephone enquiries and selected meetings, primarily in Washington, DC., with existing contacts.
- (c) Reviewing reactions and budget details with OPT.
- (d) Reviewing presentation materials.
- (e) Arranging and, where appropriate, delivering these presentations
- (f) Delivering revised proposals and following up as required to obtain contract(s).

The Consultant shall devote its best efforts to performance and discharge of its duties and responsibilities hereunder, and to the best interest and welfare of the Company.

2. Term. The Company agrees to engage the services of Consultant on a monthly basis commencing August 1, 1999, and continuing through the termination of this contract at the earliest of the following:

- (a) completion of the services set forth in 1 above to the satisfaction of OPT, or any extensions thereto,
- (b) 30 days written notice from one party to the other, stating an intent to terminate this Agreement,

(c) breach of this Agreement as provided here below.

If either party breaches this Agreement and fails to correct the breach to the reasonable satisfaction of the injured party within sixty (60) days following a written notice from the injured party specifying the breach, this Agreement shall terminate. In the event this Agreement is terminated, Consultant will be entitled to receive and retain the portion of any compensation earned pursuant to section 4 below which accrued but has not been paid through the month in which such termination occurs.

3. Cooperation. The Company will cooperate with Consultant in connection with, and shall make available or cause to be made available to Consultant, such documents and other information required for Consultant to perform its obligations hereunder.

4. Compensation. In consideration of the Consultant's services provided hereunder, the Company agrees to compensate Consultant at the rate of \$600.00 per day.

The Company will reimburse the Consultant for all reasonable out-of-pocket expenses incurred by Consultant in performance of its obligations hereunder. The Consultant must have received prior written approval from the Company in order to be reimbursed for any expense in excess of \$100.00.

5. Indemnification. The Company shall indemnify and hold harmless Consultant from any claims, liabilities, losses, damages or expenses, including legal fees, arising out of or in connection with, the services rendered by Consultant pursuant to this Agreement, unless such claims, liabilities, losses, damages or expenses, including legal fees, arise out of the gross negligence, willful misconduct or any violation of law by the Consultant. The Consultant shall indemnify and hold harmless the Company for any claims, liabilities, losses, damages or expenses, including legal fees, arising out of the gross negligence, willful misconduct or any violation of law by the Consultant.

6. Independent Contractor. The Consultant shall be, and be deemed to be, an independent contractor in the performance of the Consultant's duties hereunder. The Consultant shall not, by reason of this Agreement or the performance of the Consultant's duties hereunder, be or be deemed to be, an employee, agent, partner or co-venturer of the Company; the Consultant shall have no power to enter into any agreement on behalf of or otherwise bind the Company; and the fees due hereunder shall be paid in gross without any deductions for federal and/or state withholding taxes or any other applicable taxes. Except as expressly set forth hereunder or as imposed by applicable law, the Consultant shall not have, or be deemed to have, any fiduciary obligation or duties to the Company. The Consultant shall be free to pursue, conduct and carry on for the Consultant's own account (or for the account of others) such activities, employment, ventures, businesses and other pursuits as the Consultant, in the Consultant's sole, absolute and unfettered discretion, may elect.

7. Confidentiality. Any financial information rendered by Consultant pursuant to this Agreement may not be disclosed publicly in any manner without the Company's prior written approval. All non-public information provided to Consultant, or any of its affiliates, by the Company and all advice given by Consultant to the Company will be treated as confidential

information, and Consultant agrees not to make use of such information and advice other than for the performance of this Agreement, and shall not disclose or release such information unless directed or permitted by such executive officers of the Company, in writing.

Consultant, by acceptance of this Agreement, expressly recognizes and reaffirms the provisions and restraints imposed by the "Confidential Information Inventions and Trade Secrets Agreement" attached hereto, and agrees that said "Confidential Information, Inventions and Trade Secrets Agreement" constitutes an express term of the retention of its services under this Agreement, and is an independent covenant which shall remain in full force and effect notwithstanding any termination of this Agreement or any provision thereof.

8. Governing Law. This Agreement shall be governed by the laws of the State of New Jersey, USA. Any dispute arising out of this Agreement shall be adjudicated in the courts of the State of New Jersey or in the federal courts sitting in the District of New Jersey and each of the Company and Consultant hereby agrees that service of process by registered mail at Company's or Consultant's address, shall be deemed adequate and lawful.

Please confirm that the foregoing correctly and completely sets forth our agreement by signing and returning the enclosed copy of this Agreement.

Sincerely,

CONSULTANT

/s/ Thomas Meaney

-----  
Thomas Meaney

9/22/99

-----  
Date

###-##-####

Social Security Number

12 Fairhill Drive  
Address

Chadds Ford, PA 19317  
Address

ACKNOWLEDGED AND AGREED TO  
THIS 15 DAY OF SEPTEMBER, 1999.

OCEAN POWER TECHNOLOGIES, INC.

By: /s/ Charles F. Dunleavy

-----  
Name: Charles F. Dunleavy

Title: Vice President, Finance

9 SEPTEMBER 2004

(1) MARK DRAPER

AND

(2) OCEAN POWER TECHNOLOGIES LTD

-----  
SERVICE AGREEMENT  
(BY WAY OF DEED)

-----  
Wilmer Cutler Pickering Hale and Dorr LLP

Alder Castle  
10 Noble Street  
London EC2V 7QJ  
Tel: +44 (0)20 7645 2400  
Fax: +44 (0)20 7645 2424  
Ref: 00000-000

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Date of Deed: 9 September 2004

PARTIES:

- (1) Ocean Power Technologies Ltd of Alder Castle, 10 Noble Street, London, EC2V 7QJ (the "Company")
- (2) Mark Draper of Borrowell House, Borrowell Lane, Kenilworth, Warwickshire, CV8 1ER

1. TITLE

- 1.1 You will be employed as the Company's Chief Executive with responsibility for the Company's operations in the UK and Europe.
- 1.2 You will be a Director of the Board.

2. JOB DUTIES

You agree that you will:-

- 2.1 unless you are absent from work due to ill health, incapacity, injury or at the Company's request, devote the whole of your working time, attention and abilities to your duties under this agreement;
- 2.2 faithfully and diligently perform your duties to the best of your ability and use your best endeavours to promote the interests of the Company and any Group Company;
- 2.3 without payment of additional salary or remuneration, accept any offices or directorships in the Company or any Group Company and perform such other additional duties in relation to the business of the Company or any Group Company as may from time to time be reasonably vested in or assigned to you by the Board and/or the CEO (as defined in clause 31 of this agreement).
- 2.4 obey the reasonable directions of the Company and comply with any lawful rules or regulations issued by the CEO and/or the Board from time to time;
- 2.5 keep the CEO (or the board of any other Group Company for whom you are carrying out your duties), fully informed and in a timely manner of any activities you are undertaking on the Company's or any Group Company's behalf, in such form as the CEO and/or the Board may reasonably require;
- 2.6 agree to carry out your duties and exercise your powers jointly with any other person appointed by the CEO and/or the Board in their discretion to act jointly with you in a temporary capacity, in the event that you are absent for more than 2 consecutive months, due to illness or for any other reason, and for the duration of the absence.
- 2.7 promptly disclose to the CEO and/or the Board full details of any wrongdoing, which you become aware of, by any employee of the Company or any Group Company where that

wrongdoing is material to that employee's employment by the relevant company or to the interests or reputation of the Company or any Group Company.

### 3. OUTSIDE INTERESTS

3.1 Without prejudice to clause 2 above, you agree that during your employment, you will not be engaged, interested or concerned in any activity, office or outside business interests without the consent of the Board. Should you wish to hold any non-executive director positions in other companies, you must first seek the consent of the Board. Such consent will not be unreasonably withheld. You will disclose in writing to the Board any such activities, offices or outside business interests you may currently have, or which you subsequently wish to undertake and in the event that the Board requires you to cease the same or decline an opportunity, you will do so forthwith. For the avoidance of doubt consent will not be given *inter alia* in relation to any activities, offices or business interests which in the view of the Board, are similar to, or compete directly or indirectly with the business of the Company or any Group Company, or which could in the view of the Board, give rise to a conflict of interest or interfere with the efficient performance of your duties.

3.2 Subject to clause 3.1 you may, however, hold (directly or through nominees including your spouse, partner or minor children) by way of bona fide personal investment, any units of any authorised unit trust, and up to 3% of the issued shares, debentures or other securities of any private company or of any class of company whose shares are listed on a recognised investment exchange or dealt in the Alternative Investment Market. Any existing shareholding in excess of the 3% threshold acquired before the commencement of your employment with the Company may only be retained with the consent of the Board, such consent not to be unreasonably withheld.

### 4. FREEDOM TO TAKE UP EMPLOYMENT WITH THE COMPANY

You undertake that any notice period you are required to give or to serve with a previous employer has expired and that by entering into or performing any of your duties for the Company, you will not be in breach of any other obligation binding on you.

### 5. PERIOD OF CONTINUOUS EMPLOYMENT:

Your period of continuous employment for the purposes of the Employment Rights Act 1996 will commence on 27 September 2004. No employment with a previous employer counts as part of your period of continuous employment with the Company.

### 6. TERM

6.1 Subject to clause 21 below and the remainder of this clause 6, your employment is terminable by either party giving to the other not less than 12 months' written notice.

6.2 Subject to its rights under clause 21, the Company may in its absolute discretion choose to terminate your employment at any time and make you a payment in lieu of notice equivalent to your basic salary over any unexpired period of notice plus an additional

25% of your base salary in accordance with the provisions set out in clause 10.1. This will be paid less tax, national insurance contributions and other deductions required by law.

6.3 In the event that your employment is (a) terminated by reason of a Change of Control, or (b) you resign due to a diminution in your position as a result of a Change of Control, up to six (6) months after the date the Company enters into a contract binding it to a Business Sale, Merger or Sale constituting a Change of Control (provided your employment is not summarily terminated in accordance with clause 21 of this Agreement), you will be entitled to a payment equal to that set out at clause 6.2 above. This payment will be made net of tax, national insurance contributions and other deductions required by law.

No additional severance payments will be payable under the agreement in such circumstances. The payment detailed in this clause 6.3 will be paid within 7 days of your termination or resignation.

#### 7. PLACE OF WORK

Your place of work will initially be the Company's main office in Warwickshire, wherever it may be situated, the location of which may change from time to time. Further, you may be required from time to time, to perform your duties at the premises of customers of the Company and will be expected to travel on the business of the Company to the US and/or anywhere in the world.

#### 8. SALARY

You will be paid a basic salary of £136,000 per annum paid less tax, national insurance contributions and any other deductions required by law. Your salary will accrue on a day-to-day basis and will be payable monthly in arrears on or about the last business day of the month. Your salary is paid in respect of your duties both for the Company and any other Group Company for whom you are required to work and includes any directors' fees to be paid to you.

Adjustments to your compensation will be considered on the anniversary of your commencement of employment, or more often if the Board considers fit.

#### 9. EXPENSES

You will be reimbursed all out-of-pocket expenses reasonably and properly incurred by you on the business of the Company or any Group Company provided you produce to the Company such evidence of actual payment of the expenses concerned as the Company reasonably requires.

#### 10. BENEFITS

10.1 BONUS. You are eligible to participate in the Company's bonus plan (the "Plan"). Based on the successful achievement by the Company of pre-determined goals and targets of the Company and the Parent Company (as defined in 31 of this agreement), and dependant on your own individual performance as assessed by the Company in its discretion, you

may qualify for a bonus of up to 50% of your base salary. The Plan results and payments will be determined following the plan year after the Company's annual audited results have been completed and announced. The Plan may be varied from time to time in the discretion of the Company, and the goals and targets are likely to vary from year to year. The fact that a bonus is paid in one year is no guarantee that bonuses will be paid in subsequent years. If your employment is terminated part way through a plan year you will be entitled to 50% of the bonus as described above, which will be 25% of your base salary. Bonuses are paid less tax, national insurance contributions and other deductions required by law.

10.2 PENSION. The Company will, subject to Inland Revenue limits and the rules of the particular plan both of which may vary from time to time, contribute 15% of your basic salary in equal monthly instalments to a personal pension plan nominated by you. There is no contracting out certificate in relation to your employment.

10.3 PRIVATE MEDICAL EXPENSES INSURANCE. The Company does not currently operate a private health insurance scheme. The Company shall, however, reimburse you for up to a maximum of £2,000 per annum, which may be paid monthly, in respect to the costs associated with your current private health insurance premiums, which cover you and your eligible dependents. The Company will consider at least once each calendar year to increase this amount to take into account indexation and the rising cost of premiums. Any agreement to increase the Company's contribution to your private premiums will be set out in writing.

If the Company sets up a Company private health insurance scheme in the future, you will be given the choice as to whether to remain with your private scheme or transfer to the Company scheme. If you transfer to the Company scheme you agree that the Company may cease reimbursing you for any costs associated with your current private health insurance premiums and subject to your meeting any conditions of eligibility, you will be covered by such a scheme subject to the rules of the scheme, which may vary from time to time. The Company may vary, withdraw or replace the scheme with a broadly equivalent one if it so chooses. This is a benefit in respect of which you will be liable to pay income tax.

10.4 LIFE ASSURANCE. The Company does not currently operate a life assurance scheme. The Company shall, however, reimburse you for up to a maximum of £85 per month, with respect to the costs associated with your current private life assurance premiums, which provide for 4 x your salary. The Company will consider at least once each calendar year to increase this amount to take into account indexation and the rising cost of premiums. Any agreement to increase the Company's contribution to your private premiums will be set out in writing.

If the Company sets up a Company life assurance scheme in the future, you will be given the choice as to whether to remain with your private scheme or transfer to the Company scheme. If you transfer to the Company scheme you agree that the Company may cease reimbursing you for any costs associated with your current life assurance premiums. Your participation in the Company scheme is subject to your meeting any conditions of

eligibility (including medical examinations to the satisfaction of the relevant insurers and producing and completing any relevant paperwork) you will be covered free of charge by the Company's life assurance scheme subject to the rules of the scheme which may vary from time to time.

- 10.5 PERMANENT/DISABILITY HEALTH INSURANCE: The Company does not currently operate a permanent/disability health insurance scheme (the "Scheme"). The Company shall, however, reimburse you for up to a maximum of £195 per month, with respect to the costs associated with your current private Scheme. The Company will consider at least once each calendar year to increase this amount to take into account indexation and the rising cost of premiums. Any agreement to increase the Company's contributions to your private premiums will be set out in writing.

If the Company sets up such a Scheme in the future, you will be given the choice as to whether you continue on your existing private scheme or transfer to the Company Scheme. If you transfer to the Company Scheme, you agree that the Company will cease reimbursing you for your current private premiums and you agree to abide by the terms of the Scheme, which may vary from time to time.

- 10.6 SHARE OPTIONS: The Company will grant to you options as detailed in the options offer letter dated 9 September 2004, subject to the rules of the Ocean Power Technologies, Inc. 2001 Stock Plan (the "Plan") which may be varied, amended or supplemented from time to time.

If on termination of this Agreement whether lawfully or in breach of contract, you lose any of the rights or benefits under the Plan or in relation to any options you held immediately prior to such termination of this Agreement ("Other Options") which you would not have lost had the Agreement not been terminated (for example, you are not employed as at a vesting date and therefore such options which would have vested on that date lapse) you shall not be entitled by way of damages, to be compensated for the loss of rights or benefits under the Plan or in respect of any Other Options.

You agree that if the Company so requires you will either (at the Company's discretion):

(i) complete and execute an irrevocable agreement (in such form as determined by the Company from time to time) under which you will indemnify the Company and any Group Company, against the whole of any employer's national insurance contributions arising in respect of any gains which are treated as remuneration derived from your employment by virtue of Section 4(4)(a) Social Security Contributions and Benefits Act 1992 ("Share Option Gains"); or

(ii) enter into a joint election with the Company or any Group Company (in such form as decided by the Company from time to time) for the whole of any liability for employer's National Insurance contributions arising in respect of any Share Option Gains to be transferred to you,

within 21 days of the Company's written request for you to do so.

10.7 In relation to clauses 10.3, 10.4 and 10.5 above, if a sum payable by the Company under these clauses by way of a reimbursement of the cost of your private insurance premiums shall be subject to a UK income tax liability, the Company shall pay to you an additional sum representing up to 100/60 x 40% of the amount set out in clauses 10.3, 10.4 and 10.5 respectively. For the avoidance of doubt, you will not be entitled to such sums if you decide to join a Company plan or scheme as detailed in clauses 10.3, 10.4 and 10.5 above and on your joining such a Company plan or scheme such reimbursements will cease.

#### 11. HOURS OF WORK

Your normal office hours are 9.00am to 6.00pm Monday to Friday, however, you agree to work such additional hours without overtime or additional remuneration as may be necessary for the proper and efficient performance of your duties. You agree that the limit on average weekly working time set out in Regulation 4(1) of the Working Time Regulations 1998 will not apply to you, although you may withdraw your consent on giving the Company three months prior written notice.

#### 12. HOLIDAYS

12.1 The Company's holiday year runs from 1 January to 31 December.

12.2 You will be entitled to 30 days' paid holiday leave in each holiday year in addition to English public holidays.

12.3 You may carry forward 5 days untaken holiday to a subsequent holiday year. In the holiday year in which your employment terminates, however, any holiday carried over from the previous year will be automatically terminated.

12.4 All holiday must be taken at times agreed at least one month in advance with the CEO having regard to the needs of the Company (or any relevant Group Company's business). For the avoidance of doubt Regulations 15(1) to 15(4) of the Working Time Regulations 1998 (dealing with dates when leave is taken) will not apply to your employment.

12.5 For the holiday year during which your employment commences or terminates, your holiday entitlement will be calculated on a pro rata basis.

12.6 On the termination of your employment with the Company, the Company may at its discretion:

- (a) pay you in lieu of some or all of your accrued holiday, save that if you are dismissed for gross misconduct, the Company shall be under no obligation to pay you holiday pay in respect of accrued but untaken holiday in excess of any minimum holiday entitlement required by law for the year in question. Any holiday pay will be paid less applicable tax, national insurance contributions and other deductions required by law; or

- (b) deduct from your final salary payment (or in the event that this is insufficient) require you to pay to the Company an amount representing salary paid during holiday taken but not accrued by the date of termination of your employment.
- (c) require you to take some or all of any holiday entitlement during your notice period (if you are dismissed with notice in accordance with clause 6 of this agreement), which will have accrued to you by the date of termination of your employment, which you have not yet taken.

#### 13. DEDUCTIONS FROM WAGES

Without prejudice to any other rights open to the Company, you agree that the Company may deduct from any wages due to you, (including Company sick pay) sums representing; the amount of any outstanding loans or advances made to you by the Company; any other sums owing from you to the Company; any overpayment of salary or expenses or payment made to you by mistake or through misrepresentation; and any other sums authorised to be deducted by Section 13 of the Employment Rights Act 1996. If you are unable to work due to accident or injury caused by a third party and the Company continues to pay your salary and/or sick pay during your absence and you recover damages from the third party, then the Company may deduct (or you may be required to repay as the case may be) from your wages an amount equal to any salary or sick pay paid to you by the Company during your absence. Any repayment or deduction in these circumstances will be capped at the amount of damages you recover from the third party in respect of the accident or injury concerned.

#### 14. DATA PROTECTION

You consent to the Company holding and processing both personal data and sensitive personal data (the latter includes your religious beliefs, your ethnic or racial origin and information relating to any physical disability), for all purposes relating to your employment. In particular you agree that the Company can hold and process personal and sensitive personal data to pay and review your remuneration and other benefits, provide and administer any such benefits, provide information to the Inland Revenue (or other taxation authorities), the police, other regulatory bodies, the Company's legal advisers and potential purchasers of the Company or any business area in which you work, administer and maintain personnel records (including sickness and other absence records), carry out performance reviews, give references to future employers, and transfer personal and sensitive personal data concerning you to the HR department of the Parent Company.

#### 15. SICKNESS OR INJURY

- 15.1 The Company will pay you your normal salary for up to 12 weeks' absence due to sickness or injury in any period of twelve months, whether consecutive or not. Thereafter any Company sick pay is entirely at the discretion of the Board.
- 15.2 Company sick pay shall include any statutory sick pay payable to you under the then prevailing rules of the statutory sick pay scheme. The Company may deduct from Company sick pay an amount or amounts equal to any state sickness benefit to which you

are entitled or any payments made to you or for which you are eligible under any health insurance arrangement, effected from time to time by the Company on your behalf.

15.3 The Company reserves the right to require you to undergo a medical examination by the Company's doctor or, an independent medical practitioner and you agree that the doctor or independent medical practitioner may disclose to the Company the results of the examination and discuss with the Company and its professional advisers any matters arising from the examination as might impair you from properly discharging your duties. You also authorise your own doctor to provide the Company's doctor and/or independent medical practitioner with any relevant extracts from your medical notes. This clause is without prejudice to your statutory rights, (including your rights under the Access to Medical Reports Act 1988.

#### 16. CONFIDENTIALITY

16.1 During the course of your employment you will have access to and become aware of information, which is confidential to the Company. You undertake that you will not, save in the proper performance of your duties, make use of, or disclose to any person, (including for the avoidance of doubt any competitors of the Company), any of the trade secrets or other confidential information of or relating to the Company, or any user of the Company's services or any company, organisation or business with which the Company is involved in any kind of business venture or partnership, or any other information concerning the business of the Company which you may have received or obtained in confidence while in the service of the Company. You will likewise use your best endeavours to prevent the unauthorised publication or disclosure of any such trade secrets or confidential information.

16.2 This restriction shall continue to apply after the termination of your employment without limit in point of time but both during your employment and after its termination, shall cease to apply to information ordered to be disclosed by a Court or Tribunal of competent jurisdiction or otherwise required to be disclosed by law, or to information which becomes available to the public generally (other than by reason of your breaching this clause) without requiring a significant expenditure of labour skill or money. Nothing in this clause will prevent you making a "protected disclosure" within the meaning of the Public Interest Disclosure Act 1998.

16.3 For the purposes of this Agreement confidential information shall include, but shall not be limited to:-

- (a) the Company's business and marketing strategy and plans;
- (b) budgets, management accounts, bank account details and other confidential financial data of the Company;
- (c) business sales and marketing methods, confidential techniques and processes used for development of the Company's products and services.

- (d) details of products and services being developed by the Company, including research and development reports, confidential aspects of the Company's technology and systems, including software source and object codes, confidential algorithms developed or used by the Company, information relating to proprietary computer hardware or software (including updates) not generally known to the public and details of IP solutions to accompany the Company's products; patent and trade mark applications in the course of preparation or consideration by the relevant authorities;
- (e) confidential methods and processes, information relating to the running of the Company's business which is not in the public domain, including details of salaries, bonuses, commissions and other employment terms applicable within the Company;
- (f) the names, addresses and contact details of any customers or Prospective Customers of the Company including customer lists in whatever medium this information is stored and the requirements of those customers or the potential requirements of Prospective Customers for any of the Company's products or services. Without prejudice to the foregoing, personal information provided to the Company by visitors to and users of any of its web sites,
- (g) the terms on which the Company does business with its advertisers, customers and suppliers, including any pricing policy and price lists adopted by the Company and the terms of any partnership, joint venture or other form of commercial co-operation or agreement the Company enters into with any third party; the content of bids and tenders submitted by the Company to Potential Customers;
- (h) software and technical information necessary for the development, maintenance or operation of any of the Company's websites and the source and object code of each website; and
- (i) any other information which the Company is bound by an obligation of confidence owed to a third party, in particular the content of discussions or communications with any Prospective Customers or prospective business partners.

16.4 In this clause 16, any reference to "Company" includes any "Group Company" as defined in clause 31 and your undertaking to the Company in clause 16.1 is given to the Company for itself and as trustee for each Group Company.

#### 17. DELIVERY UP OF THE COMPANY'S PROPERTY

17.1 You may not save in the proper performance of your duties or with the Company's permission, remove any property belonging to the Company or any Group Company, or relating to the affairs of the Company or any Group Company, from the Company's or any Group Company's premises, or make any copies of documents or records relating to the Company's or any Group Company's affairs.

17.2 Upon the Company's request at any time, and in any event on the termination of your employment, you will immediately deliver up to the Company or its authorized representative, any plans, keys, mobile telephone, security passes, credit cards, customer lists, price lists, equipment, documents, records, papers, computer disks, tapes or other computer hardware or software (together with all copies of the same), and all property of whatever nature in your possession or control which belongs to the Company or any Group Company or relates to its or their business affairs. You will at the Company's request furnish the Company with a written statement confirming that you have complied with this obligation.

17.3 If you have any information relating to the Company or the Group or work you have carried out for the Company or any Group Company which is stored on a computer or laptop computer which computer or laptop does not belong to the Company, this must be disclosed to the Company and the Company shall be entitled to download the information and/or supervise its deletion from the computer or laptop concerned.

#### 18. INTELLECTUAL PROPERTY RIGHTS, INVENTIONS AND MORAL RIGHTS

18.1 You hereby acknowledge and agree that all IPRs and Inventions (as defined in clause 31 of this Agreement) shall be the property of and shall belong free of charge and exclusively to the Company as it may direct whether or not the work was made at the direction of the Company, or was intended for the Company (subject to any applicable contrary legislative, regulatory or codified provision or judicial authority and to any rights of a joint inventor or maker/author).

18.2 To the extent that any IPRs or ownership of Inventions are not otherwise vested in the Company, you hereby assign and transfer all of them to the Company with full title guarantee by way of present assignment throughout the world.

18.3 You will promptly and fully disclose to the Board full details of any Inventions and IPRs.

18.4 At any time during your employment or thereafter, (despite the termination of this Agreement) and at the Company's expense, you will do all such acts and things (including execute such documents, take such actions and make such applications) as may be necessary (or as the Board may reasonably request) in order to substantiate, confirm or vest effectually any IPRs, ownership of Inventions or choses in actions relating to them (whether owned by the Company in accordance with this clause 18 or owned by you) and any other protection as to ownership or use of the same (in any part of the world) in the Company, or as the Company may direct, (jointly if necessary with any joint inventor or maker/author thereof). You hereby irrevocably appoint the Company for these purposes to be your attorney in your name and on your behalf to execute and do such acts and things and execute any such documents as set out above.

18.5 You agree that you will not at any time make use of or exploit the Company's Inventions, IPRs or other property for any purpose which has not been agreed by the Company in advance in writing by an authorised person.

18.6 To the full extent permitted by applicable law, you irrevocably and unconditionally waive all of your moral rights in all territories of the world.

#### 19. GARDEN LEAVE

The Company shall be under no obligation to provide you with work during any period of notice to terminate your employment (or any part thereof), whether given by the Company or by you. During such period the Company may require you not to attend at work and/or require you to cease carrying out your duties altogether or having any business dealings with the Company's employees, suppliers, advertisers, customers and agents and may exclude you from any premises of the Company or any Group Company. You agree that you will, if requested to do so, forthwith resign from all offices held by you in the Company or any Group Companies and cease attending board meetings. You will continue to receive your salary and all contractual benefits provided by your employment. During such period of notice you may not be engaged or employed by or take up any office or partnership in any other company, firm or business, or trade on your own account without the written permission of the Board.

#### 20. SUSPENSION

Quite apart from the right to put you on garden leave set out in clause 19, the Company may suspend you on full pay pending the outcome of a disciplinary investigation or for health reasons. Whilst on suspension the Company may impose the same conditions as apply to employees on garden leave.

#### 21. TERMINATION

21.1 The Company may terminate your employment without notice and without a payment in lieu of notice in the event that you:

- (a) are guilty of gross misconduct or breach a fundamental term of your employment. Gross misconduct would include but is not limited to the willful misuse or disclosure of the Company's or any Group Company's confidential information or other intellectual property; attempts to solicit customers or potential customers of the Company or any Group Company to transfer business away from the Company or any Group Company for the purposes of a competitor, or employees to leave the Company or any Group Company; engaging in any form of sexual, racial or other harassment at work; or
- (b) infringe any rules or regulations imposed by any regulatory or other external authority or professional body applicable to your employment or which regulate the performance of your duties and fail to remedy the infringement within 45 days of written notice from either the Company, the regulatory or other external authority or professional body advising of the infringement.
- (c) act in a way which in the reasonable view of the Board brings you, the Company or any Group Company into disrepute, whether or not such act is directly related to the affairs of the Company or any Group Company; or

- (d) become bankrupt have an interim order made against you under the Insolvency Act 1986 or make any composition or enter into any deed of arrangement with your creditors or the equivalent of any of these under any other jurisdiction; or
- (e) are convicted of a criminal offence (other than one carrying only a non custodial sentence or a driving offence); or
- (f) become disqualified from acting as a director of a company or resign as a director of the Company otherwise than at the request of the Company or with the consent of the Company or if required to do so under this Agreement or the Articles of Association of the Company; or

## 22. OFFICES

- 22.1 You will on the termination of your employment, forthwith resign from all offices you hold in either the Company or any Group Company. You will not however otherwise (or save as required by law), resign your office as a director of the Company or any Group Company without the Board's consent.
- 22.2 You hereby irrevocably appoint the Company to be your attorney to execute any documents and do anything in your name to effect your resignation as a director of the Company or any Group Company should you fail to resign following a request from the Company to do so in accordance with clause 22.1. A written notification signed by a director of the Company that any instrument, document or act falls within the authority conferred by this clause will be conclusive evidence that it does so.
- 22.3 Your employment shall terminate automatically and with immediate effect upon your ceasing to be a director of the Company, but other than under clause 21.1 (F), without prejudice to any rights you may have to damages or compensation arising out of the termination of this agreement.

## 23. RESTRICTIONS AFTER TERMINATION OF EMPLOYMENT

- 23.1 You agree that you will not, without the written permission of the Board, or for a period of 12 months following the termination of your employment (less any period you spend on garden leave pursuant to clause 19), and whether on your own behalf or on behalf of any individual, company, firm, business or other organisation, directly or indirectly:
  - (a) in connection with the carrying on of any business which competes in the Territory with any business of the Company or any Group Company with which you were involved in the 12 months prior to the termination of your employment, solicit or entice away from the Company or any Group Company the business of any customer or Prospective Customer with whom you had business dealings on behalf of the Company or any Group Company in the course of the 12 months prior to the termination of your employment, or about which customer, or Prospective Customer you are, (or someone reporting directly to you is), privy to confidential information gained as a result of employment by the Company or relevant Group Company at the date your employment terminates; or

- (b) in connection with the carrying on of any business which competes in the Territory with any business of the Company or any Group Company with which you were involved in the 12 months prior to the termination of your employment, have business dealings (involving the provision of products or services of a type provided by the Company or any such Group Company at the date your employment terminates), with any customer or Prospective Customer of the Company or any Group Company with which customer or Prospective Customer you had business dealings on behalf of the Company or any Group Company in the course of the 12 months prior to the termination of your employment, or about which customer or Prospective Customer you are, (or someone reporting directly to you is), privy to confidential information gained as a result of employment by the Company or relevant Group Company at the date your employment terminates; or
- (c) seek to entice away from the Company or any Group Company any person employed or engaged by the Company or any Group Company at the date your employment terminates, as, or carrying out the functions of, a director, consultant, vice president, senior vice-president, engineers, customer-facing member of the sales team or employee involved in product development, or any other senior employee at the date your employment terminates and with whom you had dealings in the last 12 months of your employment with the Company. This restriction shall apply regardless of whether the solicitation involves a breach of contract on the part of the consultant, or director or employee concerned; and
- (d) employ or engage or offer to employ or engage any person employed or engaged by the Company or any Group Company at the date your employment terminates, as, or carrying out the functions of, a director, consultant, vice president, senior vice-president, engineers, customer-facing member of the sales team or employee involved in product development, or any other senior employee at the date your employment terminates (or who would have been so employed had he or she not left the Company or any Group Company due to solicitation on your part in the 4 months prior thereto) and with whom you had dealings in the last 12 months of your employment with the Company. This restriction shall apply regardless of whether the employment involves a breach of contract on the part of the consultant, director or employee concerned.

23.2 You agree that you will not, without the written permission of the Board, during your employment with the Company, or for a period of 6 months following the termination of your employment (less any period you spend on garden leave pursuant to clause 19), be engaged or employed by, or otherwise involved in any company firm or business which competes in the Territory with any business of the Company or any Group Company with which you are involved in the last 12 months of your employment under this Agreement.

23.3 Each of the sub-clauses contained in clause 23 constitutes an entirely separate and independent covenant. If any restriction is held to be invalid or unenforceable by a court of competent jurisdiction, it is intended and understood by the parties that such invalidity or unenforceability will not affect the remaining restrictions or the validity of the rest of

the Agreement and that if any such restriction would be valid if some part thereof (including some part of any term defined in clause 31 or elsewhere in this Agreement) were deleted, such restrictions shall apply with such modification as may be necessary to make them effective.

23.4 You agree that if you receive an offer of employment, consultancy, directorship or other office or partnership during the continuance in force of any of the above, you will prior to acceptance of an offer, provide the party making the offer with copies of this clause and details of your notice period, the restrictions on your use and disclosure of confidential information and the clauses dealing with intellectual property, inventions and moral rights.

23.5 You acknowledge that:

- (a) each of the restrictions in clause 23 goes no further than is necessary to protect the legitimate business interests of the Company and any Group Company; and
- (b) the Company is entering into this Agreement not only for itself but also as trustee for each Group Company and with the intention that the Company and/or any Group Company will be entitled to seek the protection of and enforce each of its restrictions directly against you. If requested to do so by the Company however, you will at any time enter into like restrictions as those contained in this clause 23 with any other Group Company.

23.6 Nothing in this clause 23 shall prohibit you from holding the investments and interests set out in clause 3 above.

23.7 Following the date your employment terminates, you will not:

- (a) represent yourself as being in any way connected with the business of the Company or any Group Company (except to the extent agreed by such Company);
- (b) represent, promote or advertise or refer to your previous connection with the Company or any Group Company in such a way as to utilise any of their goodwill;
- (c) carry on, cause or permit to be carried on any business under or using any name, trade mark, service mark, style, logo, get-up or image which is or has been used by the Company or any Group Company, or which in the reasonable opinion of the Board, is calculated to cause confusion with such a name, trade mark, service mark, style, logo, get-up or image or infer a connection with the Company or any Group Company.

#### 24. DISCIPLINARY AND GRIEVANCE PROCEDURES

Copies of the Company's disciplinary and grievance policies are available from the CEO. These policies do not form part of this Agreement, do not have contractual force and may be varied from time to time.

## 25. COLLECTIVE AGREEMENTS

There are no collective Agreements, which directly affect your terms and conditions of employment.

## 26. PARTICULARS OF EMPLOYMENT

This Agreement includes the particulars of employment required by the Employment Rights Act 1996.

## 27. SECURITY

27.1 All communications, whether by telephone, email, fax, or any other means, which are transmitted, undertaken or received using Company property or on Company premises will be treated by the Company as work related and are subject to interception, recording and monitoring without further notice, save as set out below. You should not regard any such communications as private.

27.2 Interception, recording and monitoring of communications is intended to protect the Company's business interests, for example but without limitation, for the purposes of quality control, security of communication and IT systems, record-keeping and evidential requirements, detection and prevention of criminal activity or misconduct and to assist the Company to comply with relevant legal requirements. Such interception, recording and monitoring will not be undertaken for prurient interest.

27.3 Intercepted communications may be used as evidence in disciplinary or legal proceedings, including in any such action against you.

27.4 By transmitting, undertaking or receiving communication using Company property or on Company premises you consent to the above terms.

## 28. ENTIRE AGREEMENT

28.1 This Agreement is in substitution for any previous contract of employment between the Company and you, which shall be deemed to have been terminated by mutual consent and without giving rise to claims against the Company. You represent and warrant that you are not entering into this Agreement in reliance on any representation not expressly set out herein. Any share options you hold under the Company or any Group Company share option scheme, which is still in force shall not be affected. Such options are governed by the terms of the relevant share option scheme as varied from time to time.

28.2 The termination of this Agreement howsoever arising shall not affect any of the provisions of this Agreement which are expressed to operate or have effect or are capable of operation or effect after such termination.

## 29. NOTICES

Any notice you are required to give under this Agreement should be handed or delivered to another member of the Board at the Company's main office from time to time. Any notice the Company is required to give you should be handed to you or delivered to your last notified address. These notices will be deemed to have been given on the date of receipt if hand delivered and if posted, on the day on which in the ordinary course of post they would be delivered.

## 30. THIRD PARTIES

This Agreement constitutes an agreement solely between the Company and you, and, save where otherwise provided, for the purposes of the Contracts (Rights of Third Parties) Act 1999, nothing in this contract confers or purports to confer on a third party any benefit or any right to enforce a term of this contract.

## 31. INTERPRETATION

31.1 Any reference in this Agreement to:-

31.2 any Act or delegated legislation includes any statutory modification or re-enactment of it or the provision referred to;

31.3 "Board" shall mean the Board of Directors of the Company from time to time or any person or any committee of the Board duly appointed by it;

31.4 "Business Sale" means the sale of all or substantially all the undertaking and assets of the Group in one transaction or a series of transactions;

31.5 "CEO" shall mean the Chief Executive Officer of Ocean Power Technology Inc.;

31.6 "Change of Control" means: (a) Business Sale (b) Merger; (c) Sale PROVIDED ALWAYS THAT a Group Reconstruction shall not amount to a Change of Control;

31.7 "Group" shall mean the Company and its Group Companies;

31.8 "Group Company" means a company which from time to time is a subsidiary or a holding company of the Company or a subsidiary of such holding company and "subsidiary" and "holding company" have the meanings attributed to them by section 736 of the Companies Act 1985;

31.9 "Group Reconstruction" shall mean: (a) a sale, transfer or disposition of the entire issued share capital of the Company to a company, the shareholders of which are substantially the same as those of the Company in substantially the same proportions; (b) a sale of all or substantially all the undertaking and assets of the Group in one transaction or a series of transactions to a company, the shareholders of which are substantially the same as those of the Company in substantially the same proportions; or (c) a scheme or reconstruction or arrangement whereby the entire issued share capital of the Company is

cancelled by court order, the Company becomes owned by a company, the shareholders of which are substantially the same as those of the Company in substantially the same proportions;

31.10 The words "include" and "including" and "in particular" shall be construed as being by way of illustration only and shall not limit the generality of the preceding words;

31.11 "IPRs" (Intellectual Property Rights) means, without limitation, all present and future rights of whatever description (as the same may be extended or amended) throughout the world in Inventions and intellectual property including but not limited to patents, copyright, database rights, know how, trade secrets, domain names, trade marks and design right (in either case whether registered or not) including applications for the grant of any such rights and all rights of registration, extension and renewal thereof, which are created by you during the course of your employment or using Company and or Group Company's assets;

31.12 "Inventions" shall mean, without limitation, any software programs, or subroutines, source or object code, algorithms, improvements, inventions, technology, formulae, discoveries, design, ideas, processes, techniques, know-how, data, models and prototypes whether or not relating to devices, products, services, processes, equipment or systems of the Company and each Group Company, which are made, originated, discovered or reduced to practice by you, which are created by you during the course of your employment or using Company assets;

31.13 "Merger" shall mean, a merger or consolidation of the Company with any other company or corporation where, as a result of such merger or consolidation, the voting securities of the Company outstanding immediately prior thereto do not continue to represent more than fifty percent 50% of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation;

31.14 "Sale" shall mean the sale, transfer or disposition of any part of the Company's share capital to any person resulting in that person, together with any person acting in concert with such person, holding more than 50% of the Company's issued share capital;

31.15 "Parent Company" shall mean Ocean Power Technologies Inc;

31.16 "Prospective Customer" means any person with whom the Company (or any Group Company) is in negotiations or is tendering for the supply of its goods and services;

31.17 "the Territory" means England, the remainder of the UK or any other country or smaller geographical area in which the Company or any Group Company is carrying on, or is intending to carry on business at the date your employment terminates with which you have been involved in the preceding 12 months.

32. GOVERNING LAW

Your terms of employment with the Company are governed by English law and the parties submit to the exclusive jurisdiction of the English Courts. The Company may however enforce the Agreement in any other courts of competent jurisdiction.

IN WITNESS WHEREOF this Deed has been executed and delivered as a deed on the date set out above.

EXECUTED AS A DEED  
OF THE COMPANY ACTING BY:-

Director

Director/Secretary

SIGNED AS A DEED  
BY THE EMPLOYEE:-

in the presence of:-

Signature of Witness

Name of Witness	Charles F. Dunleavy
Address of Witness	3 Waterford Place Newtown, PA USA
Occupation	Financial Executive

O.P.T.

Ocean Power Technologies, Inc.  
1590 Reed Road  
Pennington, NJ 08534 USA  
609-730-0400, Fax: 609 730-0404

September 30, 2005

John. John A. Baylouny  
34 Old Mill Drive  
Denville, NJ 07834

By Fax  
973-328-2638

Dear John:

Ocean Power Technologies, Inc. ("OPT" or the "Company") hereby offers to you the position of Senior Vice President, Engineering of Ocean Power Technologies, Inc., reporting to me. As such, your duties and responsibilities will be those duties and responsibilities consistent with your position as may from time to time be assigned by me, including your focus on the Company's engineering and commercial roll-out of its technology.

OPT may add to or alter your position and responsibilities as deemed appropriate in the future. The following responsibilities are part of your duties: (a) devote attention, labor, skill and energy to the business of OPT and diligently, and to the best of your ability, perform all duties incident to your employment as described in this letter, and (b) use your best efforts to promote the interests, goodwill and welfare of OPT.

Compensation for your services, subject to the terms of this letter, shall be salary of \$17,083.33 monthly, which is equivalent to \$205,000.00 on an annual basis, for as long as you are employed or until a change is made by OPT to your salary. In addition to this base salary, you will be eligible to receive a bonus of up to 35% of your base salary. To be eligible to receive the bonus, you must be employed by the Company as of the day that the Company pays the bonus. You shall be expected to work during OPT's normal operating hours, as well as any additional hours needed in order to complete your assigned tasks. Payments to you shall be less all amounts required to be withheld by Federal, State and all applicable income tax laws, regulations and rulings. You will receive reviews of your job performance in accordance with OPT's policies. Adjustments to your compensation, as well consideration for bonus and stock option awards, if any, will be considered on an annual basis. In addition, the Board of Directors of OPT has approved granting you at the time you commence employment with the Company, options to purchase 300,000 shares of the common stock of OPT. Of the option grant, 100,000 shares will immediately vested at the time of the grant, and 200,000 shares will be vested over five years, i.e. 40,000 shares vested at each anniversary of the date of grant. The term of these options will be for a period of ten (10) years from the date of grant, in accord with the Company's standard form of stock option agreement. If your employment with OPT is terminated (i) without "Cause", or (ii) upon any "Change of Control" or OPT, all the unvested portions of the 200,000 share grant shall vest immediately upon such termination.

In addition to the compensation stated in this offer, during your employment you will be entitled to participate in all employee benefit plans and programs now or in the future maintained by OPT and offered to all employees of the Company, as well as those offered to key employees of the Company, so long as you meet any applicable eligibility requirements. You also will receive vacation time to be accrued and administered in accordance with OPT's policies, starting with annual paid vacation of four weeks. In addition, you will be permitted to use up to five paid sick days. You will also receive a total of ten holidays with pay, each year.

By accepting this offer, you recognize and acknowledge that you may have access to certain idea, processes, strategies, trade secrets, methods of operation or other non-public information ("Confidential Information") of OPT and that all such information constitutes valuable, special and unique property of OPT. You agree that you will not, without the prior written consent of OPT, disclose or authorize or permit anyone under your direction to disclose to anyone not properly entitled thereto any such Confidential Information relative to the business, technology, operations, financial condition or services of OPT or any subsidiary. Accordingly, as part of your acceptance of this offer, you agree to execute and be bound by the attached Proprietary Information, Restrictive Covenant and Inventions Agreement ("Agreement").

By accepting this offer, you further represent that you are not bound by any employment contract, restrictive covenant or other restriction preventing you from entering into employment with OPT and carrying out your responsibilities to the Company or which in any way otherwise interferes with or is in conflict with such employment.

This letter shall not be construed as an agreement, either express or implied, to employ you for any stated term, and shall in no way alter OPT's policy of employment at-will, under which both you and OPT remain free to terminate the employment relationship at any time, with or without notice and with or without Cause (as defined below). In the case of your termination by the Company for any reason other than by the Company for Cause, you will receive the following severance: (a) if such termination occurs within the first 12 months of employment, you will receive 3 months' severance in form of base pay; (b) if such termination occurs after the first twelve months of employment, you will receive 6 months' severance in the form of base pay. Such severance amounts will be made by the Company on a monthly basis, consistent with the Company's regular payroll practices. In addition, such severance payments will be conditional upon the execution by you of a General Release of all claims against the Company. All payments to you hereunder shall be less taxes and any other deductions required by law. Except as provided to the contrary in this letter agreement, options granted to you by the Company shall cease to vest on the actual date of termination for any reason.

For purposes of this Agreement:

"Cause" means a termination of your employment by the Company because you have done any of the following: (a) materially breached or materially failed to perform your duties under applicable law, (b) failed to follow lawful directives of the Board, or any executive officer to whom you report, (c) failed to follow the Company's policies and procedures in effect from time to time, (d) committed an act of dishonesty in the performance of your duties or engaged in willful misconduct detrimental to the business of the Company, (e) been indicted on felony charges, (f) been convicted of misdemeanor charges involving any crime of moral turpitude,

(g) breached in any material respect or failed to perform in any material respect your obligations and duties or any Agreement between you and the Company, or (h) violated your restrictive covenants with the Company (including, without limit, your noncompete, nonsolicit, nonhire, confidentiality obligations, and intellectual property transfer obligations regarding the ownership of intellectual property created or developed, in whole or in part, by you while an employee of the Company.

"Change in Control" shall have the meaning set forth in Rule 405 of the Securities Act of 1933.

This letter and the Agreement attached constitute the entire offer to you and, if you accept, they shall constitute the entire agreement and shall be governed by the laws of the state of New Jersey. If you agree to the terms of this offer, please sign and date below, as well as on the attached Agreement, on both the originals provided, returning one of each original to me.

Should you have any questions concerning this offer, or any other question about the Company and this position, please contact me. I look forward to hearing from you.

Sincerely,

-----  
Dr. George W. Taylor  
Chief Executive Officer

I have read and understand this letter. The foregoing correctly sets for the terms of my employment with OPT

DATE: -----  
-----

OCEAN POWER TECHNOLOGIES, INC.

PROPRIETARY INFORMATION, RESTRICTIVE COVENANT AND  
INVENTIONS AGREEMENT ("AGREEMENT")

As an employee of OCEAN POWER TECHNOLOGIES, INC., or any of its subsidiaries or affiliates (together, the "Company"), and as a condition of my employment by the Company and in consideration of the compensation now and hereafter paid to me, I agree to the following:

1. MAINTAINING CONFIDENTIAL INFORMATION

(A) COMPANY INFORMATION - I agree at all times during the term of my employment and thereafter to hold in strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any person, firm or corporation, without the written authorization of the Board of Directors of the Company, any trade secrets, confidential knowledge, data or other proprietary information of the Company. By way of illustration and not limitation, such Company information shall include information relating to products, processes, know-how, designs, formulas, methods, samples, media and/or cell lines, developmental or experimental works, improvements, discoveries, plans for research, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers, and information regarding the skills and compensation of other employees of the Company.

(B) FORMER EMPLOYER INFORMATION - I agree that I will not, during my employment with the Company, improperly use or disclose any proprietary information or trade secrets of my former or concurrent employers or companies, if any, and that I will not bring onto the premises of the Company any unpublished documents or any property belonging to my former or concurrent employers or companies unless previously and specifically consented to in writing by said employers or companies.

(C) THIRD PARTY INFORMATION- I recognize that the Company has received and in the future will receive confidential or proprietary information from third parties subject to a duty on the Company's part to maintain the confidentiality of such information and, in some cases, to use it only for certain limited purposes. I agree that I owe the Company and such third parties, both during the term of my employment and thereafter, a duty to hold all such confidential and proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation (except in a manner that is consistent with the Company's agreement with the third party) or use it for the benefit of anyone other than the Company or such third party (consistent with the Company's agreement with the third party), unless expressly authorized to act otherwise by an officer of the Company.

2. ASSIGNMENT OF INVENTIONS AND ORIGINAL WORKS

(A) INVENTIONS AND ORIGINAL WORKS ASSIGNED TO THE COMPANY - I agree that I will make prompt written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby assign to the Company all my right, title and interest in and to any ideas, inventions, original works or authorship, developments,

improvements or trade secrets which I may solely or jointly conceive or reduce to practice, or cause to be conceived or reduced to practice, during the period of my employment with the Company.

I acknowledge that all original works for authorship which are made by me (solely or jointly with others) within the scope of my employment and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C., Section 101).

(B) INVENTIONS AND ORIGINAL WORKS ASSIGNED TO THE UNITED STATES - I hereby assign to the United States government all my right, title and interest in and to any and all inventions, original works of authorship, developments, improvements or trade secrets whenever full title to same is required to be in the United States by a contract between the Company and the United States or any of its agencies.

(C) OBTAINING LETTERS PATENT, COPYRIGHT REGISTRATIONS AND OTHER PROTECTIONS - I will assist the Company in every proper way to obtain and enforce United States and foreign proprietary rights relating to any and all inventions, original works of authorship, developments, improvements or trade secrets of the Company in any and all countries. To that end I will execute, verify and deliver such documents and perform such other acts (including appearing as a witness) that the Company may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing such proprietary rights and the assignment thereof. In addition, I will execute, verify and deliver assignments of such proprietary rights to the Company or its designee. My obligation to assist the Company with respect to proprietary rights in any and all countries shall continue beyond the termination of my employment, but the Company shall compensate me at a reasonable rate after my termination for the time actually spent by me at the Company's request on such assistance.

In the event the Company is unable for any reason, after reasonable effort, to secure my signature on any document needed in connection with the actions specified in the preceding paragraph, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and in my behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph with the same legal force and effect as if executed by me. I hereby waive and quitclaim to the Company any and all claims of any nature whatsoever which I now or may hereafter have for infringement of any proprietary rights assigned to the Company.

(D) OBLIGATION TO KEEP THE COMPANY INFORMED - In addition to my obligations under paragraph 2(a) above, during the period of my employment I will promptly disclose to the Company fully and in writing all patent applications filed by me or on my behalf. I agree to keep and maintain adequate and current records (in the form of notes, sketches, drawings and in any other form that may be required by the Company) of all proprietary information developed by me and all inventions made by me during the period of my employment by the Company, which records shall be available to and remain the sole property of the Company at all times.

3. NON-COMPETITION

I agree that, during my employment with the Company and for a period of one (1) year after termination of my employment with the Company, I will not, without the Company's express written consent, engage in any consulting, employment or business that is directly or indirectly competitive with the Company or assist others in any business that is competitive with the Company. A company shall be considered "competitive" with the Company if such company engages in any line of business in competition with the ocean energy converter services and/or products with which I was, directly or indirectly, engaged while an employee of the Company. However, this non-competition provision will not be interpreted to preclude me from consulting for, or being employed by, a company that could be considered competitive with the Company if my position or work with that company will be with a division, affiliate, operational area, or business/product lines(s) that is/are unrelated to the product and/or service lines with which I worked while employed by OPT. In such case, the provisions of section 1 of this agreement will apply.

4. NON-SOLICITATION/NON-INTERFERENCE

(A) EMPLOYEES AND INDEPENDENT CONTRACTORS - During my employment and for a period of one (1) year after termination of my employment with the Company, I will not recruit, solicit, or hire, or assist others in recruiting, soliciting or hiring, any past or present employee, director, contractor or other business associate (collectively each a "Business Relation") or otherwise induce any Business Relation to terminate or cease his/her employment or other business relationship with the Company. The term Business Relation shall include those individuals or entities who were employed, engaged or associated with the Company during my employment or, if after the termination of my employment, within the twelve (12) month period prior to the termination of my employment.

(B) CLIENTS, CUSTOMERS AND BUSINESS CONTACTS - During my employment and for the period of one (1) year after termination of my employment with the Company, I will not solicit, divert, or take away, or attempt to solicit, divert or take away the business or patronage of any of the clients, customers, business contacts or accounts of the Company which were contacted, solicited or served by me at any time during my employment with the Company or regarding which I had access to substantive confidential information.

5. NO CONFLICTING OBLIGATIONS

I represent that my performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement or obligation of mine relating to any time prior to my employment by the Company. I have not entered into, and I agree I will not enter into, any agreement either written or oral in conflict herewith.

6. RETURN OF COMPANY PROPERTY

When I leave the employ of the Company or upon any request from the Company, I will deliver to the Company (and will not keep in my possession, recreate or deliver to anyone

else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, together with all copies thereof (in whatever medium recorded) belonging to the Company, its successors or assigns whether kept at the Company, home or elsewhere. I further agree that all Company property, including disks and other storage media and filing cabinets or other work areas in subject to inspection by Company personnel at any time with or without notice.

7. NOTIFICATION OF NEW EMPLOYER

In the event that I leave the employ of the Company, I hereby consent to the notification of my new employer of my rights and obligations under this Agreement.

8. LEGAL AND EQUITABLE REMEDIES

Because my services are personal and unique and because I may have access to and become acquainted with the proprietary information of the Company, the Company shall have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that the Company may have for a breach of this Agreement.

9. GENERAL PROVISIONS

(A) NOT AN EMPLOYMENT CONTRACT - I agree and understand that nothing in this Agreement shall confer any right with respect to continuation of my employment by the Company, nor shall it interfere in any way with my right or the Company's right to terminate my employment at any time, with or without cause.

(B) GOVERNING LAW; CONSENT TO PERSONAL JURISDICTION - This Agreement will be governed by and construed according to the laws of the State of New Jersey, excluding conflicts of laws principles. I hereby expressly consent to the personal jurisdiction of the state and federal courts located in New Jersey for any lawsuit filed there against me by the Company arising from or relating to this Agreement.

(C) ENTIRE AGREEMENT - This Agreement sets forth the final, complete and exclusive agreement and understanding between the Company and me relating to the subject matter hereof and supersedes all prior and contemporaneous understandings and agreements relating to its subject matter. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by both the Company and me. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

(D) SEVERABILITY - If one or more of the provisions in this Agreement are deemed unenforceable by law, then the remaining provisions will continue in full force and effect.

(E) SUCCESSORS AND ASSIGNS - This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors and its assigns.

(F) SURVIVAL - The provisions of this Agreement shall survive the termination of my employment and the assignment of this Agreement by the Company to any successor in interest of other assignee.

(G) WAIVER - No Waiver by the Company of any breach of this Agreement shall be waiver of any preceding or succeeding breach. No waiver by the Company of any right under this Agreement shall be construed as a waiver of any other right. The Company shall not required to give notice to enforce strict adherence to all terms of this Agreement.

(H) NOTICE - Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below or at such other address as the party shall specify in writing. Such notice shall be deemed given upon personal delivery, or sent by certified or registered mail, postage prepaid, three (3) days after the date of mailing.

This Agreement shall be effective as of the first day of my employment with the Company, namely: \_\_\_\_\_, 20\_\_.

I UNDERSTAND THAT THIS AGREEMENT AFFECTS MY RIGHTS TO INVENTIONS I MAKE DURING MY EMPLOYMENT, AND RESTRICTS MY RIGHT TO DISCLOSE OR USE THE COMPANY'S PROPRIETARY INFORMATION DURING OR SUBSEQUENT TO MY EMPLOYMENT.

I HAVE READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ITS TERMS.

Dated: October 2, 2005

/s/ John A. Baylouny  
-----  
Signature

/s/ John A. Baylouny  
-----  
Printed Name of Employee

ADDENDUM TO LEASE AGREEMENT

BETWEEN

REED ROAD INDUSTRIAL PARK LLC #1, LANDLORD

AND

OCEAN POWER TECHNOLOGIES, INC., TENANT

1. This Addendum to Lease Agreement is executed on the 27th day of January, 2006, and specifically and expressly is incorporated into the Lease Agreement, dated August 30, 2005. In the event of any inconsistency or discrepancy, the terms, covenants, conditions and provisions of the within Addendum to Lease Agreement shall supersede and prevail over those set forth in the said Lease Agreement.
2. Landlord and Tenant acknowledge that Tenant is desirous of expanding its existing demised premises ("Existing Premises") to include adjacent premises consisting of 1,100 square feet of office space and 2,000 square feet of warehouse space ("Expansion Space"). Tenant shall accept the Expansion space in an "AS IS" condition and Landlord shall not be required to make any changes, install any improvements or prepare the Leased Premises in any way for occupancy in accordance with the terms of the Lease Agreement except that Landlord shall, at its sole cost and expense, clean the windows, bathrooms, carpeting, light fixtures, etc., replace carpeting in front offices (ground level), repaint said offices and complete a punch list of repair items as prepared by Tenant and approved by Landlord.
3. The Term for the Expansion Space shall commence on February 1, 2006 ("Expansion Commencement Date") and shall terminate on April 30, 2013.
4. Commencing with the Expansion Commencement Date, the Annual Rental and Additional Rental for the Expansion Space shall be as follows:

ANNUAL RENTAL

SPACE	PER SQUARE FOOT	ANNUAL RENTAL	MONTHLY RENTAL
Office	\$15.00	\$16,500.00	\$1,375.00
Warehouse	\$ 6.75	\$13,500.00	\$1,125.00
TOTAL		\$30,000.00	\$2,500.00

ADDITIONAL RENTAL

3,100 square feet presently @ \$3.48 per square foot = \$10,788.00  
(\$899.00 per month)

(THIS AMOUNT IS SUBJECT TO ANNUAL INCREASES BASED UPON ACTUAL  
TRIPLE NET COSTS, DEFINED IN THE LEASE AGREEMENT AS ADDITIONAL RENTAL)

TOTAL MONTHLY PAYMENT OF ANNUAL RENTAL AND ADDITIONAL RENTAL = \$3,399.00

5. Upon execution of the within Second Addendum, Tenant shall pay over to Landlord the sum of \$6,798.00, which sum shall constitute additional Security Deposit. In addition, Tenant shall pay to Landlord the sum of \$3,399.00, constituting the first month's Annual Rental and Additional Rental for the Expansion Space.
6. All remaining terms, covenants, conditions and provisions of the said Lease and Addenda/Schedules shall remain in full force and effect.

WITNESS/ATTEST: REED ROAD INDUSTRIAL PARK LLC #1  
LANDLORD

/s/ (illegible) BY: /s/ John Lovero Jr.  
-----  
JOHN LOVERO, JR., MANAGING MEMBER

OCEAN POWER TECHNOLOGIES, INC,  
TENANT

/s/ Mary P. Mikula BY: /s/ Charles F. Dunleavy  
-----  
SECRETARY CHARLES F. DUNLEAVY,  
VICE PRESIDENT - FINANCE

LEASE AGREEMENT

THIS LEASE AGREEMENT is made this 30 day of August, 2005, but effective as of May 1, 2005, between REED ROAD INDUSTRIAL PARK LLC #1, with an office at 1580 Reed Road, Pennington, New Jersey 08534 (hereinafter called "Landlord") and OCEAN POWER TECHNOLOGIES, INC., with an office at 1590 Reed Road, Pennington, New Jersey 08534 (hereinafter called "Tenant");

1. The Landlord hereby demises and leases to the Tenant and the Tenant hereby hires and takes from the Landlord for the term and upon the rentals hereinafter specified the Demised Premises, as follows:

SUITE 101 A: 4,028 square feet of warehouse space  
3,032 square feet of office space

SUITE 102 A: 1,500 square feet of warehouse space (old NJA space)  
500 square feet of office space

SUITE 103 A: 600 square feet of warehouse space (old Westbrook space)  
1,400 square feet of office space  
1,400 square feet of mezzanine space

SUITE 102B: 1,250 square feet of warehouse space (old Neumed space)  
2,450 square feet of office space  
525 square feet of mezzanine space

SUITE 103B: 3,010 square feet of warehouse space (old Aux space)  
1,365 square feet of office space  
300 square feet of mezzanine space

in the Reed Road Industrial Park located at 1590 Reed Road ("Building"), in the Township of Hopewell, County of Mercer, and State of New Jersey ("Schedule A"), to be used as office, research, light assembly, warehousing and light storage (mezzanine) ("Permitted Uses") for a Term of eight (8) years commencing effective May 1, 2005 ("Lease Commencement Date") and ending on April 30, 2013 ("Lease Termination Date").

2. A. Tenant shall pay to Landlord an Annual Rental plus Additional Rental as set forth on Schedule B, annexed hereto and made a part hereof, which Tenant covenants to pay to the Landlord or its duly authorized agent. At the end of each lease year, there shall be an accounting and any necessary adjustment made as well as an estimation of all Additional Rental

anticipated for the ensuing lease year and Tenant's monthly payment of Additional Rental shall be adjusted accordingly. Landlord shall always furnish Tenant with the prior lease year's total cost of Additional Rental which shall include reasonable and customary operating expenses, including, but not limited to, taxes, insurance, snow removal, lawn care, management fees, replacements, repairs and maintenance. Any and all replacements shall be the financial responsibility of Tenant and the cost of all replacements which constitute capital improvements, shall be determined under generally accepted accounting principles consistently applied and amortized over the useful life of said capital improvements.

All payments of Annual Rental and Additional Rental shall be delivered to Landlord at 1580 Reed Road, Pennington, New Jersey 08534 or to such authorized agent as the Landlord may from time to time designate, in equal monthly installments, on the first day of each month, during the said Term in advance.

B. Notwithstanding the foregoing, the following shall be excluded from Additional Rental:

- (i) Income, franchise, transfer, inheritance, excess profit and capital stock taxes;
- (ii) Any real estate taxes attributable to additions to the Building if such construction does not benefit all tenants in the Building in which the Demised Premises is located (unless such addition yields new rentable space);
- (iii) Interest, points, fees and amortization;
- (iv) Depreciation;
- (v) Principal payments of mortgage and other non-operating debts of Landlord;
- (vi) Costs of correcting defects in the original construction of the Building;
- (vii) Attorney's fees and other costs incurred in leasing space and/or enforcing leases of other tenants;

- (viii) Salaries and benefits and other compensation for any executive more senior than the manager of the Building;
- (ix) Financing or refinancing costs;
- (x) Costs in connection with a transfer or sale of the Building;
- (xi) Preparation of space for other tenants' occupancy, including legal fees and brokerage commissions;
- (xii) Lease concessions, including rental abatements and construction allowances;
- (xiii) Expenses arising out of Landlord's negligence, willful misconduct or breach of any law;
- (xiv) Costs of repairs or restoration incurred by Landlord and covered by the amount of Landlord's insurance, as required under the Lease, and excluding any deductible, condemnation or third parties;
- (xv) Any increase in insurance premiums to the extent that such increase is caused or attributable to the use, occupancy or act of another tenant and any premiums for any insurance carried by Landlord which is not customarily carried by other reasonably prudent landlords in comparable office/warehouse buildings in the area in which the Building is located;
- (xvi) Ground rent or costs in consummating a ground lease;
- (xvii) Organizational expenses associated with the creation and operation of the entity which constitutes Landlord and all general corporate overhead and general administrative expenses not related to the operation of the Building;
- (xviii) All additions to reserves including bad debts and rent loss reserves;
- (xix) The cost of any political or charitable contribution or donation;
- (xx) The cost of purchasing, installing and replacing art work in the Building;

- (xxi) All items for which Tenant or any other party compensates Landlord such that no duplication of payment shall occur;
- (xxii) Any cost or expense related to removal, cleaning, abatement or remediation of hazardous substances or asbestos in or about the property on which the Building is erected, to the extent same were placed or caused to be placed there solely by Landlord or other tenants;
- (xxiii) The creation of new parking spaces for the Building. Notwithstanding the foregoing, Landlord makes no representation as to new, additional or relocation of existing parking spaces for Tenant's use.

3. Landlord and Tenant hereby acknowledge and agree that Tenant previously paid over to Landlord the total sum of \$12,880.86 constituting the requisite Security Deposit. Said Security Deposit shall continue to be held by Landlord as security for the faithful performance by Tenant of all conditions to be performed by Tenant under this Lease. Tenant shall, upon execution of the within Lease, pay over to Landlord an additional sum of \$27,694.02, which sum constitutes additional Security Deposit, so that the total Security Deposit held by Landlord shall be equal to two (2) months Annual Rental and estimated Additional Rental (\$40,574.88) as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this Lease. Tenant shall deliver to Landlord a Certificate of Deposit, in the aforesaid amount of \$27,694.02, which Certificate of Deposit shall be in the name of Landlord with interest accruing thereon to the benefit of Tenant. In the event that Tenant defaults in respect of any of the terms, provisions and conditions of this Lease, including without limitation, the payment of Annual Rental and Additional Rental, Landlord may use, apply or retain the whole or any part of the Security Deposit to the extent required for the payment of any Annual Rental, Additional Rental or any other sum as to which Tenant is in default or for any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this Lease, including, without limitation, all reasonable attorneys', brokers' and other professional fees and expenses and any damages or deficiency in reletting the Demised Premises accrued before or after any summary proceedings

or other re-entry by Landlord. Such sum shall be returned to the Tenant within thirty (30) days after the expiration of the Term of this Lease provided the Tenant has performed all of the terms, provisions and conditions required hereunder.

4. The Landlord covenants that the Tenant, upon paying the said Rental and performing the covenants and conditions in this Lease contained, shall and may peaceably and quietly have, hold, and enjoy the Demised Premises for the Term aforesaid, subject, however, to the terms and conditions set forth in the within Lease.

5. Tenant shall not permit any Notice of Unpaid Balance or Construction Lien to be filed against the Demised Premises by reason of work, labor, services or materials performed or furnished to Tenant by anyone. If any such Notice or Lien shall at any time be filed, Landlord may remove said Notice or Lien by paying the full amount thereof without investigating the validity thereof, and Tenant, upon demand, as Additional Rental, shall pay to Landlord the amount so paid by Landlord in connection with the discharge of such Notice or Lien, together with expenses incurred in connection therewith, including reasonable attorneys' fees and costs.

6. Tenant covenants to pay the said Rental punctually without any previous demand therefor and without any deduction or abatement. At any time during the Term of this Lease, should the Tenant be in default of any monetary obligation hereunder, then, and in such event, Landlord may demand from Tenant current financial statements, by giving Tenant ten (10) days prior written notice of such demand. Such financial statements shall be prepared in accordance with generally accepted accounting principles.

7. This Lease is subject and subordinate to all present or future mortgages, deeds of trust, ground leases, and other encumbrances affecting the Demised Premises or the property of which said Demised Premises is a part. The Tenant agrees to execute, at no expense to the Landlord, any customary subordination and attornment agreement which may be deemed necessary or desirable by the Landlord to further effectuate the subordination of this Lease to any such mortgage, ground lease, deed of trust or encumbrance. In addition, Tenant shall execute any requested estoppel certificates. The Tenant shall execute and deliver any such instrument or instruments within ten (10) days after Landlord's request therefor.

8. A. The Tenant shall not be permitted to assign the within Lease nor sublet the Demised Premises, in whole or in part, nor permit or cause any lien, including, without

limitation, any mortgage or lien or security interest arising by operation of the Uniform Commercial Code, or encumbrance, including, without limitation, any collateral assignment or any assignment whatsoever with respect to any institutional or other financing, without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Any lawful levy or sale or execution or other legal process, or any compulsory procedure, shall be deemed an impermissible assignment within the meaning of this Lease.

B. Notwithstanding the foregoing, Landlord shall not unreasonably withhold, delay or condition its consent to an assignment of this Lease or subletting of the Demised Premises, subject to compliance with all of the conditions enumerated below:

(i) Intentionally Omitted

(ii) The operation being conducted in the Demised Premises shall remain unaffected and any such assignee or other transferee shall use the Demised Premises only for the Permitted Use; and

(iii) The assignment or subletting must be all of Tenant's leasehold interests and of the entire Demised Premises, and shall in the case of assignment also transfer to the assignee all of the Tenant's rights in, and interest under, this Lease including the security, if any, deposited hereunder; and

(iv) At the time of such assignment or subletting this Lease must be in full force and effect without any breach or default thereunder on the part of the Tenant; and

(v) The assignee or sublessee shall assume, by written recordable instrument, in form and content satisfactory to Landlord, the due performance of all of Tenant's obligations under this Lease, including any accrued obligations at the time of the assignment or subletting; and

(vi) Any such assignee or sublessee shall have had substantial and adequate business experience and such assignee or sublessee shall be financially qualified to carry on such business in the Demised Premises; and

(vii) The proposed assignee/subtenant shall provide financial statements setting forth its net worth, which shall demonstrate its ability to perform all of the terms and provisions of the Lease; and

(viii) A copy of the assignment or sublease and the original assumption agreement (both in form and content satisfactory to the Landlord) fully executed and acknowledged by the assignee or sublessee shall be delivered to the Landlord at least ten (10) days prior to the effective date of such assignment or subletting; and

(ix) Such assignment or subletting shall be upon and subject to all the provisions, terms, covenants and conditions of this Lease and the Tenant (and any assignee/subtenant) shall continue to be and remain liable thereunder; and

(x) Tenant shall reimburse Landlord for Landlord's attorneys' fees for examination of and/or preparation of any documents in connection with such assignment or subletting; and

(xi) Such assignment/subletting shall be at a rental which is equal to or greater than the rental which Landlord is then asking for other space within the Building. Landlord shall have the right to recapture from any consideration paid to Tenant any surplus from any assignment or subletting in excess of the rental Tenant is obligated to pay Landlord under this Lease; and

(xii) Landlord shall revisit the issue of an increase in Security Deposit and the necessity of a Guaranty(ies), which shall be determined in Landlord's reasonable commercial discretion; and

(xiii) Any such assignment or sublease agreement shall contain an express and specific prohibition against any additional assignment or subletting by such assignee or subtenant; and

(xiv) No assignment or subletting shall be permitted which will be violative of any exclusive or restrictive rights granted to any present or future tenant, assignor or subtenant; and

(xv) If any such assignment or subletting runs to the end of the initial Term, or to the end of any Renewal Term, then Landlord shall have the option to recapture said space and such shall be considered to be an offer by Tenant to Landlord to assign this Lease, as respects the proposed assigned/sublet area to Landlord; and

(xvi) Such assignee/subtenant shall not be an affiliate of an existing tenant of Landlord nor one with whom Landlord, or any of its affiliates, is (or has, within the preceding nine months) negotiating with for space; and

(xvii) Tenant's failure to strictly comply with all the provisions and conditions of this Section, and all the subsections hereof, shall, at Landlord's option, render any purported assignment or subletting null and void and of no force and effect.

9. Tenant, during the Term hereof, shall keep, and at the expiration hereof deliver up, the Demised Premises in as good order and condition as the same now are or may hereafter be put, reasonable wear and tear and damage by unavoidable casualty being alone excepted. If the Tenant fails to remove any property or trade fixtures from the Demised Premises at the expiration or earlier termination of this Lease, said property shall be deemed abandoned and Landlord may cause the same to be removed or sold, either privately or publicly, without notice

to Tenant, and Landlord may retain all proceeds from any such sale without any accounting or liability to Tenant. Tenant will not make any alterations, additions or improvements to the Demised Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed nor conditioned, and all alterations, additions and improvements made by either of the parties hereto upon the Demised Premises, shall be the property of the Landlord, excluding Tenant's trade fixtures, furniture, equipment and other personal property, and shall remain upon and be surrendered with the Demised Premises at the expiration or earlier termination of this Lease, excepting if Landlord notifies Tenant that Landlord desires any and all alterations, additions or improvements be removed by Tenant, which removal, and any and all damages caused by such removal, shall be at Tenant's sole cost and expense. Notwithstanding the foregoing, Tenant shall not make any non-structural alterations, renovations, improvements or other installations in, on or to the Demised Premises, or any part thereof, (including, without limitation, any alterations of the signs, structural alterations, or any cutting or drilling into any part of the Demised Premises or any securing of any fixture, apparatus or equipment of any kind to any part of the Demised Premises) unless and until Tenant shall have caused plans and specifications therefor to have been prepared, at Tenant's expense, by an architect or other duly qualified person and shall have obtained Landlord's reasonable written approval thereof, which approval shall not be unreasonably withheld nor delayed. If such approval is granted, Tenant shall cause the work described in such plans and specifications to be performed, at its expense, promptly, efficiently and competently by duly qualified or licensed persons or entities without interference with or disruption of the operations of tenants or other occupants of the Building. All such work shall comply with all applicable laws, codes, rules, regulations and ordinances. In addition, Tenant may not disturb or tamper with Landlord's HVAC, mechanical, electrical and plumbing equipment that have been installed within the Demised Premises or Building.

10. A. The Landlord shall obtain and maintain, during the Term of this Lease, fire insurance with full extended coverage in an amount equivalent to the full replacement value of the insurable improvements to the Demised Premises, including insurance coverage against damage to the building and/or its contents. Said insurance, in any event, shall not be less than the amount of any bona fide mortgage which may be placed on the Demised Premises by Landlord and shall be in such form as any such bona fide mortgagee shall require with an authorized and recognized fire insurance company authorized to do business in the State of New Jersey.

B. Tenant covenants and agrees that it shall carry liability insurance, which said insurance shall be in the minimum amount of One Million Dollars (\$1,000,000.00) per accident for one (1) person, Two Million Dollars (\$2,000,000.00) per accident for two (2) or more persons, and a minimum amount of One Hundred Thousand Dollars (\$100,000.00) for property damage, and Tenant further covenants and agrees that it shall add Landlord as an additional insured, shall furnish Landlord with a Certificate of said liability insurance prior to taking possession of Demised Premises and shall, annually, furnish Landlord with a copy of said Certificate, together with proof of payment. No such policy shall be cancellable without at least thirty (30) days prior written notice to Landlord.

C. Tenant shall not do nor permit anything in the Demised Premises or bring or keep anything therein that shall, in any way, increase the rate of fire insurance in the building in which the Demised Premises is located, or on the property kept therein, or obstruct or interfere with the rights of other tenants, or in any way injure or annoy them or those having business with them, or conflict with the regulations of the fire department or the fire laws or with any insurance policies upon the building in which the Demised Premises is located, or any part thereof. Tenant shall comply with any and all laws, rules and ordinances established by the Board of Health or other governmental agencies or authorities. In the event there is any increase in the fire insurance premiums as the result of the acts or omissions of the Tenant, its agents, servants, or employees, Tenant hereby covenants to pay on demand, as Additional Rental an amount equal to the aforesaid increase in insurance premiums.

D. All policies of liability insurance to be provided by Tenant or Landlord pursuant to this Paragraph covering and insuring the Demised Premises, shall expressly waive any right of subrogation on the part of the insurer against Landlord or Tenant, as applicable, which right, to the extent not prohibited or violative of any such policy, is hereby expressly waived by Tenant against Landlord and waived by Landlord against Tenant. This paragraph and the waiver of claims/subrogation has priority over any other clause of the Lease which may be in conflict.

11. Tenant shall have the right to erect a sign on exterior of the Building subject to Landlord's consent, and approval of Hopewell Township zoning or ordinances; and such sign

shall be removed at the end of Tenant's leasehold with any damaged repaired by Tenant. Landlord shall have Tenant's corporate name printed on existing sign on the Demised Premises.

12. If, during the Term of this Lease, the building of which the Demised Premises is a part shall be damaged by fire or other casualty and if such damage cannot be repaired with one hundred twenty (120) working days of the usual working hours, the Landlord shall have the right to cancel and terminate this Lease as of the date of the damage by giving the Tenant written notice thereof within thirty (30) days after the date of such damage. If such notice is not given or if the damage can be repaired within one hundred twenty (120) days, Landlord shall restore such building with reasonable diligence, and if the Demised Premises is rendered untenable by such damage, the Rental shall be proportionately abated until it is restored. In the event Landlord determines that the damage cannot be repaired within the one hundred twenty (120) working days set forth above, Landlord shall provide Tenant with written notice thereof. Within thirty (30) days after Tenant's receipt of said notice from Landlord, Tenant shall have the right to terminate the within Lease by providing written notice to Landlord. Furthermore, in the event the damage is not substantially repaired within the one hundred twenty (120) working days, then Tenant shall be permitted to provide Landlord with thirty (30) days notice of Tenant's intention to terminate the Lease. The Lease shall terminate and Tenant shall vacate the Demised Premises at the expiration of the thirty (30) day notice period unless prior to such date Landlord has substantially repaired any and all damage.

13. In the event that the Tenant shall remain in the Demised Premises after the expiration of the Term of this Lease without having executed a new written lease with the Landlord, such holding over shall not constitute a renewal or extension of the Lease. The Landlord may, at its option, elect to treat the Tenant as one who has not removed at the end of its Term and thereupon be entitled to all remedies against the Tenant provided by law in that situation, or the Landlord may elect, at its option, to construe such holding over as a tenancy from month-to-month and subject to all the terms and conditions of this Lease, except as to duration thereof. In the event Tenant remains in the Demised Premises with Landlord's consent, during the first three (3) months of said holdover period, Tenant shall pay monthly Rental, in advance, at the rate of 125% of the then existing monthly Rental effective during the last month of the Term. In the event Tenant remains in the Demised Premises without Landlord's consent, or if Tenant remains beyond the three (3) month period set forth above with Landlord's consent,

then Tenant shall pay monthly Rental in advance at the rate of 150% the then existing monthly Rental effective during the last month of the Term. Additional Rental shall continue to be paid as required in this Lease.

14. It is further agreed that if any installment of Rental or Additional Rental is not paid within ten (10) days following notice by Landlord to Tenant after such payment is due, or if Tenant shall breach any of the other terms, covenants, provisions and conditions of this Lease, or the rules and regulations hereinafter mentioned, the Tenant shall be in default hereof and Landlord shall have available all remedies provided by law. Tenant hereby waives any requirement as to notice hereunder and further waives any and all rights or claims for redemption of any Rentals or payments or for repossession of the Demised Premises or any portion thereof. Notwithstanding the foregoing, Landlord shall provide Tenant with written notice of any non-monetary default and Tenant shall have thirty (30) days within which to cure said default and such additional time as may be reasonably necessary providing Tenant is promptly, continuously and diligently pursuing a cure.

15. Landlord, its agents or employees, may enter to clean, examine and exhibit the Demised Premises and may make repairs and improvements therein and in and to any portion of the building in which the Demised Premises is located, and for such purpose shall have the right to install pipes and wires and otherwise utilize the Demised Premises, including the right to break floors, walls and ceilings, and to move cases, fixtures and floor coverings when desirable for such purposes, but same is to be done so as to inconvenience not more than is reasonably necessary.

16. Tenant covenants and agrees that the following rules, regulations and stipulations and such other and further rules and regulations as the Landlord may make, being in the Landlord's judgment needful for the safety, care and cleanliness of the building and the Demised Premises, shall be considered a part of this Lease and shall be faithfully kept, observed and performed by the Tenant and by its employees, agents, contractors and visitors of the Tenant unless waived in writing by the Landlord:

A. Tenant shall not obstruct sidewalks, entries, passages and staircases or use same for any other purposes than ingress and egress. Tenant shall not cover nor obstruct the

windows, glass doors and any lights that reflect or admit light into the halls or other places of the building of which the Demised Premises is a part.

B. Tenant shall not have the right to block any driveway to the access areas of the building of which the Demised Premises is a part. Adequate parking shall be made available in office parking area.

C. Except for the purpose of performing any duties under this Lease, the Tenant shall not mark, paint, drill into or in any way deface the walls, ceilings, or partitions, floors, wood, stone or iron work. Notwithstanding the foregoing, Tenant may hang decorative pictures provided Tenant properly repairs any holes or other damage made by said hangings at the end of the Term.

D. Tenant shall not make any use of the Demised Premises nor install any equipment therein which would create a hazardous condition or cause an overloading of the presently installed electrical services.

E. Gas, electric and water shall be paid for by Tenant.

F. Tenant's equipment shall be delivered to the building only at reasonable times. Tenant shall not overload, damage, suffer or permit the Demised Premises to be overloaded or damaged.

G. Keys pertaining to Demised Premises or the building in which the Demised Premises is located, held by the Tenant shall be delivered to the Landlord at the termination of the tenancy.

H. Nothing shall be thrown by Tenant, its employees, agents, contractors or visitors, out of the windows or doors or down passages of the building in which the Demised Premises is located.

17. A. Tenant shall, at Tenant's own expense, comply with the Industrial Site Recovery Act, N.J.S.A. 13:1K-6, et seq. and the regulations promulgated thereunder ("ISRA"). Tenant shall not, however, have any obligation or liability whatsoever in respect of any spill or discharge of hazardous substances or wastes or any other non-compliance with ISRA, which is caused by any person other than Tenant. Tenant shall, at Tenant's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of, the Industrial

Site Evaluation Element ("The Element") of the New Jersey Department of Environmental Protection ("NJDEP"). Should the Element or any other division of NJDEP determine that a clean up plan be prepared and that a clean up be undertaken because of any spills or discharges of hazardous substances or wastes at the Demised Premises occurring or arising from Tenant's use and occupancy, then Tenant shall, at Tenant's own expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. Tenant's obligations under this paragraph shall arise if there is any closing, terminating or transferring of Tenant's operation at the Demised Premises pursuant to ISRA or other triggering event by Tenant. At no expense to Landlord, Tenant shall promptly provide all information reasonably requested by Landlord for preparation of non-applicability affidavits, de minimis quantity exemption application, or other required submissions, and shall promptly sign such affidavits when reasonably requested by Landlord. Tenant shall indemnify, defend and save harmless Landlord from all fines, suits, procedures, claims and actions of any kind arising out of or in any way connected with any spills or discharges or hazardous substances or wastes at the Demised Premises occurring or arising from Tenant's use and occupancy, and from all fines, suits, procedures, claims and actions of any kind arising out of Tenant's failure to comply with this Paragraph. Tenant's obligations and liabilities under this Paragraph shall continue so long as Landlord remains responsible for any spills or discharges of hazardous substances or wastes by Tenant at the Demised Premises occurring or arising from Tenant's use and occupancy. Tenant's failure to abide by the terms of this Paragraph shall be restrainable by injunction.

B. Landlord shall, at Landlord's own expense, comply with ISRA in all instances beyond Tenant's responsibility as set forth above. To the extent the Element or any other Division of NJDEP requires information from Landlord, Landlord shall promptly provide all information requested. Should the Element or any other Division of NJDEP determine that a clean up plan be prepared and that a clean up be undertaken because of any spills or discharges of hazardous substances or waste at the Demised Premises, by any party other than Tenant, then and in such case, Tenant shall not be responsible and the party who is responsible, Landlord, other tenant or other party, shall, at its own expense prepare and submit required plans and financial assurances and carry out the approved plans. Landlord shall indemnify, defend and save harmless Tenant from all fines, suits, procedures, claims and actions of any kind arising out of or any way connected with any spillages, discharges of hazardous substances or waste or other

action by Landlord at the Demised Premises and not occurring or arising from Tenant's use and occupancy, and from all fines, suits, procedures, claims and actions of any kind arising out of Landlord's failure to comply with this Paragraph. Landlord's obligations under this Paragraph shall survive the expiration or termination of this Lease. Landlord's failure to abide by the terms of this Paragraph shall be restrainable by injunction.

C. In the event the provisions of Subsection A above have not been complied with, then and in such event, Tenant shall be responsible to continue to pay monthly Annual Rental and all Additional Rental until said NJDEP approval is delivered to Landlord, notwithstanding Tenant may not be in possession. The monthly Annual Rental Tenant shall be required to pay hereunder shall be 125% the Annual Rental for the last month of the Term.

D. In the event that Landlord shall require from Tenant information and evidence of Tenant's Standard Industrial Classification number, the nature of Tenant's business being operated upon the Demised Premises, the use Tenant made of the Demised Premises or like information to be submitted to NJDEP or any successor governmental department or agency in connection with a proposed sale, leasing, exchange, financing, refinancing or other disposition of the Demised Premises, or of any part thereof, or of the building in which or land upon which the Demised Premises is located, or any part thereof, then Tenant shall upon written request of Landlord furnish such information and evidence in Affidavit or other form required by NJDEP without unreasonable delay.

E. Tenant shall commence its ISRA submission in anticipation of the end of its Lease Term at least six (6) months prior to the expiration of the Term.

18. All notices or other communications required or permitted hereby shall be effective only if the same are in writing and are signed by the party giving the notice or by an agent or other person authorized in writing to so act on behalf of such party. Notices to Tenant may be given either by delivery to Tenant at the Demised Premises or by registered or certified mail, return receipt requested; or by delivery by a nationally recognized courier; and notices to Landlord may be given either by delivery to Landlord at the address stated above or by registered or certified mail, return receipt requested, or by delivery by a nationally recognized courier, with copies to Stuart B. Dember, Esquire, Saul Ewing LLP, 750 College Road East, Suite 100, Princeton, New Jersey 08540. All notices shall be deemed given unless specified herein, on the

date when the same are delivered, if delivered, or five (5) business days after the date when the same are deposited in the mail if given by certified mail, or on the business day following the day same are deposited with such national overnight courier.

19. A. Tenant agrees to defend, indemnify, save, hold and keep Landlord and Landlord's agents harmless from all losses, costs, liabilities, claims, damages and expenses, including reasonable attorneys' and other professional fees, penalties and fines, incurred in connection with or arising from (i) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease on Tenant's part to be observed or performed, or (ii) the use, occupancy, control or management, or manner of use, occupancy, control or management of the Demised Premises or the building in which the Demised Premises is located by Tenant or any person claiming through or under Tenant, or contractors, agents, servants, employees, visitors, invitees, licensees and the like, of Tenant or any such person, in or about the Demised Premises or the building in which the Demised Premises is located, either prior to, during, or after the expiration of, the Term including any acts, omissions or negligence in the making or performing of any improvements.

Subject to the limitations set forth in Section E below, Landlord agrees to defend, indemnify, save, hold and keep Tenant and Tenant's agents harmless from all losses, costs, liabilities, claims, damages and expenses, including reasonable attorneys' and other professional fees, penalties and fines, incurred in connection with or arising from Landlord's control or management of the Common Areas. ("Common Areas" means those areas which may be furnished by Landlord in or near the Reed Road Industrial Park for the non-exclusive general common use of tenants and other occupants of the Reed Road Industrial Park).

B. Tenant shall pay to Landlord, as Additional Rental, within forty-five (45) days next following receipt by Tenant of bills or statements therefor, sums equal to all losses, costs, liabilities, claims, damages and expenses referred to in this Paragraph and Tenant's obligations under this Paragraph shall survive the termination of the Term.

C. Tenant has examined the Demised Premises and accepts it in its present "AS IS" condition, excepting for Landlord's Work as set forth on Schedule C.

D. It is expressly understood and agreed by and between the parties to this Lease that Tenant shall assume all risk of damage and casualty to its property, equipment and

fixtures occurring in or about the Demised Premises, whatever the cause of such damage or casualty. It is further understood and agreed that, in any event, Landlord, in its capacity as Landlord, and, if applicable, as builder, architect, designer or general contractor of the Demised Premises and the building in which the Demised Premises is located, and Landlord's agents, servants, employees, contractors, invitees and the like shall not be liable to Tenant, Tenant's agents, servants, employees, contractors, invitees and the like, for any damage or injury to person or property or for any inconvenience or annoyance to Tenant or any other occupant of the Demised Premises or injury to or interruption of Tenant's or such other occupant's business, arising out of or attributable to (i) the design and construction of the Demised Premises and the building of which the Demised Premises is a part; (ii) any maintenance, repairs, replacements, additions, alterations, substitutions and installations made to the Demised Premises and the building of which the Demised Premises is a part; (iii) the failure of Landlord or others to perform any such maintenance or to make any such repairs, replacements, additions, alterations, substitutions and installations to the Demised Premises and the building of which the Demised Premises is a part or to provide any utilities or services; (iv) the acts or omissions of any tenant or other occupants of any space adjacent to or adjoining the Demised Premises; and (v) steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into the Demised Premises and the building of which the Demised Premises is a part. Specifically excluded herefrom is Landlord's negligence or willful misconduct.

E. Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons occupying space adjoining the Demised Premises or any other part of the building, or otherwise, or for any loss or damage incurred by Tenant, or those claiming by, through or under Tenant, or its or their property, from the breaking, bursting, stoppage, overflowing or leaking of electrical cable or wires, water, gas, sewer or steam pipes. To the maximum extent permitted by law, Tenant agrees to use and occupy the Demised Premises, and to use such other portions of the common areas as Tenant is herein given the right to use, at Tenant's own risk as specified in this Section. In no event shall Landlord have any responsibility to Tenant, under any of the Lease provisions contained herein or elsewhere in this Lease, for any special, consequential, indirect or punitive damages.

F. Notwithstanding anything to the contrary provided in this Lease, each and every term, covenant, condition and provision of this Lease is hereby made specifically subject to the provisions of this Paragraph. It is expressly understood and agreed that there shall be no personal liability whatsoever on the part of the Landlord or any successor in interest of Landlord (or on the part of the officers, directors and shareholders of any corporation or the managers, members of any firm, limited liability company, partnership or joint venture which may be the Landlord or any successor in interest of the Landlord at any time or from time to time) with respect to any of the terms, covenants, conditions and provisions of this Lease, and Tenant shall look solely to the equity of Landlord or such successor in interest in the fee estate of Landlord in the Demised Premises for the satisfaction of each and every remedy of Tenant in the event of any breach by Landlord or by any such successor in interest of any of the terms, covenants, conditions and provisions of this Lease to be performed by Landlord, such exculpation of corporate and/or personal liability to be absolute and without any exception whatsoever.

20. In the event that the Demised Premises, or any part thereof, are taken or condemned for a public or quasi-public use, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor and rent reserved shall abate proportionately as to the part so taken or shall cease if the entire Demised Premises be so taken, and the Tenant shall have no claim or interest in or to any aware of damages for such taking.

21. In the event that the Demised Premises is not ready for occupancy on the Lease Commencement Date because of any alterations to be made by the Landlord to the Demised Premises, or because of the failure of the occupant of the Demised Premises to vacate and surrender same, this Lease shall not be affected thereby nor shall Tenant have any claim against the Landlord by reason thereof, but no Rental shall be due hereunder until the Landlord shall send ten (10) days notice by mail to the Tenant, addressed to the Tenant's last known address, that the Demised Premises is ready for occupancy. Notwithstanding the foregoing, both Landlord and Tenant shall have the right to terminate the within Lease as to Suites 102B and 103B in the event those Suites are not delivered pursuant to the terms of this Lease to Tenant by December 14, 2004. However, Tenant shall not have the right to terminate on said date if failure to deliver the Suites is caused by any delay, in whole or in part, by Tenant.

22. A. Landlord, at its expense, will make, or cause to be made structural repairs to exterior walls, structural columns and structural floors which collectively enclose the Demised Premises (excluding, however, all doors, door frames, windows and glass), sewage, water pipes, power lines and facilities relating to the immediate foregoing items and the roof over the Demised Premises; provided Tenant shall give Landlord notice of the necessity for such repairs and provided that the necessity for such repairs shall not have arisen from nor shall have been caused by Tenant's use or the negligence or willful acts of Tenant, its agents, officers, employees, licensees, invitees or contractors, and the like.

B. All repairs to the Demised Premises or any installations, equipment or facilities therein, other than those repairs required to be made by Landlord, shall be made by Tenant at its expense. (Landlord shall cause certain repairs and maintenance to be done, on Tenant's behalf and as Tenant's agent, for which Tenant shall remain responsible and for which Tenant shall pay, such as capital improvements which are to be amortized and those due to Tenant's or its agents negligence, the latter of which remain the sole responsibility of Tenant). Without limiting the generality of the foregoing, Tenant shall keep the interior of the Demised Premises, together with all electrical, plumbing and other mechanical installations therein, in good order and repair and shall make all replacements from time to time required thereto at its expense; Tenant will not overload the electrical wiring serving the Demised Premises or within the Demised Premises, and will install at its expense, any additional electrical wiring which may be required in connection with Tenant's apparatus. Any damage or injury sustained by any person because of mechanical, electrical, plumbing or any other equipment or installations whose maintenance, repair or cost shall be the responsibility of Tenant, shall be paid for by Tenant, and Tenant shall indemnify and hold Landlord harmless from and against all claims, actions, damages and liability in connection therewith, including but not limited to, attorneys' and other professional fees, and any other costs which Landlord might reasonably incur (as Additional Rental).

C. Tenant shall repair promptly, at its expense, any damage to the Demised Premises, and, upon demand, shall reimburse Landlord (as Additional Rental) for the cost of the repair of any damage elsewhere in the building in which the Demised Premises is located, caused by bringing into the Demised Premises any property for Tenant's use, or by the installation or removal of such property regardless of fault or by whom such damage shall be caused (unless

caused solely by Landlord, its agents, employees or contractors), and in default of such repairs by Tenant, at the expiration of five (5) days after notice to Tenant, Landlord may make or cause the same to be made and Tenant agrees to pay to Landlord promptly upon Landlord's demand, as Additional Rental, the cost thereof.

D. Tenant shall be responsible for and shall pay to Landlord, upon demand and as Additional Rental, all reasonable attorneys', architectural, engineering and other professional fees and expenses incurred with respect to any and all review and approval regarding Tenant's repairs to the Demised Premises.

E. Subject to the limitations set forth elsewhere in this Lease, excepting for Landlord's negligence or willful misconduct, Landlord shall not be liable by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations, additions or improvements in or to the Demised Premises or the building in which the Demised Premises is located, or to any appurtenances or equipment therein. There shall be no abatement of Rental because of such repairs, alterations, additions or improvements.

23. Tenant, at its sole cost and expense, shall comply with and shall cause the Demised Premises to comply with (i) all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Demised Premises, or any part thereof, or the use thereof, including those which require the making of any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may hereafter be enacted involve a change of policy on the part of the governmental body enacting the same; and (ii) all rules, orders and regulations of the National Board of Fire Underwriters of Landlord's fire insurance rating organization or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions which apply to the Demised Premises. Landlord, at its sole cost and expense, shall comply with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Common Areas.

24. It is understood and agreed that the Tenant shall provide its own janitorial service for the Demised Premises.

25. Tenant represents that in the negotiation of this Lease it dealt with no real estate broker or salesman except NONE. Tenant hereby agrees to indemnify Landlord and hold

it harmless from any and all losses, damages and expenses arising out of any inaccuracy or alleged inaccuracy of the above representation, including court costs and attorneys' fees. Landlord shall have no liability for brokerage commissions arising out of a sublease by Tenant and Tenant shall and does hereby indemnify Landlord and hold Landlord harmless from any and all liability for brokerage commissions arising out of any such sublease. Landlord shall pay the commissions of N/A pursuant to separate agreement.

26. No rights are to be conferred upon the Tenant until this Lease has been signed by the Landlord and an executed copy of the Lease has been delivered to the Tenant.

27. The foregoing rights and remedies are not intended to be exclusive, but as additional to all rights and remedies the Landlord would otherwise have by law.

28. All of the terms, covenants and conditions of this Lease shall inure to the benefit of and be binding upon the respective heirs, executors, administrators and assigns of the parties hereto.

29. Tenant and Landlord agree that any failure of the other to insist upon strict observance of any term, condition or covenant of this Lease in any one or more instances, shall not constitute nor be deemed a waiver at that time or thereafter of such or any other term, condition or covenant in this Lease.

30. This Lease and obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in nowise be affected, impaired or excused because Landlord is unable to supply or is delayed in supplying any service, utility, equipment or fixtures if Landlord is prevented or delayed from so doing by reason of governmental pre-emption in connection with any national emergency declared by the President of the United States or in connection with any rules, orders or regulations of any department or sub-division thereof of the conditions of supply and demand which have been or are affected by such national emergency.

31. This Lease and the rights and obligations of the parties hereunder shall be construed in accordance with the internal laws of the State of New Jersey applicable to leases made and to be performed in the State of New Jersey without regard to principles of conflict of law.

32. The authorization of the Permitted Use of the Demised Premises for the purposes set forth herein does not constitute a representation or warranty by Landlord that any particular use of the Demised Premises is now or shall continue to be permitted under applicable laws or regulations.

33. Tenant has requested that Landlord perform certain work at the Demised Premises ("Landlord's Work"), which work is set forth on Schedule C annexed hereto and made a part hereof (Schedule C consists of the pertinent portions of Landlord's letter of May 9, 2005) for which Landlord has received from the Township of Hopewell a Certificate of Approval dated April 13, 2005. The cost of Landlord's Work to date totals \$63,326.17 ("Landlord's Work Cost"). Tenant shall pay the sum of \$20,000.00 to Landlord upon execution of the within Lease. The balance of \$43,326.17 plus interest at six (6%) percent per annum shall be paid by Tenant to Landlord in thirty-six (36) equal monthly installments of \$1,275.72 commencing with Tenant's first monthly installment of Rental hereunder. In the event Tenant is in default under the Lease, whether monetary or non-monetary, then and in such event, the total remaining balance of Landlord's Work Cost shall immediately become due, owing and payable to Landlord and shall constitute Additional Rental hereunder.

34. RIGHT OF FIRST REFUSAL:

In the event Landlord intends to sell the building in which the Demised Premises is located to a third party, Tenant shall be granted a continuous Right of First Refusal for the purchase of the building, such Right of First Refusal subject to and conditioned upon Tenant being in actual occupancy of the Demised Premises and Tenant not being in default of any monetary or non-monetary terms, covenants, conditions and provisions of this Lease. Tenant shall execute and deliver to Landlord a written exercise of the Right of First Refusal, which must be delivered within seven (7) calendar days of receipt of Landlord's written notice of the proposed sale of the building, time specifically and expressly hereby being made of the essence for Landlord receipt of Tenant's written exercise of the Right of First Refusal. The notice of Right of First Refusal to Tenant shall contain the purchase price and such other terms Landlord is

requiring of such third party. Tenant's failure to timely respond to Landlord's notice shall conclusively be deemed to be a waiver by Tenant of its Right of First Refusal for said transaction. Any transaction consummated by Landlord shall be upon substantially the same terms and conditions as set forth in Landlord's notice. Specifically excluded from this Right of First Refusal is any intra-family transfer or any transfer to an affiliate of the Landlord.

35. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted.

36. This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof; all negotiations, considerations and representations between the parties have been incorporated herein. No course of prior dealings between the parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease. No representations, understandings, or agreements have been made or relied upon in the making of this Lease other than those specifically set forth herein. This Lease can be modified only by a writing signed by the party against whom the modification is enforceable.

37. Concurrent with the execution of the within Lease, Tenant's leasehold under a certain Lease Agreement, dated September 15, 2004, shall terminate.

IN WITNESS WHEREOF, the said parties have hereto set their hands and seals the day and year first above written.

WITNESS/ATTEST: REED ROAD INDUSTRIAL PARK, LLC #1  
/s/ (illegible) /s/ John Lovero Jr.  
-----  
JOHN LOVERO, JR., MANAGER

OCEAN POWER TECHNOLOGIES, INC.

/s/ Charles F. Dunleavy BY: /s/ George W. Taylor  
-----  
SECRETARY PRESIDENT

ADDENDUM A

Total leased area: 8,747 square feet office  
10,388 square feet warehouse  
2,225 square feet mezzanine

Measurements are included to center of walls when adjacent to other Tenants; when outside walls, measurements shall be taken from outside walls.

The following are conditions that Landlord and Tenant shall abide by:

The installation and replacement of any carpets, vinyl, or any other floor coverings, as well as shades or blinds, shall be supplied and installed at Tenant's cost;

After the installation of heating and cooling equipment, Tenant shall have units serviced as required (suggest a service policy by mechanical installer);

If, at the expiration of three (3) years, Tenant shall require any interior painting or repairs, Landlord shall provide Tenant with a work order sheet reflecting the cost for such painting or repairs, and Tenant shall pay to Landlord the cost thereof upon completion;

Any light bulbs, additional lighting receptacles or switches, if required, shall be billed to Tenant;

A dumpster shall be supplied and paid for by Tenant, the container shall never be overfilled and no debris shall be left loose. The Demised Premises shall be kept clean at all times.

Landlord shall provide Tenant with one (1) set of keys; Tenant shall obtain additional keys, at its sole cost and expense, if needed;

Tenant shall provide his own janitorial services for the Demised Premises;

Tenant shall not have the right to have any vehicles parked outside of building after business hours except to park opposite its own door or inside that leased area. No vehicle other than their business cars or trucks shall be parked inside or around premises. No personal cars, trailers, motorcycles, bicycles, etc., shall be left in or on premises;

Any additional work required by Tenant shall first be approved with a work order sheet, executed by both Landlord and Tenant, with payment in full by Tenant to landlord upon completion of such additional work;

Landlord is not responsible for any excessive loads stored on mezzanine. The recommended load would be 70 pounds per sq. ft. The Architectural Plans denote that the recommended load for concrete flooring equals 3,000 pounds per square foot.

WITNESS/ATTEST: REED ROAD INDUSTRIAL PARK, LLC #1  
/s/ (illegible) /s/ John Lovero Jr.  
-----  
JOHN LOVERO, JR., MANAGER

OCEAN POWER TECHNOLOGIES, INC.  
/s/ Charles F. Dunleavy BY: /s/ George W. Taylor  
-----  
SECRETARY PRESIDENT

ADDENDUM B

Sprinkler System

Tenant shall be responsible for providing adequate heating and constant insulation in all areas of its space to protect the wet pipe fire sprinkler system from freezing or damage from extreme low temperatures, and/or physical damage.

Tenant must obtain insurance to cover the total value of all material, supplies, and equipment; and shall file a Certificate of Insurance for the amount of coverage on all personal or corporate materials, supplies, and equipment in Tenant's areas for fire, vandalism, theft, and any damage from sprinkler system (water damage) if sprinklers are activated due to fire, freezing or any other reason.

Notwithstanding anything to the contrary in this Lease, Landlord shall replace, when and if necessary, at its expense, the wet pipe fire sprinkler system; provided the replacement is not due to Tenant's negligence, fit-out, improvements or Tenant's use. Any and all maintenance and repairs shall remain the sole responsibility of Tenant.

WITNESS/ATTEST: REED ROAD INDUSTRIAL PARK, LLC #1  
/s/ (illegible) /s/ John Lovero Jr.  
-----  
JOHN LOVERO, JR., MANAGER

OCEAN POWER TECHNOLOGIES, INC.

/s/ Charles F. Dunleavy BY: /s/ George W. Taylor  
-----  
SECRETARY PRESIDENT

SCHEDULE A  
DEMISED PREMISES

SCHEDULE B

RENTAL

SUITE NO.	OFFICE SQUARE FOOTAGE	WAREHOUSE SQUARE FOOTAGE	MEZZANINE SQUARE FOOTAGE
101A	3,032	4,028	0
102A	500	1,500	0
103A	1,400	600	1,400
102B	2,450	1,250	525
103B	1,365	3,010	300
TOTAL	8,747	10,388	2,225

The Annual Rental for the First through and including the Fourth Lease Year shall be as set forth below, commencing effective May 1, 2005:

OFFICE RENTAL CALCULATED AT \$12.50 PER SQUARE FOOT  
 WAREHOUSE RENTAL CALCULATED AT \$6.50 PER SQUARE FOOT

NO RENTAL ON MEZZANINE SPACE (PROVIDED USED SOLELY FOR LIGHT STORAGE SUBJECT TO MUNICIPAL ZONING CODE AS A PERMITTED USE; IF NOT, WILL BE ABANDONED BY TENANT. TENANT SHALL NOT OVERLOAD.)

OFFICE RENTAL: \$109,337.50  
 WAREHOUSE RENTAL: \$ 67,522.00  
 -----  
 TOTAL ANNUAL RENTAL: \$176,859.50 (\$14,738.29 PER MONTH)

ADDITIONAL RENTAL

19,135 SQUARE FEET ESTIMATED @ \$3.48 PER SQUARE FOOT = \$66,589.80  
 (\$5,549.15 PER MONTH) (THIS AMOUNT IS SUBJECT TO ANNUAL INCREASES BASED UPON ACTUAL TRIPLE NET COSTS, DEFINED HEREIN AS ADDITIONAL RENTAL)

Tenant's proportionate share of Additional Rental is defined as that fraction, the numerator of which is the rentable area of the Demised Premises and the denominator of which is the total rentable area in the Building known as Reed Road Industrial Park, Township of Hopewell, County of Mercer, State of New Jersey. Tenant's present proportionate share is 87%.

TOTAL MONTHLY PAYMENT OF ANNUAL RENTAL AND ADDITIONAL RENTAL = \$20,287.44

The Annual Rental for the Fifth Lease Year shall be the greater of (a) \$203,921.00 (\$15.00 per square foot for office space and \$7.00 per square foot for warehouse area), or (b) the Annual Rental in effect at the expiration of the Fourth Lease Year (\$176,859.50) plus the percentage of increase, if any, in the Consumer Price Index, computed as follows:

- A. There shall be compared the Consumer Price Index for All Urban Consumers, New York, N.Y. - Northeastern New Jersey Local Area, All Items, published by the Bureau of Labor Statistics, Revised Consumer Price Index, effective January, 1987 (1982-84 = 100) (the Index) for the first month of the Fifth Lease Year with the first month of the First Lease Year. The percentage of increase in such Index for the first month of the Fifth Lease Year over the first month of the First Lease Year shall be the percentage of increase in the Index for the purpose of determining the increase in the Annual Rental payable during the Fifth Lease Year of this Lease.
- B. It is understood and agreed that in the event the Index figure required to make the foregoing comparison shall not be published for the particular month when the same shall be applicable, then the like Index figure published in any preceding month shall be used provided such figure is published within three (3) months of the month required in accordance with the foregoing. In the event that the applicable Index figure is not published within three (3) months of the required month or if such figure or the entire Index shall become unavailable by reason of discontinuance of publication or any other reason, then in any such event, the parties shall agree on an equivalent and substituted Consumer Price Index to be applied in the same manner as herein provided.
- C. The parties covenant and agree that as soon as the Index figure for the first month of the Fifth Lease Year of this Lease is published they will set forth such figure in writing signed by both parties; and thereafter, when the figure is published for any succeeding month to be used for comparison as hereinabove provided, they will likewise set forth such figure in writing signed by both parties. The failure to set forth such figures in writing shall not diminish Tenant's obligations hereunder.
- D. The Annual Rental for the Sixth, Seventh and Eighth Lease Years shall be the Annual Rental in effect at the expiration of the prior Lease Year plus the percentage of increase, if any, in the Consumer Price Index, computed as set forth above using the applicable Lease Years. In no event shall the Annual Rental be less than that in effect for the prior Lease Year.

SCHEDULE C

LANDLORD'S WORK

Architectural Drawings:

Because of the extensive nature of design time and electrical lay-out, the cost of architectural work exceeded normal allowance: (HVAC design work supplied by HVAC contractor);

Allowance	\$ 1,500.00	
Actual: client meetings initial design drawings research International Building Codes; drawing revisions, final corrections and plot drawings; construction drawings for permit;	4,132.00	
	-----	
Additional cost	\$ 2,632.00	
15% overhead & profit	394.80	
	-----	
Total Extra		\$ 3,026.80

NOTE: original field data work and existing "as-built" drawing is by Landlord and is not part of these figures;

HVAC Extras:		
Basic HVAC for new office areas by Landlord;		
Additional work by Tenant includes:		
Two-zone system to separate new conference/lecture room (#3), and cubicle area with thermostat, dampers, control board, etc.;	\$ 2,290.00	
300 cfm exhaust fan in Conference Room #3 with duct and speed control;	625.00	
Re-do existing warehouse #3 (Old Neumed) air conditioning system including cutting, relocating and extending duct work to unit #2 (Old Auxiliary warehouse);	2,690.00	
	-----	
Additional cost	\$ 5,600.00	
15% overhead & profit	840.00	
	-----	
Total Extra		\$ 6,440.00

Conference Room #3 Extras:  
 Wood floor:  
 2x4 pressure-treated joists;  
 3/4" tongue & groove sturd-i-floor  
 plywood; \$ 1,735.00

New window:  
 Remove existing steel door and frame;  
 Re-frame for new window;  
 Exterior stucco work and sill;  
 New Andersen vinyl-clad window;  
 (Insulation, sheetrock, trim, and paint  
 by Landlord); 1,647.00

Kitchenette:  
 Frame walls and ceiling; Sheetrock;  
 Door and trim - 4/8 x 6/8 birch  
 veneer double door unit with  
 hardware;

Cabinets:  
 One 24" sink base;  
 One 12" drawer base;  
 One 24" open refrigerator space;  
 One 12" x 15" x 36" wall cabinet;  
 One 12" x 30" x 24" wall cabinet;  
 Refrigerator supplied and installed; \$ 1,810.00

Conceal septic emergency equipment  
 including framing, sheetrock, access  
 panel and paint (prime only); 345.00

Electric:  
 Two hi-hat fixtures and one switch;  
 One GFCI outlet;  
 One refrigerator circuit; 450.00

Four floor outlets located by Tenant  
 with conduit supplied for computer,  
 security, telephone, etc. people to use; 1,400.00

Room lighting allowance -eight 2x4  
 prismatic lights replaced with six 2x4  
 parabolic lense units 12 hi-hat units; 1,368.00

Four three-way dimmers, and additional  
 three outlets above normal 252.00

Plumbing:  
 Drill through existing block wall into  
 old kitchen cabinet and tie into waste  
 and water lines as needed for new bar  
 sink; New bar sink with faucets; 640.00

Crown mold:

Three piece stained to match existing Conference Room;	1,275.00	
	-----	
Additional cost	\$ 10,907.00	
15% overhead & profit	1,636.00	
	-----	
Total Extra		\$ 12,543.00

Existing Cable Bracing:

Remove existing steel cable bracing and install in new location to allow for future access opening from original OPT space to new warehouse #2;	865.00	
Enlarge existing access from warehouse #1 to warehouse #2 including cutting out block wall and install triple concrete lintel; demolition of block work, 2x pressure-treated jambs; new concrete ramp; clean and remove all debris from site;	1,495.00	
Cut back already existing wood Handicap ramp into new cubicle area;	175.00	

Conference Room #1:

New window: Remove existing steel entry door and frame; Re-frame wall for new window; Stucco exterior of wall and set sill;		
New Andersen window;		
Patch insulation, sheetrock and trim to match existing;	\$ 1,650.00	
Frame around existing electrical panel and septic safety equipment and fabricate and install access panel; painting includes only prime coat on all new work;	345.00	
Total Extra		2,295.00

Doors #2 and #6:

Openings cut, framed and doors installed; and ramp installed as per plan;		By Landlord
---	--	-------------

Door #9:

Cut, framed, and door installed complete;		By Landlord
--	--	-------------

Four vision panels supplied, installed and painted in interior doors, and one 10" x 10" vision panel installed in Conference Room door;

\$ 818.00

Carpeting:

New offices:

Allowance - 225 yds. at \$20/yd. \$ 4,500.00

Actual cost 5,384.80

-----  
884.80

Extra  
Original OPT front office in 4/04 carpeting replaced; demo and removal by Landlord; new carpet allowance - 27 yds. at \$20/yd.;

\$ 540.00

Actual cost 899.52

-----  
359.99

Extra  
VCT to replace carpet in hall way leading from warehouse #4 to Conference Room #1:

Allowance for carpet - 20 yds. at \$20/yd.;

\$ 400.00

VCT cost; 500.00

-----  
100.00

Extra Total \$ 1,343.80

15% overhead & profit 201.57

-----

Total Extra 1,545.37

Demolition:

Demo of existing full height tenant separation wall and two existing work rooms including electric and HVAC demo as needed; and removal of all debris from site (floor and wall clean up by Landlord);

\$ 3,220.00

Electrical Extras:

New 200 amp. Outlet as per letter dated December 22, 2004, less credit for repair work as work was less than anticipated (NOTE: 15% overhead & profit included in this number);

\$ 22,750.00

Temporary and final hook-up for fork lift charger;	AT LATER DATE	
Four 20 amp./ 208 volt, three-phase unfused disc switch;		600.00
One 200 amp., 208 volt, three- phase circuit breaker panel with 100 amp., 208 volt, three- phase outlet instead of 200 amp. Outlet;		1,500.00
One ceiling outlet in warehouse #3;		150.00
One stairwell fixture with switch;		370.00
Four paddle fans installed;		1,400.00
Building sign circuit with timer from Owner's panel;		650.00
Additional 20 amp., 120 volt outlets in:		
Warehouse #1-5		
Warehouse #2-8		
Warehouse #3-4		1,700.00
Additional outlets and switches (above standard allowance) for cubicle area;		
Six outlets; 5 switches, 2 GFCI outlets;		720.00
		-----
		\$ 7,090.00
		-----
15% overhead & profit		\$ 1,063.00
		-----
Total Extra		\$ 30,903.00
		-----
Total Extras		\$ 63,326.17

DATED \_\_\_\_\_ 2005

(1) UNIVERSITY OF WARWICK SCIENCE PARK INNOVATION CENTRE LIMITED

and

(2) OCEAN POWER TECHNOLOGIES LIMITED

-----

LEASE

relating to  
Unit No. 21  
Warwick Science Park Innovation Centre  
Warwick Technology Park  
Gallows Hill  
Warwick

-----

TERM BEGINS : \_\_\_\_\_

DURATION OF TERM : 3 Years

TERM ENDS : (Subject to prior determination renewal or continuation)

RENT : £14,365.00 per annum (exclusive)

PAYABLE Quarterly in Advance

NOTE : This Lease is excluded from the security of tenure provisions  
of the Landlord & Tenant Act 1954 (as amended)

shoosmiths

Lock House  
Castle Meadow Road  
Nottingham  
NG2 1AG  
Tel: +44 (0) 08700 865 000  
Fax: +44 (0) 08700 865 5001  
nottingham@shoosmiths.co.uk  
Rel. AL

SUBJECT TO CONTRACT

HEADS OF TERMS

WARWICK INNOVATION CENTRE  
PROPOSED LETTING TO OCEAN POWER TECHNOLOGIES LIMITED

- 1) LANDLORD  
University of Warwick Science Park Limited  
Barclays Venture Centre  
Sir William Lyons Road  
Coventry  
CV4 7EZ
- 2) PROPERTY  
Unit 21  
Warwick Innovation Centre  
Warwick Technology Park  
Gallows Hill  
Warwick  
  
UNIT 21 has a net internal area of 845 sq ft
- 3) TENANT  
Ocean Power Technologies Limited
- 4) LEASE TERMS  
The tenant will take a 3 year lease which will be excluded from the security of tenure provisions of the Landlord & Tenant legislation. The lease will incorporate a tenant option to break operable by the giving of 3 months prior written notice at a point 18 months into the lease term.
- 5) RENTAL  
Unit 21 is L14,365 per annum exclusive of business rates, service charge and VAT.
- 6) SERVICE CHARGE  
The current budgeted service charge for Warwick Innovation Centre is L5 psf per annum exclusive of VAT.
- 7) REPAIRS, MAINTENANCE AND DECORATION  
The Tenant will be responsible for the repair, maintenance and decoration of the interior of the demised unit.
- 8) ASSIGNMENT/UNDERLETTING  
The lessee will not be permitted to assign, charge, underlet or part with possession of the demised unit or any part thereof.

- 9) INNOVATION CENTRE - RULES AND REGULATIONS      The Tenant is to observe the rules and regulations made by the Director of UWSP to maintain the administration and management of the Innovation Centre.
- 10) RIGHT OF ENTRY AND INSPECTION      The Landlord will reserve the right to enter into the demised unit at all reasonable times for the purposes of viewing its state of repair or execution works to neighbouring units.
- 11) LEGAL COSTS      The Tenant will be responsible for meeting the Landlord's legal costs.

I agree to these heads of terms with the alteration in clause 4.

/s/ Mark Draper  
M.R. Draper  
on behalf of OPT Ltd.  
4 December 2004.

Deloitte and Touche LLP  
Two Hilton Court  
Parsippany, NJ 07054-0319 USA  
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Deloitte.

November 8, 2006

Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-7561

Ladies and Gentlemen:

We have read the "Change in Accountants" section of Ocean Power Technologies, Inc.'s Form S-1 registration statement dated November 8, 2006 and have the following comments:

1. We agree with the statements made in the first two paragraphs.
2. We have no basis on which to agree or disagree with the statement made in the third paragraph.

Yours truly,

/s/ Deloitte & Touche LLP

Exhibit 21.1

Subsidiary -----	Jurisdiction of Incorporation -----
Ocean Power Technologies Ltd	United Kingdom
Ocean Power Technologies (Australasia) Pty Ltd	Australia
OPT Wave Park LLC	Oregon
Oregon Wave Energy Partners I, LLC	Delaware
Oregon Wave energy Partners II, LLC	Delaware

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors  
Ocean Power Technologies, Inc.:

We consent to the use of our report included herein and to the references to our firm under the headings "Selected Consolidated Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations - Change in Accountants" and "Experts" in the prospectus.

Our report refers to the Company's restatement of the consolidated statement of cash flows for the year ended April 30, 2005.

/s/ KPMG LLP

Philadelphia, Pennsylvania  
November 9, 2006

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Registration Statement of Ocean Power Technologies, Inc. and Subsidiaries (the "Company") on Form S-1 of our report dated July 20, 2004, November 8, 2006 as to the effects of the restatement discussed in Note 1 (b) (which report expresses an unqualified opinion and includes an explanatory paragraph relating to the restatement discussed in Note 1(b)) related to the financial statements of the Company for the year ended April 30, 2004, appearing in the prospectus, which is part of this Registration Statement and to the reference to us under the heading "Experts" in such prospectus.

DELOITTE & TOUCHE LLP

Parsippany, New Jersey  
November 8, 2006

November 9, 2006

VIA ELECTRONIC SUBMISSION

Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: Ocean Power Technologies, Inc.  
Registration Statement on Form S-1

Ladies and Gentlemen:

Submitted herewith for filing on behalf of Ocean Power Technologies, Inc. (the "Company") is a Registration Statement on Form S-1 relating to the registration under the Securities Act of 1933, as amended (the "Securities Act"), of shares of Common Stock of the Company.

This filing is being effected by direct transmission to the Commission's EDGAR System. On November 9, 2006, in anticipation of this filing, the Company caused the filing fee of \$10,700 to be wire transferred to the Commission's account at the Mellon Bank in Pittsburgh.

The Registration Statement relates to the Company's initial public offering of securities. It is the intent of the Company and the managing underwriters of the proposed offering to have the Registration Statement declared effective as early as possible.

Acceleration requests may be made orally, and the Company and the managing underwriters of the proposed offering have authorized us to represent on their behalf that they are aware of their obligations under the Securities Act with respect thereto.

Please contact the undersigned or Corey C. DuFresne of WilmerHale's Boston office at (617) 526-6039 with any questions or comments you may have regarding this filing.

Very truly yours,

/s/ ROBERT A. SCHWED

Robert A. Schwed

cc: Dr. George W. Taylor, Ocean Power Technologies, Inc.  
Charles F. Dunleavy, Ocean Power Technologies, Inc.  
Corey C. DuFresne, WilmerHale  
Jennifer Berrent, WilmerHale

Wilmer Cutler Pickering Hale and Dorr LLP, 399 Park Avenue, New York, New York 10022

Baltimore Beijing Berlin Boston Brussels London Munich New York Northern Virginia Oxford Palo Alto Waltham Washington