

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

**Form 10-Q**

(Mark One)

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

**For the Quarterly Period Ended January 31, 2020**

Or

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

**For the Transition Period From \_\_\_\_\_ to \_\_\_\_\_**

**Commission file number: 001-33417**

**OCEAN POWER TECHNOLOGIES, INC.**

*(Exact Name of Registrant as Specified in Its Charter)*

**Delaware**  
*(State or Other Jurisdiction of  
Incorporation or Organization)*

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

**28 ENGELHARD DRIVE, SUITE B, MONROE TOWNSHIP, NJ 08831**

*(Address of Principal Executive Offices, Including Zip Code)*

**(609) 730-0400**

*(Registrant's Telephone Number, Including Area Code)*

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock \$0.001 par value	OPTT	Nasdaq Capital Market

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting  
company)

Emerging growth company

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

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

As of March 5, 2020, the number of outstanding shares of common stock of the registrant was 9,255,500.

**OCEAN POWER TECHNOLOGIES, INC.**  
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### Special Note Regarding Forward-Looking Statements

We have made statements in this Quarterly Report on Form 10-Q that are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements convey our current expectations or forecasts of future events. Forward-looking statements include statements regarding our future financial position, business strategy, pending, threatened, and current litigation, liquidity, 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.

The forward-looking statements contained in or incorporated by reference are largely based on our expectations, which reflect estimates and assumptions made by our management. These estimates and assumptions reflect our best judgment based on currently known market conditions and other factors. Although we believe such estimates and assumptions to be reasonable, they are inherently uncertain and involve a number of risks and uncertainties that are beyond our control, including:

- our ability to commercialize our PowerBuoys®, and achieve and sustain profitability;
- our continued development of our proprietary technologies, and expected continued use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services;
- our ability to obtain additional funding, as and if needed which will be subject to a number of factors, including market conditions, and our operating performance;
- our estimates regarding expenses, future revenues and capital requirements;
- the adequacy of our cash balances and our need for additional financings;
- our ability to develop and manufacture a commercially viable PowerBuoy® product;
- our ability to successfully develop and market new products, such as a hybrid PowerBuoy® or subsea battery solutions;
- our ability to identify and penetrate markets for our PowerBuoys® and our wave energy technology;
- the power output, survivability and reliability of our PowerBuoys®;
- our ability to implement our commercialization strategy as planned, or at all;
- our relationships with our strategic partners may not be successful and we may not be successful in establishing additional relationships;
- our ability to maintain the listing of our common stock on the Nasdaq Capital Market;
- our ability to raise capital through our current equity facilities;
- the impact of pending and threatened litigation on our business, financial condition and liquidity;
- changes in current legislation, regulations and economic conditions that affect the demand for renewable energy;
- our ability to compete effectively in our target markets;
- our limited operating history and history of operating losses;
- our sales and marketing capabilities and strategy in the United States and internationally; and
- our ability to protect our intellectual property portfolio.

Any or all of our forward-looking statements in this report 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 risks, uncertainties and assumptions described in Item 1A “Risk Factors” of our Annual Report on Form 10-K for the year ended April 30, 2019, and in our subsequent reports under the Exchange Act. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this report may not occur as contemplated and actual results could differ materially from those anticipated or implied by the forward-looking statements.

Many of these factors are beyond our ability to control or predict. These factors are not intended to represent a complete list of the general or specific factors that may affect us. You should not unduly rely on these forward-looking statements, which speak only as of the date of this filing. 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.

## PART I — FINANCIAL INFORMATION

## Item 1. Financial Statements

**Ocean Power Technologies, Inc. and Subsidiaries**  
**Consolidated Balance Sheets**  
(in thousands, except share data)

	January 31, 2020 (Unaudited)	April 30, 2019
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 9,877	\$ 16,660
Restricted cash- short-term	707	344
Accounts receivable	70	63
Contract assets	35	15
Other current assets	1,095	537
Total current assets	11,784	17,619
Property and equipment, net	536	592
Right-of-use asset, net	1,215	-
Restricted cash- long-term	221	155
Total assets	\$ 13,756	\$ 18,366
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 118	\$ 312
Accrued expenses	2,208	1,938
Contract liabilities	295	188
Warrant liabilities	-	6
Right-of-use liability- current	222	-
Total current liabilities	2,843	2,444
Right-of-use liability	1,139	-
Deferred rent	-	147
Total liabilities	3,982	2,591
Commitments and contingencies		
Stockholders' Equity:		
Preferred stock, \$0.001 par value; authorized 5,000,000 shares, none issued or outstanding	-	-
Common stock, \$0.001 par value; authorized 100,000,000 shares, issued 8,699,319 and 5,425,517 shares, respectively	9	5
Treasury stock, at cost; 4,251 and 3,770 shares, respectively	(302)	(301)
Additional paid-in capital	229,167	226,026
Accumulated deficit	(218,917)	(209,784)
Accumulated other comprehensive loss	(183)	(171)
Total stockholders' equity	9,774	15,775
Total liabilities and stockholders' equity	\$ 13,756	\$ 18,366

See accompanying notes to unaudited consolidated financial statements.

**Ocean Power Technologies, Inc. and Subsidiaries**  
**Consolidated Statements of Operations**  
(in thousands, except per share data)  
(Unaudited)

	Three months ended January 31,		Nine months ended January 31,	
	2020	2019	2020	2019
Revenues	\$ 725	\$ 268	\$ 1,131	\$ 440
Cost of revenues	681	400	1,335	1,180
Gross profit/(loss)	44	(132)	(204)	(740)
Operating expenses:				
Engineering and product development costs	896	1,382	3,403	4,105
Selling, general and administrative costs	2,093	2,008	5,629	5,909
Total operating expenses	2,989	3,390	9,032	10,014
Operating loss	(2,945)	(3,522)	(9,236)	(10,754)
Gain due to the change in fair value of warrant liabilities	-	47	6	183
Interest income, net	27	2	102	23
Foreign exchange gain/(loss)	(1)	12	(5)	(43)
Loss before income taxes	(2,919)	(3,461)	(9,133)	(10,591)
Income tax benefit	-	850	-	850
Net loss	\$ (2,919)	\$ (2,611)	\$ (9,133)	\$ (9,741)
Basic and diluted net loss per share	\$ (0.46)	\$ (2.72)	\$ (1.40)	\$ (10.46)
Weighted average shares used to compute basic and diluted net loss per share	6,318,162	959,287	6,543,500	931,052

See accompanying notes to unaudited consolidated financial statements.

**Ocean Power Technologies, Inc. and Subsidiaries**  
**Consolidated Statements of Comprehensive Loss**  
(in thousands)  
(Unaudited)

	Three months ended		Nine months ended	
	January 31,		January 31,	
	2020	2019	2020	2019
Net loss	\$ (2,919)	\$ (2,611)	\$ (9,133)	\$ (9,741)
Foreign currency translation adjustment	(11)	1	(12)	(4)
<b>Total comprehensive loss</b>	<b>\$ (2,930)</b>	<b>\$ (2,610)</b>	<b>\$ (9,145)</b>	<b>\$ (9,745)</b>

See accompanying notes to unaudited consolidated financial statements.

**Ocean Power Technologies, Inc. and Subsidiaries**  
**Consolidated Statements of Stockholders' Equity**  
(in thousands, except per share data)  
(Unaudited)

**Three Months Ended January 31, 2020**

	<u>Common Shares</u>		<u>Treasury Shares</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Deficit</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Total Stockholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
Balances at October 31, 2019	6,489,668	\$ 7	(4,251)	\$ (302)	\$ 227,214	\$ (215,998)	\$ (173)	10,749
Net loss						(2,919)		(2,919)
Stock based compensation					56			56
Issuance of restricted stock, net	65,060	-			-			-
Exercise of prefunded warrants, net of issuance costs	264,280	-			2			2
Sale of stock to Aspire ELOC, net of financing costs	1,024,205	1			849			850
Sale of stock thru AGP ATM, net of financing costs	856,106	1			1,045			1,046
Other comprehensive loss							(11)	(11)
Balance, January 31, 2020	<u>8,699,319</u>	<u>\$ 9</u>	<u>(4,251)</u>	<u>\$ (302)</u>	<u>\$ 229,167</u>	<u>\$ (218,917)</u>	<u>\$ (183)</u>	<u>\$ 9,774</u>

**Nine Months Ended January 31, 2020**

	<u>Common Shares</u>		<u>Treasury Shares</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Deficit</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Total Stockholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
Balances at April 30, 2019	5,425,517	\$ 5	(3,770)	\$ (301)	\$ 226,026	\$ (209,784)	\$ (171)	\$ 15,775
Net loss						(9,133)		(9,133)
Stock based compensation					225			225
Issuance of restricted stock, net	64,928	-			-			-
Exercise of prefunded warrants, net of issuance costs	614,280	1			(16)			(16)
Common stock issued for commitment fee- Aspire	194,805	1			294			295
Sale of stock to Aspire ELOC, net of financing costs	1,024,205	1			849			850
Sale of stock thru AGP ATM, net of financing costs	1,375,584	1			1,790			1,791
Acquisition of treasury stock			(481)	(1)				(1)
Other comprehensive loss							(12)	(12)
Balance, January 31, 2020	<u>8,699,319</u>	<u>\$ 9</u>	<u>(4,251)</u>	<u>\$ (302)</u>	<u>\$ 229,167</u>	<u>\$ (218,917)</u>	<u>\$ (183)</u>	<u>\$ 9,774</u>

See accompanying notes to unaudited consolidated financial statements.

**Ocean Power Technologies, Inc. and Subsidiaries**  
**Consolidated Statements of Stockholders' Equity**  
(in thousands, except per share data)

Three Months Ended January 31, 2019								
	Common Shares		Treasury Shares		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balances at October 31, 2018	19,067,868	\$ 19	(75,782)	\$ (301)	\$ 208,714	\$ (204,668)	\$ (165)	3,599
Net loss					-	(2,611)		(2,611)
Stock based compensation					65			65
Issuance of restricted stock, net	(97,297)							-
Sale of stock thru AGP ATM, net of financing costs	1,419,538	1			394			395
Other comprehensive loss							1	1
Balance, January 31, 2019	<u>20,390,109</u>	<u>\$ 20</u>	<u>(75,782)</u>	<u>\$ (301)</u>	<u>\$ 209,173</u>	<u>\$ (207,279)</u>	<u>\$ (164)</u>	<u>\$ 1,449</u>

Nine Months Ended January 31, 2019								
	Common Shares		Treasury Shares		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balances at April 30, 2018	18,424,939	\$ 18	(74,012)	\$ (300)	\$ 208,216	\$ (197,538)	\$ (160)	10,236
Net loss						(9,741)		(9,741)
Stock based compensation					200			200
Issuance of restricted stock, net	(82,939)							-
Common stock issued for commitment fee	428,571				295			295
Sale of stock thru AGP ATM, net of financing costs	1,619,538	2			462			464
Acquisition of treasury stock			(1,770)	(1)				(1)
Other comprehensive loss							(4)	(4)
Balance, January 31, 2019	<u>20,390,109</u>	<u>\$ 20</u>	<u>(75,782)</u>	<u>\$ (301)</u>	<u>\$ 209,173</u>	<u>\$ (207,279)</u>	<u>\$ (164)</u>	<u>\$ 1,449</u>

See accompanying notes to unaudited consolidated financial statements.



**Ocean Power Technologies, Inc. and Subsidiaries**  
**Consolidated Statements of Cash Flows**  
(in thousands)  
(Unaudited)

	<b>Nine months ended January 31,</b>	
	<b>2020</b>	<b>2019</b>
<b>Cash flows from operating activities:</b>		
Net loss	\$ (9,133)	\$ (9,741)
<b>Adjustments to reconcile net loss to net cash used in operating activities:</b>		
Foreign exchange loss	5	43
Depreciation and amortization	263	135
Compensation expense related to stock option grants and restricted stock	225	200
Gain due to the change in fair value of warrant liabilities	(6)	(183)
<b>Changes in operating assets and liabilities:</b>		
Accounts receivable	(7)	105
Unbilled receivables	-	71
Contract assets	(20)	(85)
Other assets	19	(203)
Accounts payable	(194)	(116)
Accrued expenses	257	281
Deferred rent	-	5
Deferred credit payable	-	(600)
Unearned revenue	-	(18)
Change in lease liability	(147)	-
Contract liabilities	107	256
Net cash used in operating activities	<u>(8,631)</u>	<u>(9,850)</u>
<b>Cash flows from investing activities:</b>		
Purchases of marketable securities	-	(25)
Maturities of marketable securities	-	50
Purchase of computers, equipment and furniture	(61)	(54)
Net cash used in investing activities	<u>(61)</u>	<u>(29)</u>
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of common stock, net of issuance costs	-	464
Proceeds from issuance of common stock- Aspire financing net of issuance costs	850	-
Proceeds from issuance of common stock- AGP At The Market offering, net of issuance costs	1,520	-
Costs associated with exercise of pre-funded warrants	(16)	-
Payment of capital lease obligations	-	(23)
Acquisition of treasury stock	(1)	(1)
Net cash provided by financing activities	<u>2,353</u>	<u>440</u>
Effect of exchange rate changes on cash, cash equivalents and restricted cash	<u>(15)</u>	<u>(58)</u>
Net decrease in cash, cash equivalents and restricted cash	<u>(6,354)</u>	<u>(9,497)</u>
Cash, cash equivalents and restricted cash, beginning of period	17,159	12,225
Cash, cash equivalents and restricted cash, end of period	<u>\$ 10,805</u>	<u>\$ 2,728</u>
<b>Supplemental schedule of cash flows information:</b>		
Cash paid for interest	\$ -	\$ 1
<b>Supplemental disclosure of noncash operating activities:</b>		
Prepaid financing costs reported in accrued expenses	\$ 13	\$ -
<b>Supplemental disclosure of noncash investing activities:</b>		
Acquisition of computers, equipment and furniture through accounts payable	\$ -	\$ 2
<b>Supplemental disclosure of noncash financing activities:</b>		
Common stock issued for payment of commitment fee	\$ 295	\$ 295
Outstanding receivable for sale of shares through AGP At the Market program	\$ 271	\$ -

See accompanying notes to unaudited consolidated financial statements.

**Ocean Power Technologies, Inc. and Subsidiaries**  
**Notes to Unaudited Consolidated Financial Statements**

**(1) Background, Basis of Presentation and Liquidity**

**a) Background**

Ocean Power Technologies, Inc. (the “Company”) was founded in 1984 in New Jersey, commenced business operations in 1994 and re-incorporated in Delaware in 2007. The Company is developing and commercializing its proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. The Company uses proprietary technologies that convert the mechanical energy created by the heaving motion of ocean waves into electricity. The Company has designed and continues to develop the PowerBuoy® product line which is based on modular, ocean-going buoys, which the Company has been periodically ocean testing since 1997. The Company markets its PowerBuoys® in the United States and internationally. Since fiscal 2002, government agencies have accounted for a significant portion of the Company’s revenues. These revenues were largely for the support of product development efforts relating to our technology. Today our goal is to generate the majority of our revenue from the sale or lease of products, and sales of services to support our business operations. As we continue to develop and commercialize our products and services, we expect to have a net decrease in cash due to the use of cash from operating activities unless and until we achieve positive cash flow from the commercialization of products and services.

**b) Basis of Presentation**

The accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles (“GAAP”) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. The interim operating results are not necessarily indicative of the results for a full year or for any other interim period. Further information on potential factors that could affect the Company’s financial results can be found in the Company’s Annual Report on Form 10-K for the year ended April 30, 2019 and its Quarterly Reports on Form 10-Q for the quarters ended July 31, 2019 and October 31, 2019, each filed with the Securities and Exchange Commission (“SEC”), and elsewhere in this Form 10-Q.

**c) Liquidity/Going Concern**

Our consolidated financial statements have been prepared assuming the Company will continue as a going concern. The Company has experienced substantial and recurring losses from operations, which have contributed to an accumulated deficit of \$218.9 million as of January 31, 2020. As of January 31, 2020, the Company had approximately \$10.8 million in cash, cash equivalents, and restricted cash on hand. The Company generated revenues of \$1.1 million and \$0.4 million during the nine months ended January 31, 2020 and 2019, respectively. Based on the Company’s cash, cash equivalents and restricted cash balances as of January 31, 2020, the Company believes that it will be able to finance its capital requirements and operations into the quarter ending October 31, 2020. Among other things, the Company is currently evaluating a variety of different financing alternatives and we expect to continue to fund our business with sales of our securities and through generating revenue with customers. The Company will require additional equity and/or debt financing to continue its operations into Fiscal Year 2021. The Company cannot provide assurances that it will be able to secure additional funding when needed or at all, or, if secured, that such funding would be on favorable terms. These factors raise substantial doubt about the Company’s ability to continue as a going concern.

The consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. The consolidated financial statements do not include any adjustments relating to the recoverability and classification of recorded assets amounts or the amounts and classification of liabilities that might result from the outcome of this uncertainty.

Management is evaluating different strategies to obtain the required additional funding for future operations. These strategies may include, but are not limited to, continued pursuit of business opportunities, additional funding from current and /or new investors, officers and directors; borrowings of debt; a public offering of the Company’s equity or debt securities; partnerships and/or collaborations. There can be no assurance that any of these future-funding efforts will be successful.

In fiscal 2019 and during the nine months ended January 31, 2020, the Company has continued to make investments in ongoing product development efforts in anticipation of future growth. The Company's future results of operations involve significant risks and uncertainties. Factors that could affect the Company's future operating results and cause actual results to vary materially from expectations include, but are not limited to, risks from lack of available financing and insufficient capital, performance of PowerBuoys®, its inability to market and commercialize its PowerBuoys® and new products that it may develop, technology development, scalability of technology and production, dependence on skills of key personnel, concentration of customers and suppliers, deployment risks and laws, regulations and permitting. In order to continue to implement its business strategy, the Company requires additional equity and/or debt financing. The Company currently has committed sources of equity financing through its At the Market Offering Agreement with A.G.P./Alliance Global Partners ("AGP") and the Aspire Capital financing (each discussed further below), but the Company cannot be sure that additional equity and/or debt financing will be available to the Company as needed on acceptable terms, or at all. Historically, the Company has raised capital through securities sales in the public capital markets. If sufficient additional financing is not obtained when needed, the Company may be required to further curtail or limit operations, product development costs, and/or selling, general and administrative activities in order to reduce its cash expenditures. This could cause the Company to be unable to execute its business plan, take advantage of future opportunities and may cause it to scale back, delay or eliminate some or all of its product development activities and/or reduce the scope of or cease its operations.

On August 13, 2018, the Company entered into a common stock purchase agreement with Aspire Capital Fund, LLC ("Aspire Capital") which provided that, subject to certain terms, conditions and limitations, Aspire Capital was committed to purchase up to an aggregate of \$10.0 million of shares of the Company's common stock over a 30-month period that does not exceed 19.99% of the outstanding common stock on the date of the agreement. The number of shares the Company could issue within the 19.99% limit is 183,591 shares. Shareholder approval was not needed since the number of common stock offered for sale in the common stock purchase agreement did not exceed 19.99% of the outstanding common stock on the date of the agreement. In consideration for entering into the agreement, the Company issued to Aspire Capital 21,429 shares of our common stock as a commitment fee. The agreement was cancelled on October 24, 2019, and as of that date, the Company had sold 162,162 shares of common stock with an aggregate market value of \$949,259 at an average price of \$5.85 per share pursuant to this common stock purchase agreement.

On October 24, 2019, the Company entered into a new common stock purchase agreement with Aspire Capital which provides that, subject to certain terms, conditions and limitations, Aspire Capital is committed to purchase up to an aggregate of \$10.0 million of shares of the Company's common stock over a 30-month period that does not exceed 19.99% of the outstanding common stock on the date of the agreement. The number of shares the Company can issue within the 19.99% limit is 1,219,010 shares including shares issued as a commitment fee. Shareholder approval is needed for sale of common stock over the 19.99% limit of the outstanding common stock on the date of the agreement. At the 2019 annual meeting of stockholders, held on December 20, 2019, the Company's stockholders approved an additional 5,400,000 shares to be issued pursuant to the common stock purchase agreement. In consideration for entering into the agreement, the Company issued to Aspire Capital 194,805 shares of our common stock as a commitment fee. As of January 31, 2020, the Company has sold 1,024,205 shares of common stock with an aggregate market value of \$901,206 at an average price of \$0.88 per share pursuant to this common stock purchase agreement.

On April 8, 2019, the Company sold 1,542,000 shares of common stock, which includes the sale of 642,000 shares of the Company's common stock sold by the Company pursuant to the exercise, in full, of the over-allotment option by the underwriters in a public offering. As part of the public offering, the Company also sold prefunded warrants to purchase up to 3,385,680 shares of common stock and common warrants to purchase up to 4,927,680 shares of our common stock. The net proceeds to the Company from the offering were approximately \$15.7 million, after deducting underwriter fees and offering expenses payable by the Company.

On January 7, 2019, the Company entered into an At the Market Offering Agreement ("2019 ATM Facility") with AGP, under which the Company may issue and sell to or through AGP, acting as agent and/or principal, shares of the Company's common stock having an aggregate offering price of up to \$25 million. Through January 31, 2020, under the 2019 ATM Facility, the Company sold and issued 1,527,145 shares of its common stock with an aggregate market value of \$2.9 million at an average price of \$1.91 per share and paid AGP a sales commission of approximately \$94,724 related to those shares.

The sale of additional equity or convertible securities could result in dilution to stockholders. If additional funds are raised through the issuance of debt securities, these securities could have rights senior to those associated with the Company's common stock and could contain covenants that would restrict its operations. Financing may not be available in amounts or on terms acceptable to the Company, or at all. If the Company is unable to obtain required financing, it may be required to reduce the scope of its operations, including its planned product development and marketing efforts, which could materially and adversely harm its financial condition and operating results. If the Company is unable to secure additional financing, it may be forced to cease operations.

If our common stock is delisted from Nasdaq, our ability to raise capital through public offerings of our securities and to finance our operations could be adversely affected. See additional risk factors under "Part II, Item 1A – Risk Factors". We also believe that delisting would likely result in decreased liquidity and/or increased volatility in our common stock and could harm our business and future prospects. In addition, we believe that, if our common stock is delisted, our stockholders would likely find it more difficult to obtain accurate quotations as to the price of the common stock and it may be more difficult for stockholders to buy or sell our common stock at competitive market prices, or at all.

#### **(d) Reverse Stock-Split**

The Company initiated a 1-for-20 reverse stock split effective as of the close of markets on March 11, 2019. The common stock began trading on a reverse stock split-adjusted basis on the Nasdaq on March 12, 2019. All shares and per share data in these consolidated financial statements and notes thereto have been retroactively adjusted to give effect to the reverse stock split.

#### **(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.

##### **(b) 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 fair value of warrant liabilities, estimated costs to complete projects; and percentage of completion of customer contracts for purposes of revenue recognition. Actual results could differ from those estimates.

##### **(c) Cash, Cash Equivalents, Restricted Cash and Security Agreements**

###### *Cash and Cash Equivalents*

The Company considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. The Company invests excess cash in a money market account.

	<u>January 31, 2020</u>	<u>April 30, 2019</u>
	(in thousands)	
Checking and savings accounts	\$ 948	\$ 860
Money market account	8,929	15,800
	<u>\$ 9,877</u>	<u>\$ 16,660</u>

###### *Restricted Cash and Security Agreements*

A portion of the Company's cash is restricted under the terms of various security agreements.

One agreement is between the Company and Barclays Bank. Under this agreement, the cash is on deposit at Barclays Bank and serves as security for letters of credit and bank guarantees that are expected to be issued by Barclays Bank on behalf of OPT LTD, one of the Company's subsidiaries, under a credit facility established by Barclays Bank for OPT LTD. The credit facility is approximately €0.3 million (\$0.4 million) and carries a fee of 1% per annum of the amount of any such obligations issued by Barclays Bank. The credit facility does not have an expiration date but is cancelable at the discretion of the bank. As of January 31, 2020, there were no letters of credit outstanding under this agreement.

The other agreements are between the Company and Santander Bank. Cash is on deposit at Santander Bank and serves as security for a letter of credit issued by Santander Bank for the lease of warehouse/office space in Monroe Township, New Jersey. This agreement cannot be extended beyond January 31, 2025 and is cancelable at the discretion of the bank. Santander Bank also issued two letters of credit to subsidiaries of Enel Green Power ("EGP") pursuant to the Company's contracts with EGP. The first letter of credit was issued in the amount of \$125,690 that expires in October 2020. The second letter of credit was issued in the amount of \$645,467. This second letter of credit will be reduced to \$322,734 in March 2020 and to \$64,547 in May 2020. The remaining amount expires in April 2021. Restricted cash includes the following:

	<u>January 31, 2020</u>	<u>April 30, 2019</u>
	(in thousands)	
Barclay's Bank Agreement	\$ -	\$ 344
Santander Bank	928	155
	<u>\$ 928</u>	<u>\$ 499</u>

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within the Statement of Financial Position that sum to the total of the same such amounts shown in the Statement of Cash Flows.

	<u>January 31, 2020</u>	<u>April 30, 2019</u>
	(in thousands)	
Cash and cash equivalents	\$ 9,877	\$ 16,660
Restricted cash- short term	707	344
Restricted cash- long term	221	155
	<u>\$ 10,805</u>	<u>\$ 17,159</u>

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

The Company maintains cash accounts that are denominated in British pounds sterling, Euros and Australian dollars. These amounts are included in cash, cash equivalents and restricted cash on the accompanying Consolidated Balance Sheets. 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)” in the accompanying Consolidated Statements of Operations.

***(e) 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. Property and equipment is also 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 in the amount by which the carrying amount of the asset exceeds the fair value of the asset.

***(f) Concentration of Credit Risk***

Financial instruments that potentially subject the Company to credit risk consist principally of trade accounts receivable and cash. The Company believes that its credit risk is limited because the Company’s current contracts are with companies with strong financial strength. The Company invests its excess cash in a money market fund and does not believe that it is exposed to any significant risks related to its cash accounts and money market fund. Cash is also maintained at foreign financial institutions. Cash in foreign financial institutions as of January 31, 2020 was \$0.3 million.

The table below shows the percentage of the Company’s revenues derived from customers whose revenues accounted for at least 10% of the Company’s consolidated revenues for at least one of the periods indicated:

Customer	Three months ended January 31,		Nine months ended January 31,	
	2020	2019	2020	2019
Eni S.p.A.	6%	53%	10%	60%
Premier Oil UK Limited	1%	47%	11%	35%
EGP	93%	0%	68%	5%
Other	0%	0%	11%	0%
	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>

The loss of, or a significant reduction in revenues from a current customer could significantly impact the Company’s financial position or results of operations. The Company does not require its customers to maintain collateral.

**(g) Warrant Accounting**

The Company accounts for warrants issued in connection with its public offerings in accordance with the guidance on “Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity” in Accounting Standards Codification (“ASC”) Topic 480 which provides that warrants meeting the classification of a liability award are recorded as a liability at its fair value. The warrant liabilities are subject to re-measurement at each balance sheet date using the Black-Scholes option pricing model. The Company recognizes any change in fair value in its Consolidated Statements of Operations within “Gain due to the change in fair value of warrant liabilities.” The Company will continue to adjust the carrying value of the warrants for changes in the estimated fair value until such time as these instruments are exercised or expire. At that time, the liabilities will be reclassified to “Additional paid-in capital”, a component of “Stockholders’ Equity” on the Consolidated Balance Sheets.

**(h) 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 and common stock equivalents outstanding during the period. The pre-funded warrants were determined to be common stock equivalents and have been included in the weighted average number of shares outstanding for calculation of the basic earnings per share number. Due to the Company’s net losses, potentially dilutive securities, consisting of options to purchase shares of common stock, warrants on common stock and non-vested restricted stock issued to employees and non-employee directors, were excluded from the diluted loss per share calculation due to their anti-dilutive effect.

In computing diluted net loss per share on the Consolidated Statement of Operations, warrants on common stock, options to purchase shares of common stock and non-vested restricted stock issued to employees and non-employee directors, totaling 5,565,462 and 1,786,494 for each of the three and nine months ended January 31, 2020 and 2019, respectively, were excluded from each of the computations as the effect would be anti-dilutive due to the Company’s losses.

**(i) Share-Based Compensation**

Costs resulting from all share-based payment transactions are recognized in the consolidated financial statements at their fair values. The following table summarizes share-based compensation related to the Company’s share-based plans by expense category for the three and nine months ended January 31, 2020 and 2019:

	Three months ended January 31,		Nine months ended January 31,	
	2020	2019	2020	2019
	(in thousands)			
Product development	\$ 12	\$ (14)	\$ 52	\$ 7
Selling, general and administrative	44	79	173	193
Total share-based compensation expense	<u>\$ 56</u>	<u>\$ 65</u>	<u>\$ 225</u>	<u>\$ 200</u>

**(j) Deferred Rent**

On March 31, 2017, the Company signed a 7-year lease for approximately 56,000 square feet in Monroe Township, New Jersey that is being used as warehouse/production space, the Company’s principal offices and corporate headquarters. The lease was classified as an operating lease. Rent payments relating to the Monroe premises are subject to annual increases. The minimum monthly payments will vary over the 7-year term of the lease. The Landlord has provided the Company a tenant improvement allowance in an amount up to, but not exceeding, \$137,563 to be applied to the cost of tenant improvement work. The Company recorded lease incentive liability to deferred rent. With the Company’s adoption of Accounting Standards Update (“ASU”) No. 2016-02 on May 1, 2019, the balances in lease incentive liability and deferred rent have been included in the value of the right of use asset.

### **(k) Revenue Recognition**

A performance obligation is the unit of account for revenue recognition. The Company assesses the goods or services promised in a contract with a customer and identifies as a performance obligation either: a) a good or service (or a bundle of goods or services) that is distinct; or b) a series of distinct goods or services that are substantially the same and that have the same pattern of transfer to the customer. A contract may contain a single or multiple performance obligations. For contracts with multiple performance obligations, the Company allocates the contracted transaction price to each performance obligation based upon the relative standalone selling price, which represents the price the Company would sell a promised good or service separately to a customer. The Company determines the standalone selling price based upon the facts and circumstances of each obligated good or service. The majority of the Company's contracts have no observable standalone selling price since the associated products and services are customized to customer specifications. As such, the standalone selling price generally reflects the Company's forecast of the total cost to satisfy the performance obligation plus an appropriate profit margin.

The nature of the Company's contracts may give rise to several types of variable consideration, including unpriced change orders and liquidated damages and penalties. Variable consideration can also arise from modifications to the scope of services. Variable consideration is included in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur once the uncertainty associated with the variable consideration is resolved. Our estimates of variable consideration and determination of whether to include such amounts in the transaction price are based largely on our assessment of legal enforceability, performance and any other information (historical, current, and forecasted) that is reasonably available to us.

The Company recognizes revenue when or as it satisfies a performance obligation by transferring a good or service to a customer, either (1) at a point in time or (2) over time. A good or service is transferred when or as the customer obtains control of it. The evaluation of whether control of each performance obligation is transferred at a point in time or over time is made at contract inception. Input measures such as costs incurred or time elapsed are utilized to assess progress against specific contractual performance obligations for the Company's services. The selection of the method to measure progress towards completion requires judgment and is based on the nature of the services to be provided. For the Company, the input method using costs incurred or time elapsed best represents the measure of progress against the performance obligations incorporated within the contractual agreements. When the Company's estimate of total costs to be incurred to satisfy the performance obligations exceed revenue, the Company recognizes the loss immediately.

The Company's contracts are either cost plus or fixed price contracts. Under cost plus contracts, customers are billed for actual expenses incurred plus an agreed-upon fee. Under cost plus contracts, a profit or loss on a project is recognized depending on whether actual costs are more or less than the agreed upon amount.

The Company has two types of fixed price contracts, firm fixed price and cost-sharing. Under firm fixed price contracts, the Company receives an agreed-upon amount for providing products and services specified in the contract, a profit or loss is recognized depending on whether actual costs are more or less than the agreed upon amount. Under cost-sharing contracts, the fixed amount agreed upon with the customer is only intended to fund a portion of the costs on a specific project. Under cost sharing contracts, an amount corresponding to the revenue is recorded in cost of revenues, resulting in gross profit on these contracts of zero. The Company's share of the costs is recorded as product development expense. The Company reports its disaggregation of revenue by contract type since this method best represents the Company's business. For the nine-month period ended January 31, 2020 and 2019 all of the Company's contracts were classified as firm fixed price.

As of January 31, 2020, the Company's total remaining performance obligations, also referred to as backlog, totaled \$1.4 million. The Company expects to recognize approximately 99%, or \$1.3 million, of the remaining performance obligations as revenue over the next twelve months.

#### *PB3 PowerBuoy® Leasing*

The Company enters into lease arrangements with certain customers for their PB3 PowerBuoy® ("PB3"). As of January 31, 2020, the Company has two lease arrangements with up to 4 months remaining in their terms. Revenue related to multiple-element arrangements is allocated to lease and non-lease elements based on their relative standalone selling prices or expected cost plus a margin approach. Lease elements generally include a PB3 and components, while non-lease elements generally include engineering, monitoring and support services. In the lease arrangement, the customer is provided an option to extend the lease term or purchase the leased PB3 at some point during and/or at the end of the lease term.

The Company classifies leases as either operating or financing in accordance with the authoritative accounting guidance contained within ASC Topic 842, “Leases”. At inception of the contract, the Company evaluates the lease against the lease classification criteria within ASC Topic 842. If the direct financing or sales-type classification criteria are met, then the lease is accounted for as a finance lease. All others are treated as an operating lease.

The Company recognizes revenue from operating lease arrangements generally on a straight-line basis over the lease term and is presented in Revenues in the Consolidated Statement of Operations. The lease income for the three and nine months ended January 31, 2020 was immaterial.

#### **(l) Recently Issued Accounting Standards**

In February 2016, the Financial Accounting Standards Board (“FASB”) issued ASU No. 2016-02, “Leases (Topic 842).” which amends the existing guidance on accounting for leases. Topic 842 was further clarified and amended within ASU 2017-13, ASU 2018-01, ASU 2018-10, ASU 2018-11 and ASU 2018-20. The new standard establishes a right-of-use (ROU) model that requires a lessee to record a ROU asset and a lease liability on the balance sheet for all leases with terms longer than twelve months or leases that contain a purchase option that is reasonably certain to be exercised. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. ASU 2016-02 was effective for annual periods beginning after December 15, 2018, including interim periods within those annual periods, with early adoption permitted. The guidance permits the Company to utilize the package of practical expedients that, upon adoption of Topic 842, allows entities to (1) not reassess whether any expired or existing contracts are or contain leases, (2) retain the classification of leases (e.g., operating or finance lease) existing as of the date of adoption and (3) not reassess initial direct costs for any existing leases. Additionally, the Company elected to exclude short-term leases having initial terms of 12 months or less and recognizes rent expense on a straight-line basis over the lease term. The Company adopted Topic 842 on May 1, 2019 using the modified retrospective approach. Under this approach, comparative periods presented in the financial statements in which the new lease standard is adopted will continue to be presented in accordance with prior GAAP. The adoption of this standard had an impact on the Company’s Consolidated Balance Sheets, recognizing a ROU and a lease liability of approximately \$1.4 million and \$1.5 million, respectively, and eliminating deferred rent of \$39,000 and an unamortized lease incentive receivable of \$108,000. Refer to Note 6 to the Consolidated Financial Statements for disclosure requirements related to the adoption of this standard.

In June 2016, the FASB issued ASU No. 2016-13, “Financial Instruments - Credit Losses (Topic 326), Measurement of Credit Losses on Financial Instruments.” The amendment in this update replaces the incurred loss impairment methodology in current GAAP with a methodology that reflects expected credit losses on instruments within its scope, including trade receivables. This update is intended to provide financial statement users with more decision-useful information about the expected credit losses. This ASU is effective for annual periods and interim periods beginning after December 15, 2019. The Company is currently evaluating the impact the adoption of ASU 2016-13 will have on its consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-13, “Fair Value Measurement (Topic 820).” The ASU modifies, removes, and adds several disclosure requirements on fair value measurements in Topic 820, Fair Value Measurement. ASU 2018-13 is effective for all entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. The amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and the narrative description of measurement uncertainty should be applied prospectively for only the most recent interim or annual period presented in the initial fiscal year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective date. Early adoption is permitted upon issuance of ASU 2018-13. An entity is permitted to early adopt any removed or modified disclosures upon issuance of ASU 2018-13 and delay adoption of the additional disclosures until their effective date. The Company is evaluating the effect ASU 2018-13 will have on its Consolidated Financial Statements and disclosures and has not yet determined the effect of the standard on its ongoing financial reporting at this time.

In August 2018, the FASB issued ASU No. 2018-15, “Intangibles — Goodwill and Other — Internal-Use Software (Subtopic 350-40).” The ASU provides for the recognition of an intangible asset for the costs of internal-use software licenses included in a cloud computing arrangement. Costs of arrangements that do not include a software license should be accounted for as a service contract and expensed as incurred. This ASU is effective for fiscal years beginning after December 15, 2019, with early adoption permitted. The ASU permits two methods of adoption: prospectively to all implementation costs incurred after the date of adoption, or retrospectively to each prior reporting period presented. The Company is evaluating the effect ASU 2018-15 will have on its Consolidated Financial Statements and disclosures and has not yet determined the effect of the standard on its ongoing financial reporting at this time.



### (3) Account Receivable, Contract Assets, and Contract Liabilities

The following provides further details on the balance sheet accounts of accounts receivable, contract assets, and contract liabilities.

#### *Accounts Receivable*

The Company grants credit to its customers, generally without collateral, under normal payment terms (typically 30 to 60 days after invoicing). Generally, invoicing occurs after the related services are performed or control of good has transferred to the customer. Accounts receivable represents an unconditional right to consideration arising from the Company's performance under contracts with customers. The carrying value of such receivables represent their estimated realizable value. Accounts receivable consisted of the following at January 31, 2020 and April 30, 2019.

	<u>January 31, 2020</u>	<u>April 30, 2019</u>
	(in thousands)	
Opening balance	\$ 63	\$ 171
Amount invoiced to customer	1,217	857
Collections	(1,210)	(965)
Ending balance	<u>\$ 70</u>	<u>\$ 63</u>

#### *Contract Assets and Contract Liabilities*

Contract assets include unbilled amounts typically resulting from arrangements whereby the right to payment is conditioned on completing additional tasks or services for a performance obligation. The increase in contract assets is primarily a result of services performed but unbilled during the nine months ended January 31, 2020.

Contract liabilities consist of amounts invoiced to customers in excess of revenue recognized. The increase in contract liabilities is primarily a result of an advance payment made by EGP during the nine months ended January 31, 2020.

### (4) Other Current Assets

Other current assets consist of the following at January 31, 2020 and April 30, 2019:

	<u>January 31, 2020</u>	<u>April 30, 2019</u>
	(in thousands)	
Deposits	\$ 71	\$ 63
Other receivables	273	44
Prepaid insurance	161	93
Prepaid offering costs	423	144
Prepaid expenses- other	167	193
	<u>\$ 1,095</u>	<u>\$ 537</u>

## (5) Property and Equipment, net

The components of property and equipment, net as of January 31, 2020 and April 30, 2019 consisted of the following:

	January 31, 2020	April 30, 2019
	(in thousands)	
Equipment	\$ 342	339
Computer equipment & software	719	558
Office furniture & equipment	341	341
Leasehold improvements	474	474
Equipment under capitalized lease	-	103
Construction in process	15	15
	\$ 1,891	\$ 1,830
Less: accumulated depreciation	(1,355)	(1,238)
	\$ 536	\$ 592

Depreciation expense was approximately \$40,000 and \$45,000 for the three-month period ended January 31, 2020 and 2019, and approximately \$117,000 and \$135,000 for the nine-month period ended January 31, 2020 and 2019, respectively.

## (6) Leases

### *Lessor Information*

As of January 31, 2020, the Company has two leases which have been classified as operating leases per accounting guidance contained within ASC Topic 842, "Leases". The Company's remaining operating lease term on these leases is less than a year. The maturity of lease payments remaining on this lease is immaterial. The accounting of the operating lease income according to ASC Topic 842, "Leases" is similar to the accounting in prior years.

### *Lessee Information*

The Company has one lease for its facility located in Monroe Township, New Jersey that is used as warehouse/production space and the Company's principal offices and corporate headquarters. The initial lease term is for 7 years with an option to extend the lease for another 5 years. The lease is classified as an operating lease. The operating lease is included in right-of-use assets, lease liabilities- current and lease liabilities- long-term on the Company's Consolidated Balance Sheets. The Company has elected the package of practical expedients which applies to leases that commenced before the adoption date. By electing the package of practical expedients, the Company did not need to reassess whether any existing contracts are or contain leases, the lease classification for any existing leases and initial direct costs for any existing leases.

Right-of-use asset and operating lease liabilities are recognized based on the present value of future minimum lease payments over the lease term at commencement date. When the implicit rate of the lease is not provided or cannot be determined, the Company used the incremental borrowing rate based on the information available at the effective date to determine the present value of future payments. Lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise those options. The renewal options have not been included in the lease term as they are not reasonably certain of exercise. Lease expense for minimum lease payments is recognized on a straight-line basis over the lease term and consists of interest on the lease liability and the amortization of the right of use asset. Variable lease expenses, if any, are recorded as incurred. The operating lease straight-line expense in the Consolidated Statement of Operations for the three and nine months ended January 31, 2020 was \$79,000 and \$238,000. The operating cash flows from operating leases cash payments for the three and nine months ended January 31, 2020 was \$82,000 and \$240,000.

Information related to the Company's right-of use assets and lease liabilities as of January 31, 2020 was as follows:

	<b>January 31, 2020</b>
	(in thousands)
<b>Operating lease:</b>	
Operating right-of-use asset, net	\$ 1,215
Right-of-use liability- current	222
Right-of-use liability- long term	1,139
Total lease liability	<u>\$ 1,361</u>
Weighted average remaining lease term- operating leases	4.74 years
Weighted average discount rate- operating leases	8.5%

Total remaining lease payments under the Company's operating leases are as follows:

	<b>January 31, 2020</b>
	(in thousands)
2020 (Feb- April)	82
2021	331
2022	341
2023	352
2024	362
Thereafter	184
Total future minimum lease payments	<u>\$ 1,652</u>
Less imputed interest	(291)
Total	<u>\$ 1,361</u>

#### ASC 840 Disclosure

The Company elected the modified retrospective transition method and is required to present previously disclosed information under the prior accounting standard for leases.

#### Lessee Information

Future minimum lease payments under the Company's operating lease as of April 30, 2019 are as follows:

	<b>April 30, 2019</b>
	(in thousands)
2020	322
2021	331
2022	341
2023	352
2024	362
Thereafter	184
	<u>\$ 1,892</u>

## (7) Accrued Expenses

Accrued expenses consist of the following at January 31, 2020 and April 30, 2019:

	January 31, 2020	April 30, 2019
	(in thousands)	
Project costs	\$ 21	\$ 9
Contract loss reserve	264	211
Employee incentive payments	682	580
Accrued salary and benefits	470	500
Legal and accounting fees	303	273
Accrued taxes payable	177	177
Other	292	188
	<u>\$ 2,208</u>	<u>\$ 1,938</u>

## (8) Warrants

### *Liability Classified Warrants*

On June 2, 2016, the Company entered into a securities purchase agreement, which was amended on June 7, 2016 (as amended, the “June Purchase Agreement”) with certain institutional purchasers (the “June Purchasers”). Pursuant to the terms of the June Purchase Agreement, the Company sold an aggregate of 20,850 shares of Common Stock together with warrants to purchase up to an aggregate of 7,298 shares of Common Stock. Each share of Common Stock was sold together with a warrant to purchase 0.35 of a share of Common Stock at a combined purchase price of \$92.00. The warrants have an exercise price of \$121.60 per share, became exercisable on December 3, 2016 (“Initial Exercise Date”), and will expire five years following the Initial Exercise Date. As of January 31, 2020, none of the warrants have been exercised.

On July 22, 2016, the Company entered into a Second Amendment to the Purchase Agreement (the “Second Amended Purchase Agreement”) with certain institutional purchasers (the “July Purchasers”). Pursuant to the terms of the Second Amended Purchase Agreement, the Company sold an aggregate of 29,750 shares of Common Stock together with warrants to purchase up to an aggregate of 8,925 shares of Common Stock. Each share of Common Stock was sold together with a warrant to purchase 0.30 of a share of Common Stock at a combined purchase price of \$135.00. The Warrants were exercisable immediately at an exercise price of \$187.20 per share. The Warrants will expire on the fifth (5th) anniversary of the initial date of issuance. As of January 31, 2020, none of the warrants have been exercised.

### *Equity Classified Warrants*

On April 8, 2019, the Company issued and sold 1,542,000 shares of common stock and pre-funded warrants to purchase up to 3,385,680 shares of common stock and common warrants to purchase up to 4,927,680 shares of our common stock in an underwritten public offering. The public offering price for the pre-funded warrants was equal to the public offering price of the common stock, less the \$0.01 per share exercise price of each warrant. The pre-funded warrants have no expiration date. As of January 31, 2020, 3,246,400 of the pre-funded warrants have been exercised. The common stock warrants have an exercise price of \$3.85 per share and expire five years from the issuance date. As of January 31, 2020, none of the common stock warrants have been exercised.

The Company accounts for warrants issued in connection with its June and July 2016 public offerings in accordance with the guidance on “*Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity*” in Topic 480 which provides that the Company classify the warrant instruments as a liability at its fair value. The warrant liabilities are subject to re-measurement at each balance sheet date using the Black-Scholes option pricing model. The June and July 2016 warrants contain a feature whereby they could require the transfer of assets and therefore are classified as a liability award in accordance with the guidance in Topic 480. The warrants have a value of zero at January 31, 2020 and \$6,000 at April 30, 2019 and are reflected within “Warrant liabilities” in the Consolidated Balance Sheets. The pre-funded and common warrants issued in the Company’s April 8, 2019 public offering did not meet the criteria to be classified as a liability award and therefore were treated as an equity award and recorded as a component of stockholders’ equity in the Consolidated Balance Sheets.

An unrealized gain of approximately zero and \$47,000 for the three months ended January 31, 2020 and 2019, respectively, and \$6,000 and \$183,000 for the nine months ended January 31, 2020 and 2019, respectively, were included within “Gain due to change in fair value of warrant liabilities” in the Consolidated Statements of Operations. The Company determined the fair value using the Black-Scholes option pricing model with the following assumptions:

	<u>January 31, 2020</u>	<u>January 31, 2019</u>
Dividend rate	0.0%	0.0%
Risk-free rate	1.5%	2.4%
Expected life (years)	1.3 - 1.4	2.5 - 2.8
Expected volatility	109.8% - 130.1%	90.8% - 142.7%

#### **(9) Preferred Stock**

The Company has authorized 5,000,000 shares of undesignated preferred stock with a par value of \$0.001 per share. As of January 31, 2020, and 2019, no shares of preferred stock had been issued.

#### **(10) Common Stock**

The Company has 100,000,000 shares authorized with a par value of \$0.001 per share. As of January 31, 2020, there were 8,699,319 shares issued.

On August 13, 2018, the Company entered into a common stock purchase agreement with Aspire Capital which provided that, subject to certain terms, conditions and limitations, Aspire Capital was committed to purchase up to an aggregate of \$10.0 million of shares of the Company’s common stock over a 30-month period that does not exceed 19.99% of the outstanding common stock on the date of the agreement. The number of shares the Company could issue within the 19.99% is 183,591 shares. Shareholder approval was not needed since the number of common stock offered for sale in the common stock purchase agreement did not exceed 19.99% of the outstanding common stock on the date of the agreement. In consideration for entering into the agreement, the Company issued to Aspire Capital 21,429 shares of common stock as a commitment fee. The agreement was cancelled on October 24, 2019, and as of that date, the Company had sold 162,162 shares of common stock with an aggregate market value of \$949,259 at an average price of \$5.85 per share pursuant to this common stock purchase agreement.

On October 24, 2019, the Company entered into a new common stock purchase agreement with Aspire Capital which provides that, subject to certain terms, conditions and limitations, Aspire Capital is committed to purchase up to an aggregate of \$10.0 million of shares of the Company’s common stock over a 30-month period that does not exceed 19.99% of the outstanding common stock on the date of the agreement. The number of shares the Company can issue within the 19.99% limit is 1,219,010 shares. Shareholder approval is needed for sale of common stock over the 19.99% limit of the outstanding common stock on the date of the agreement. At the 2019 annual meeting of stockholders, held on December 20, 2019, the Company’s stockholders approved an additional 5,400,000 shares to be issued pursuant to the common stock purchase agreement. In consideration for entering into the agreement, the Company issued to Aspire Capital 194,805 shares of common stock as a commitment fee. As of January 31, 2020, the Company has sold 1,024,205 shares of common stock with an aggregate market value of \$901,206 at an average price of \$0.88 per share pursuant to this common stock purchase agreement.

On January 7, 2019, the Company entered into the 2019 ATM Facility with AGP, under which the Company may issue and sell to or through A.G.P./Alliance Global Partners, acting as agent and/or principal, shares of the Company’s common stock having an aggregate offering price of up to \$25 million. As of January 31, 2020, under the 2019 ATM Facility the Company had issued and sold 1,527,145 shares of its common stock with an aggregate market value of \$2.9 million at an average price of \$1.91 per share and paid AGP a sales commission of approximately \$94,724 related to those shares.

On April 8, 2019, the Company sold 1,542,000 shares of common stock, which includes the sale of 642,000 shares of the Company’s common stock sold by the Company pursuant to the exercise, in full, of the over-allotment option by the underwriters in a public offering, prefunded warrants to purchase up to 3,385,680 shares of common stock and common warrants to purchase up to 4,927,680 shares of common stock in an underwritten public offering. The net proceeds to the Company from the offering were approximately \$15.7 million, after deducting underwriter’s fees and offering expenses payable by the Company.

## (11) Treasury Shares

During the nine months ended January 31, 2020 and 2019, 481 and 1,770 shares of common stock, respectively, were purchased by the Company from employees to pay taxes related to the vesting of restricted stock and are reflected in Treasury Stock as of January 31, 2020.

## (12) Stock-Based Compensation

In 2015, upon approval by the Company's stockholders, the Company's 2015 Omnibus Incentive Plan (the "2015 Plan") became effective. A total of 12,036 shares were authorized for issuance under the 2015 Omnibus Incentive Plan, including shares available for awards under the 2006 Stock Incentive Plan remaining at the time that plan terminated, or that were subject to awards under the 2006 Stock Incentive Plan that thereafter terminated by reason of expiration, forfeiture, cancellation or otherwise. On October 21, 2016 upon approval by the Company's stockholders the Company increased the number of shares authorized for issuance to 32,036. On December 7, 2018, upon approval by the Company's stockholders, the Company increased the number of shares authorized for issuance to 132,036. On December 20, 2019, upon approval by the Company's stockholders, the Company increased the number of shares authorized for issuance to 732,036. If any award under the 2006 Stock Incentive Plan or 2015 Plan expires, is cancelled, terminates unexercised or is forfeited, those shares become again available for grant under the 2015 Plan. The 2015 Plan will terminate ten years after its effective date, in October 2025, but is subject to earlier termination as provided in the 2015 Plan. As of January 31, 2020, the Company has 167,784 shares available for future issuance under the 2015 Plan.

On January 18, 2018, the Company's Board of Directors adopted the Company's Employment Inducement Incentive Award Plan (the "2018 Inducement Plan") pursuant to which the Company reserved 25,000 shares of common stock for issuance under the Inducement Plan. In accordance with Rule 5635(c)(4) and Rule 5635(c)(3) of the Nasdaq Listing Rules, awards under the Inducement Plan may only be made to individuals not previously employees of the Company (or following such individuals' bona fide period of non-employment with the Company), as an inducement material to the individuals' entry into employment with the Company. An award is any right to receive the Company's common stock pursuant to the 2018 Inducement Plan, consisting of a performance share award, restricted stock award, a restricted stock unit award or a stock payment award. As of January 31, 2020, there were 11,487 shares available for grant under the 2018 Inducement Plan.

### Stock Options

The Company estimates the fair value of each stock option award granted with service-based vesting requirements, 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 US 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 using the "simplified" method as permitted by the SEC's Staff Accounting Bulletin No. 110, *Share-Based Payment*. Expected volatility was based on the Company's historical volatility over the expected life of the stock option granted. There were 411,666 and 49,750 shares granted in the three and nine months ended January 31, 2020 and 2019.

	Three months ended January 31,		Nine months ended January 31,	
	2020	2019	2020	2019
Risk-free interest rate	1.7%	2.7%	1.7%	2.7%
Expected dividend yield	0.0%	0.0%	0.0%	0.0%
Expected life (in years)	5.5- 5.7	5.5	5.5- 5.7	5.5
Expected volatility	127.6% - 128.2%	126.4%	127.6% - 128.2%	126.4%

### Performance Stock Options

The Company in January of 2020 issued 81,334 performance-based stock options to two of its executives. The awards can vest over 2 years if there is positive total shareholder return (e.g. share price increase) as measured to the 5-day (January 11-15, 2021) and (January 10-14, 2022) share price VWAP. There were 81,334 shares unvested and outstanding for the nine months ended January 31, 2020. The Company determined these awards contain a market-based condition and estimated the fair value using the Monte Carlo simulation model with the following assumptions:

Risk-free interest rate	2.3%
Expected dividend yield	0.0%
Expected life (in years)	10.0
Expected volatility	115.0%

A summary of stock options under our stock incentive plans is detailed in the following table.

	Shares Underlying Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (In Years)
Outstanding as of April 30, 2019	65,572	\$ 21.08	8.9
Granted	493,000	\$ 1.05	
Exercised	-	-	
Cancelled/forfeited	(2,073)	\$ 52.66	
Outstanding as of January 31, 2020	556,499	\$ 3.24	9.7
Exercisable as of January 31, 2020	63,499	\$ 20.21	8.0

As of January 31, 2020, the total intrinsic value of both outstanding and exercisable options was zero. As of January 31, 2020, approximately 493,000 additional options were unvested, which had no intrinsic value and a weighted average remaining contractual term of 10.0 years. There was approximately \$207,000 and \$151,000 of total recognized compensation cost related to stock options during each of the nine months ended January 31, 2020 and 2019, respectively. As of January 31, 2020, there was approximately \$429,000 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 1.2 years. The Company typically issues newly authorized but unissued shares to satisfy option exercises under these plans.

#### *Restricted Stock*

Compensation expense for non-vested restricted stock is generally recorded based on its market value on the date of grant and recognized ratably over the associated service and performance period. During the nine months ended January 31, 2020, the Company granted 13,513 shares subject to service-based vesting requirements.

A summary of non-vested restricted stock under our stock incentive plans is as follows:

	Number of Shares	Weighted Average Price per Share
Issued and unvested at April 30, 2019	4,506	\$ 30.08
Granted	13,513	\$ 1.48
Vested	(4,380)	\$ 30.14
Cancelled/forfeited	(126)	\$ 28.00
Issued and unvested at January 31, 2020	13,513	\$ 1.48

There was approximately \$10,000 and \$49,000 of total recognized compensation cost related to restricted stock for the nine months ended January 31, 2020 and 2019, respectively. As of January 31, 2020, there is 15,000 unrecognized compensation cost remaining related to unvested restricted stock granted under our plans.

During the nine months ended January 31, 2020, the Company granted 51,547 shares, subject to service-based vesting requirements, to an executive that were outside the Company stock incentive plans. There was approximately \$8,000 of total recognized compensation cost related to this award for the nine months ended January 31, 2020. As of January 31, 2020, there is \$43,000 unrecognized compensation cost remaining related to this award.

### (13) Fair Value Measurements

The Company measures and reports certain financial and non-financial assets and liabilities on a fair value basis. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (exit price). GAAP specifies a three-level hierarchy that is used when measuring and disclosing fair value. The fair value hierarchy gives the highest priority to quoted prices available in active markets (i.e., observable inputs) and the lowest priority to data lacking transparency (i.e., unobservable inputs). An instrument's categorization within the fair value hierarchy is based on the lowest level of significant input to its valuation. The following is a description of the three hierarchy levels.

- Level 1 Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities. Active markets are considered to be those in which transactions for the assets or liabilities occur in sufficient frequency and volume to provide pricing information on an ongoing basis.
- Level 2 Quoted prices in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability. This category includes quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in inactive markets.
- Level 3 Unobservable inputs are not corroborated by market data. This category is comprised of financial and non-financial assets and liabilities whose fair value is estimated based on internally developed models or methodologies using significant inputs that are generally less readily observable from objective sources.

Transfers into or out of any hierarchy level are recognized at the end of the reporting period in which the transfers occurred. There were no transfers between any levels during each of the nine months ended January 31, 2020 and 2019.

The following information is provided to help readers gain an understanding of the relationship between amounts reported in the accompanying consolidated financial statements and the related market or fair value. The disclosures include financial instruments and derivative financial instruments, other than investment in affiliates.

Following are descriptions of the valuation methodologies used to measure material assets and liabilities at fair value and details of the valuation models, key inputs to those models and significant assumptions utilized.

#### *Warrant Liabilities*

The fair value of the Company's warrant liabilities (refer to Note 8) recorded in the Company's financial statements is determined using the Black-Scholes option pricing model and the quoted price of the Company's common stock in an active market, volatility and expected life, is a Level 3 measurement. Volatility is based on the actual market activity of the Company's stock. The expected life is based on the remaining contractual term of the warrants and the risk-free interest rate is based on the implied yield available on U.S. Treasury Securities with a maturity equivalent to the warrants' expected life.

The following table presents financial assets and liabilities measured at fair value on a recurring basis as of January 31, 2020.

	<b>Total Carrying Value in Consolidated Balance Sheet</b>	<b>Quoted prices in active markets for identical assets or liabilities (Level 1)</b>	<b>Significant other observable inputs (Level 2)</b>	<b>Significant unobservable inputs (Level 3)</b>
		(in thousands)		
Warrant liabilities	\$ -	\$ -	\$ -	\$ -



The following table presents financial assets and liabilities measured at fair value on a recurring basis as of April 30, 2019.

	Total Carrying Value in Consolidated Balance Sheet	Quoted prices in active markets for identical assets or liabilities (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
	(in thousands)			
Warrant liabilities	\$ 6	\$ -	\$ -	\$ 6

The following table provides a summary of changes in fair value of the Company's warrant liabilities held at January 31, 2020.

Fair Value Measurement Using Significant Unobservable Inputs (Level 3)	
	Total Warrant Liability (in thousands)
Fair value – April 30, 2018	\$ 201
Change in fair value	(195)
Fair value – April 30, 2019	6
Change in fair value	(6)
Fair value – January 31, 2020	\$ -

There were no other re-measured assets or liabilities at fair value on a non-recurring basis during the nine months ended January 31, 2020 and 2019.

#### (14) Commitments and Contingencies

##### *Employment Litigation*

On June 10, 2014, the Company announced that it had terminated Charles Dunleavy as its Chief Executive Officer and as an employee of the Company for cause, effective June 9, 2014, and that Mr. Dunleavy had also been removed from his position as Chairman of the Board of Directors. On June 17, 2014, Mr. Dunleavy wrote to the Company stating that he had retained counsel to represent him in connection with an alleged wrongful termination of his employment. On July 28, 2014, Mr. Dunleavy resigned from the Board and the boards of directors of the Company's subsidiaries. In 2014, the Company and Mr. Dunleavy entered into a tolling agreement with respect to his alleged employment claims pending resolution of a securities class action and shareholder derivative litigation. The securities class action was resolved in November 2017 and the derivatives litigation was resolved in June 2018.

On August 28, 2018, counsel for Mr. Dunleavy filed a demand for arbitration, captioned *Charles F. Dunleavy v. Ocean Power Technologies, Inc.*, Case No. 01-18-0003-2374, before the American Arbitration Association in New Jersey. The demand names Ocean Power Technologies, Inc. as the respondent and alleges various claims and seeks declaratory relief and permanent injunction. The demand seeks damages in the amount of \$5 million for compensatory and punitive damages, plus interest and attorneys' fees as well as certain equitable relief. On November 8, 2018, the Company through counsel responded to the demand for arbitration, denied all allegations, and asserted various affirmative defenses. On April 5, 2019, a three-person arbitration panel scheduled the discovery process to run from April 12, 2019 until November 9, 2019, set a pre-hearing case management conference for October 14, 2019, and set the hearing for December 9-13, 2019 in Princeton, New Jersey. On September 30, 2019, the parties completed the factual discovery process and the Company identified its expert witnesses. On October 14, 2019, the parties participated in a pre-hearing case management conference with arbitration panel and altered slightly the dates for the hearing. The hearing was conducted in Princeton, New Jersey between December 9-11, 2019, and between December 16-18, 2019, and on December 18, 2019 the panel decided to continue the hearing for at least another day of testimony on May 18, 2020. As of January 31, 2020, the Company has not accrued any provision related to this matter since it is not probable and cannot reasonably estimate the loss contingency.

##### *FINRA Review*

On April 4, 2019, FINRA notified the Company that it was conducting a routine review of the Company's stock associated with two public announcements and asked several questions regarding: (i) an April 3, 2019 announcement that the Company had won a contract with a leading oil and gas operator; and (ii) an April 4, 2019 announcement of the pricing of an underwritten public offering. The Company provided its response to the FINRA questions on April 9, 2019. As of March 9, 2020, FINRA has not provided any follow-up.

## *Spain Income Tax Audit*

The Company is currently undergoing an income tax audit in Spain for the period from 2008 to 2014, when our Spanish branch was closed. The branch reported net operating losses for each of the years reported that the Spanish tax inspector claims should have been capitalized on the balance sheet instead of charged as an expense in the Consolidated Statement of Operations. As of April 30, 2017, the Company had recorded a penalty of \$132,000 to Selling, general and administrative costs in the Consolidated Statement of Operations. The Spanish tax inspector has recently closed its discussion relating to the capitalization of expenses and as of April 30, 2018 the Company reversed the penalty. However, the Spanish tax inspector has now raised questions with respect to the Company's recognition of funds received in 2011 to 2014 from a governmental grant from the European Commission in connection with the Waveport project. It is anticipated that the Company will be assessed a penalty relating to these tax years. The Company has estimated this penalty to be \$177,000 and as of January 31, 2020 and April 30, 2019 has recorded the penalty in Accrued expenses in the Consolidated Balance Sheets.

### **(15) Income Taxes**

During the three and nine months ended January 31, 2019, the Company recorded an income tax benefit of \$0.9 million, representing the proceeds from the sale of \$9.1 million of New Jersey net operating loss carryforwards and research and development tax credits. During the three and nine months ended January 31, 2020, the Company has not received any proceeds from the sale of its New Jersey net operating loss carryforwards and research and development tax credits.

Other than the sale of New Jersey net operating loss carryforwards and research and development tax credits, the Company did not recognize any consolidated income tax benefit (expense) during the three and nine months ended January 31, 2020 and 2019. The Company has recorded a valuation allowance to reduce its net deferred tax asset to an amount that is more likely than not to be realized in future years. Accordingly, the benefit of the net operating loss that would have been recognized was offset by changes in the valuation allowance.

### *Uncertain Tax Positions*

The Company applies the guidance issued by the FASB for the accounting and reporting of uncertain tax positions. The guidance requires the Company to recognize in its consolidated financial statements the impact of a tax position if that position is more likely than not to be sustained upon examination, based on the technical merits of the position. The Company is currently undergoing an income tax audit in Spain for the period from 2008 to 2014, when our Spanish branch was closed (see Note 14 to the Consolidated Financial Statements). At January 31, 2020 the Company had no other unrecognized tax positions. The Company does not expect any material increase or decrease in its income tax expense in the next twelve months, related to examinations or uncertain tax positions. U.S. federal and state income tax returns were audited through fiscal 2014 and fiscal 2010 respectively. Net operating loss and credit carry forwards since inception remain open to examination by taxing authorities and will continue to remain open for a period of time after utilization.

### **(16) Operating Segments and Geographic Information**

The Company's business consists of one segment as this represents management's view of the Company's operations. The Company operates on a worldwide basis with one operating company in the US and subsidiaries in the UK and in Australia. Revenues and expenses are generally attributed to the operating unit that bills the customers. During the three and nine months ended January 31, 2020 and 2019, the Company's primary business operations were in North America.

### **(17) Subsequent Event**

#### *Nasdaq Delisting Notification*

On March 3, 2020, the Company received a notification from the Nasdaq Stock Market (the "NASDAQ") indicating that the minimum bid price of the Company's common stock has been below \$1.00 per share for 30 consecutive business days and as a result, the Company is not in compliance with the minimum bid price requirement for continued listing. The Nasdaq notice has no immediate effect on the listing or trading of the Company's common stock. Under the Nasdaq Listing Rules, the Company has a grace period of 180 calendar days, or until August 31, 2020, in which to regain compliance with the minimum bid price rule. To regain compliance, the closing bid price of the Company's common stock must meet or exceed \$1.00 per share for a minimum of ten consecutive business days during this grace period.

## Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with the accompanying unaudited consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q. Some of the information contained in this management's discussion and analysis or set forth elsewhere in this Form 10-Q, including information with respect to our plans and strategy for our business, pending and threatened litigation and our liquidity includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section of our Annual Report on Form 10-K for the year ended April 30, 2019 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. References to a fiscal year in this Form 10-Q refer to the year ended April 30 of that year (e.g., fiscal 2019 refers to the year ended April 30, 2019).

### Overview

Nearly 70% of the earth's surface is covered by water, and over 40% of the world's population lives within approximately 150 miles of a coast. Thousands of information gathering and/or power systems are deployed in the oceans today to increase our understanding of weather, climate change, biological processes, and marine mammal patterns as well as supporting exploration, security and defense and operations for industries such as oil and gas. Most of these systems are powered by battery, solar, wind, fuel cell, or fossil fuel generators that may be unreliable, carbon intensive, and expensive to operate while they also may be limited in their ability to deliver ample electric power. These current systems often necessitate significant tradeoffs in sensor accuracy, data processing and communications bandwidth and frequency in order to operate given limited available power. More persistent power systems requiring less maintenance and being carbon neutral, such as our systems, may have the ability to save costs over these current systems. Equally important are increases in available power which may allow for better sensors, faster data sampling and higher frequency communication intervals up to real-time which could improve scientific and economic returns.

Founded in 1984 and headquartered in Monroe Township, New Jersey, we believe we are the leader in ocean wave power conversion technology. Our PB3 is our first fully commercial product which generates electricity by harnessing the renewable energy of ocean waves. In addition to our PB3, we continue to develop our PowerBuoy® product line based on modular, ocean-going buoys, which we have been periodically ocean testing since 1997. In November 2018, the Company announced additional complementary products, the hybrid PowerBuoy® and subsea battery solutions which leverage our existing expertise in offshore power systems while expanding our product line beyond our flagship PB3 offering.

The PB3 generates power for use in remote offshore locations, independent of a conventional power grid. It features a unique onboard power take-off ("PTO") system, which incorporates both energy storage and energy management and control systems. The PB3 generates a nominal name-plated capacity rating of up to 3 kilowatts ("kW") of peak power during recharging of the onboard batteries. Power generation is deployment-site dependent whereby average power generated can increase substantially at very active sites. Our standard energy storage system ("ESS") has an energy capacity of up to a nominal 150 kilowatt-hours ("kWh") to meet specific application requirements. We believe there is a substantial addressable market for the current capabilities of our PB3, which we believe could be utilized in a variety of applications.

In addition to leveraging earlier design aspects of our autonomous PowerBuoy®, the PB3 has undergone extensive factory and in-ocean design validation testing. Currently, our engineering efforts are continuing to expand the PowerBuoy® capability with simplified deployment and mooring options and working together with our customer base to ensure flexible systems integration and to optimize energy output. Our marketing efforts are focused on applications in remote offshore locations that require clean, reliable and persistent power and communications, either by supplying electric power to payloads that are integrated directly in or on our PowerBuoy® or located in its vicinity, such as on the seabed and in the water column.

Based on our market research and publicly available data, we believe that numerous markets have a direct need for our PowerBuoys® including oil and gas, defense and security, science and research, and communications. Depending on payload power requirements, sensor types and other considerations, we have found that our PowerBuoy® could satisfy several application requirements within these markets. We believe that the PB3 persistently generates sufficient power to meet the requirements of many potential customer applications within our target markets.

Since fiscal 2002, government agencies have accounted for a significant portion of our revenues. These revenues were largely for the support of our development efforts relating to our technology. Today our goal is to generate the majority of our revenue from the sale or lease of our products, and sales of services to support our business operations. As we continue to develop and commercialize our products, we expect to have a net loss of cash from operating activities unless and until we achieve positive cash flow from the commercialization of our products and services. During fiscal 2019 and the first nine months of fiscal year 2020, we continued work on projects with the Premier Oil (“PMO”), Eni S.p.A. (“Eni”), the U.S. Navy Small Business Innovation Research (“U.S. SBIR”) program, and a leading oil & gas operator. In fiscal year 2020, the Company’s sold its first PowerBuoy® to EGP.

## **Product Development**

The development of our technology has been funded by capital we raised, by development engineering contracts we received starting in fiscal 1995 with agencies like the Department of Energy (“DOE”), the U.S. Navy, the Department of Homeland Security, and revenue generating projects with MES, Eni and Premier Oil. Through these projects, we also continued development of our PowerBuoy® technologies. We are continuing to focus on marketing and developing our PowerBuoy® products and services for use in unmanned autonomous power applications and communications solutions.

In addition to the PB3 commercial activities, a concerted effort has been underway which is focused on proactively implementing additional features driven by extensive and direct discussions with potential users, customers, marketing partners, and end users in our target markets. Such features include:

- Enhancement and cost-out of our current PB3 PowerBuoy® product and supporting systems through customary product life cycle management.
- The design and development of a single point mooring umbilical solution that not only allows for quick deployment of the PowerBuoy® but also enables delivery of power and communication capabilities to customer payloads which are external to the PowerBuoy®, and which may reside in the water column, on the seabed, or both.
- The design, development and implementation of an advanced buoy controller that significantly reduces power consumption and continues to address buoy reliability, and supports high computational speeds needed for the PowerBuoy® monitoring and control.

As previously stated, the PB3 has achieved commercial status through a series of design iterations which focused on improving its reliability and survivability in the ocean environment. Though the PB3 will continue to undergo further enhancements through customary product life cycle management, we believe the PB3 has achieved a maturity level for immediate commercial use. We believe that the PB3 will generate and store sufficient power to address various application requirements in our target markets. Our product development and engineering efforts are focused, in part, on increasing the energy output and efficiency of our PowerBuoys®. If we are able to do so, we believe the PowerBuoy® would be useful as part of broader solutions where cost savings and additional power are required by our potential customers and would also offer enabling capabilities which may not have been previously available to customers. We continue to explore opportunities in these target markets. We believe that by demonstrating the capability of our PowerBuoy® in oil & gas, fishery protection, marine monitoring, and telecommunications applications, we can advance our product and services and gain further adoption from our target markets. We continue to improve design and manufacturing to enhance our ability to reduce solution costs, improve customer value, displace incumbent solutions, and become the preferred power source for new and existing applications in our target markets.

We are utilizing our experience with multiple commercial PowerBuoy® deployments globally to continually improve our solutions so that we have higher energy efficiency, additional mooring capability, platform flexibility and high reliability. For example, the redesigned PB3 leverages our knowledge base from past designs to incorporate new design features which we believe will improve its reliability and efficiency.

In fiscal year 2019, the Company announced several new product offerings including hybrid PowerBuoy®, subsea battery systems and support services.

- **Hybrid PowerBuoy®** - The Company is in the process of creating a hybrid PowerBuoy® that will be a smaller solar powered and liquid-fueled surface buoy, compared to the wave power generating PB3 PowerBuoy®, capable of providing reliable power in remote offshore locations. This product is to be highly complementary to the PB3 PowerBuoy® by providing the Company the opportunity to address a broader spectrum of customer deployment needs, including low-wave environments, with the potential for greater Company integration within each customer project. It is primarily intended for shorter term deployment applications such as electric remotely operated vehicles (“eROV’s”) and autonomous underwater vehicles (“AUV’s”) inspections and short-term maintenance, topside surveillance and communications, and subsea equipment and controls. The hybrid PowerBuoy® is anticipated to be a lightweight, quickly deployable and cost-effective solution. The design is also anticipated to have a high payload capacity for communications and surveillance, with the capability of being tethered to subsea payloads and battery packs, or with a conventional anchor mooring system. The Company is designing the hybrid PowerBuoy® with a Stirling engine to outperform traditional diesel buoys, which we believe have more frequent service and refueling intervals and higher carbon intensities. We believe the hybrid PowerBuoy® will be able to operate in an environmentally safer manner using more robust fuels, while operating over a wider temperature range and more broad ocean wave conditions than existing diesel buoys.
- **Subsea battery systems** – The Company is in the process of creating a sea floor energy storage solution for remote offshore operations. These subsea battery systems will contain lithium ion batteries, which provide high power density, to supply power that can enable subsea equipment, sensors, communications, AUV’s and eROV’s recharge. The Company’s PB3 PowerBuoy® is complimentary to subsea battery systems by providing a means for recharging during longer term deployments, or the subsea battery systems can be used independently for shorter term deployments. Ideal for many remote offshore customer applications, these subsea battery systems are anticipated to be high performance, cost-efficient, and quickly deployable. Given the Company’s expertise in offshore energy storage systems from existing PB3 PowerBuoy® technology, the subsea battery solutions will provide an opportunity for the Company to differentiate through technical, cost and delivery leadership.
- **Support services** – The Company offers customers a comprehensive range of support services tailored to meeting specific client needs. These support services include innovation services, remote monitoring, extended service agreements, customization and pre-packaged payload options, engineering-design-testing services, mooring design, and marine services. These same support services will be extended to the new subsea battery solution and hybrid PowerBuoy® products.

## Commercial Activities

We continue to seek new strategic relationships, and further develop our existing partnerships, with other companies that have developed or are developing in-ocean applications requiring a persistent source of power that is also capable of real time data collection, processing and communication, to address potential customer needs. We are also expanding our relationships with deployment, service and maintenance companies.

The table below shows the percentage of our revenues derived from customers whose revenues accounted for at least 10% of our consolidated revenues for at least one of the periods indicated:

Customer	Three months ended January 31,		Nine months ended January 31,	
	2020	2019	2020	2019
Eni S.p.A.	6%	53%	10%	60%
Premier Oil UK Limited	1%	47%	11%	35%
EGP	93%	0%	68%	5%
Other	0%	0%	11%	0%
	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>

In order to achieve success in commercializing our products, we must expand our customer base and obtain commercial contracts to lease or sell our PowerBuoy® and related services to customers. Our potential customer base for our PowerBuoy® includes various public and private entities, and agencies that require remote offshore power. To date, substantially all of our revenue producing contracts have been with a small number of customers under contracts to fund a portion of the costs of our operational efforts to develop and improve our technology, validate our product through ocean and laboratory testing, and business development activities with potential commercial customers. Our goal in the future is that an increased portion of our revenues will be from the lease or sale of our products and related maintenance and other services.

## Customers

- In September 2019, we entered into two contracts with subsidiaries of EGP which include the sale of a PB3 PowerBuoy® and the development and supply of a turn-key integrated Open Sea Lab (“OSL”) that will be the Company’s first deployment off the coast of Chile. The contract is a result of a detailed feasibility study of the PowerBuoy® as an offshore autonomous platform hosting oceanographic sensor systems conducted in September 2018.
- In April 2019, we entered into an agreement with a leading oil and gas operator to conduct a detailed feasibility study of using the Company’s technology to monitor subsea wells.
- In February 2019, we entered into a contract with the U.S. Navy to carry out the first phase of a project to design and develop a buoy mooring system which incorporates fiber optics for the transmission of subsea sensor data to airplanes, ships, and satellites.
- In August 2018, we entered into an agreement with EGP to evaluate a PB3 deployment along the coast of Chile through a detailed feasibility study of the PowerBuoy® as an offshore autonomous platform hosting oceanographic sensor systems.
- In June 2018, we entered into a contract with PMO for the lease of a PB3 to be deployed in one of PMO’s offshore fields in the North Sea. During its deployment, the PB3 PowerBuoy® provided unmanned exclusion zone monitoring service. With an opportunistic marine weather window that allowed for offshore equipment retrievals, in early March 2020 the Company and Premier Oil retrieved the PB3 PowerBuoy® and shipped it to back to the Company’s headquarters in Monroe, New Jersey. The PB3 PowerBuoy® will be serviced to prepare for one of multiple upcoming commercial opportunities. In addition, the Company will perform an inspection and review of the system’s performance with the intention to develop a Phase II deployment scope with Premier Oil. As a result of this, it impacted revenue recognized for the third quarter, 2020 and removed the remaining lease payments from fourth quarter fiscal 2020 backlog.
- In March 2018, we entered into an agreement with Eni that provides for a minimum 24-month contract that includes an 18-month PB3 lease and associated project management.
- In September 2016, we entered into a contract with U.S. Department of Defense Office of Naval Research (“ONR”) totaling approximately \$0.2 million to carry out the first phase of a project which focuses on the initial concept design and development of a mass-on-spring PTO-based PowerBuoy® leveraging a number of OPT patents covering such a technology. If successful, this device is expected to be able to respond to the unique set of requirements expected in various military marine applications. We completed the Phase 2 BASE Effort work under the contract which focused on the initial concept design and development of a mass-on-spring PTO-based PowerBuoy®.
- We have worked with MES (from 2010 to current) to develop several PowerBuoy® projects in Japan. Historically, our agreements with MES have provided for MES to reimburse us for specific costs associated with research, development and deployment of our PowerBuoy® product. In March 2016, we entered into a letter of intent with MES to conduct funded pre-work tasks and to negotiate a definitive agreement that would allow for the lease of the PB3 for a project off the coast of Kozushima Island, Japan following a planned stage gate review. Stage-gate reviews are used in product development to gather key information needed to advance the project to the next gate or decision point. This process is a generally accepted industry practice and has been utilized by other customers such as the DOE. A final contract totaling nearly \$1.0 million was negotiated and finalized with MES in May 2016 that included engineering and logistics support, and the lease of our PB3 for a 7-month period, its ocean deployment, associated data collection and monitoring of its performance. Upon the completion of the engineering pre-work and a successful stage gate review, the PB3 was shipped to Japan and was deployed off Kozushima Island from April to September 2017. The MES lease concluded in September 2017 and the PB3 was shipped back to New Jersey.

## Partnerships

- In May 2019, we signed a memorandum of understanding with Modus Seabed Intervention Ltd. (“Modus”). for the purpose of developing and delivering commercial market solutions that offer a step-change in innovation and market value against conventional methodologies, specifically through development and marketing of a combined Hybrid Autonomous Underwater Vehicle (HAUV) charging station which will be able to utilize the PowerBuoy® system for topside charging and communications.
- In April 2019, we signed a memorandum of understanding with Acteon Field Life Service Ltd. (“Acteon”) to develop, explore and exploit mutual opportunities in the global oil and gas and renewable markets.
- In January 2019, we entered into a Joint System Solution Development and Marketing Agreement with Saab Seaeeye Ltd. (“Saab”). The agreement anticipates a preliminary focus on AUV and eROV charging and communications systems.
- In December 2018, we signed a letter of intent to enter into a non-exclusive long-term supply agreement with NEC Energy Solutions (“NEC ES”), a pioneer and global leader in utility scale energy storage. Under the terms of the supply agreement, NEC ES will be a supplier of lithium ion batteries for our subsea battery systems.

## Business Strategy

We continue to commercialize our PB3 for use in remote offshore power and real-time data communications applications, and in order to achieve this goal, we are pursuing the following business objectives:

- *Sell and/or lease PB3 PowerBuoy® as part of solution offerings.* We believe our PB3 PowerBuoys® are well suited to enable many unmanned, autonomous (non-grid connected) offshore solutions, such as topside and subsea surveillance and communications, subsea equipment monitoring, early warning systems platform and subsea power and buffering, and weather and climate data collection. We have investigated and realized market demand for some of these solutions leveraging both PowerBuoy® sales and leases within our selected markets, and we intend to continue to sell and lease PowerBuoys® to these markets as part of these broader solutions. Additionally, we intend to provide services associated with our solution offerings such as paid engineering studies, value-added engineering, maintenance, remote monitoring and diagnostics, application engineering, planning, training, project management, and marine and logistics support required for our solution life-cycles. We continue to increase our commercial capabilities through new hires in sales and application support, and through engagement of expert market consultants in various geographies.
- *Expand product offering by adding new complimentary products that are cost efficient and designed for shorter and faster deployments, which will create a system solutions approach for our customers.* We are currently developing two new complementary products to our PB3, the hybrid PowerBuoy® and subsea battery solutions. These products build on our existing expertise in offshore power systems and are targeted for a near term deployment. The hybrid PowerBuoy® is to be highly complementary to the PB3 by providing the Company the opportunity to address a broader spectrum of customer deployment needs, including low-wave environments, with the potential for greater Company integration within each customer project. The hybrid PowerBuoy® is primarily intended for shorter term deployment applications such as eROV and AUV inspections and short-term maintenance, topside surveillance and communications, and subsea equipment and controls. The subsea battery solutions are expected to offer the possibility of creating a sea floor energy storage solution for remote offshore operations. These subsea battery systems will contain lithium ion batteries, which provide high power density to supply power that can enable subsea equipment, sensors, communications, AUVs and eROV recharge. Ideal for many remote offshore customer applications, these subsea battery systems are anticipated to be high performance, cost-efficient, and quickly deployable.
- *Concentrate sales and marketing efforts in specific geographic markets.* We are currently focusing our marketing efforts on parts of North and South America, Europe and Asia. We believe that each of these areas has sizable end market opportunities, political and economic stability, and high levels of industrialization and economic development.
- *Expand our relationships in key market areas through strategic partnerships and collaborations.* We believe that strategic partners are an important part of commercializing a new product. Partnerships and collaborations can be used to improve the development of overall integrated solutions, create new market channels, expand commercial know-how and geographic footprint, and bolster our product delivery capabilities. We believe that offering a turn-key solution, and not just power, is key to securing long term success.
- *Commercial collaborations.* We believe that an important element of our business strategy is to collaborate with other organizations to leverage our combined expertise, market presence and access, and core competences across key markets. We have formed such a relationship with several well-known groups, including Modus, Saab, NEC ES, Acteon, MES, PMO and Eni. We continue to seek other opportunities to collaborate with application experts from within our selected markets.
- *Outsourcing of fabrication, deployment and service support.* We outsource all fabrication, anchoring, mooring, cabling supply, and in most cases deployment of our PowerBuoy® in order to minimize our capital requirements as we scale our business. Our PTO is a proprietary subsystem and is assembled and tested at our facility. We believe this distributed manufacturing and assembly approach enables us to focus on our core competencies to ensure a cost-effective product by leveraging a larger more established supply base. We also continue to seek strategic partnerships with regard to servicing of our PB3.
- *PB3 cost reduction and PowerBuoy® product development.* Our engineering efforts are focused on customer application development for PB3 sales, cost reduction of our PB3 and improving the energy output, reliability, maintenance interval and expected operating life of our PowerBuoys®. We continue to optimize manufacturability of our designs with a focus on cost competitiveness, and we believe we will be able to address new and different applications by developing new products that increase energy output.

## Capital Raises

On August 13, 2018, the Company entered into a common stock purchase agreement with Aspire Capital Fund, LLC (“Aspire Capital”) which provided that, subject to certain terms, conditions and limitations, Aspire Capital was committed to purchase up to an aggregate of \$10.0 million of shares of the Company’s common stock over a 30-month period that does not exceed 19.99% of the outstanding common stock on the date of the agreement. The number of shares the Company could issue within the 19.99% limit is 183,591 shares. Shareholder approval was not needed since the number of common stock offered for sale in the common stock purchase agreement did not exceed 19.99% of the outstanding common stock on the date of the agreement. In consideration for entering into the agreement, the Company issued to Aspire Capital 21,429 shares of our common stock as a commitment fee. The agreement was cancelled on October 24, 2019, and as of that date, the Company had sold 162,162 shares of common stock with an aggregate market value of \$949,259 at an average price of \$5.85 per share pursuant to this common stock purchase agreement.

On October 24, 2019, the Company entered into a new common stock purchase agreement with Aspire Capital which provides that, subject to certain terms, conditions and limitations, Aspire Capital is committed to purchase up to an aggregate of \$10.0 million of shares of the Company’s common stock over a 30-month period that does not exceed 19.99% of the outstanding common stock on the date of the agreement. The number of shares the Company can issue within the 19.99% limit is 1,219,010 shares including shares issued as a commitment fee. Shareholder approval is needed for sale of common stock over the 19.99% limit of the outstanding common stock on the date of the agreement. At the 2019 annual meeting of stockholders, held on December 20, 2019, the Company’s stockholders approved an additional 5,400,000 shares to be issued pursuant to the common stock purchase agreement. In consideration for entering into the agreement, the Company issued to Aspire Capital 194,805 shares of our common stock as a commitment fee. As of January 31, 2020, the Company has sold 1,024,205 shares of common stock with an aggregate market value of \$901,206 at an average price of \$0.88 per share pursuant to this common stock purchase agreement.

On April 8, 2019, the Company sold 1,542,000 shares of common stock, which includes the sale of 642,000 shares of the Company’s common stock sold by the Company pursuant to the exercise, in full, of the over-allotment option by the underwriters in a public offering. As part of the public offering, the Company also sold prefunded warrants to purchase up to 3,385,680 shares of common stock and common warrants to purchase up to 4,927,680 shares of our common stock. The net proceeds to the Company from the offering were approximately \$15.7 million, after deducting underwriter fees and offering expenses payable by the Company.

On January 7, 2019, the Company entered into the 2019 ATM Facility with AGP under which the Company may issue and sell to or through AGP, acting as agent and/or principal, shares of the Company’s common stock having an aggregate offering price of up to \$25 million. As of January 31, 2020, under the 2019 ATM Facility, the Company issued and sold 1,527,145 shares of its common stock with an aggregate market value of \$2.9 million at an average price of \$1.91 per share and paid AGP a sales commission of approximately \$94,724 related to those shares.

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 or preferred stock, these securities could have rights senior to those associated with our common stock and could contain covenants that would restrict our operations. We do not have any committed sources of debt or equity financing and we cannot assure you that financing will be available in amounts or on terms acceptable to us when needed, or at all. If we are unable to obtain required financing when needed, we may be required to reduce the scope of our operations, including our planned product development and marketing efforts, which could materially and adversely affect our financial condition and operating results. If we are unable to secure additional financing, we may be forced to cease our operations.

## Backlog

As of January 31, 2020, the Company’s backlog was \$1.4 million. As of April 30, 2019, backlog was \$0.9 million. Our backlog can include unfilled firm orders for our products and services from commercial or governmental customers. If any of our contracts were to be terminated, our backlog would be reduced by the expected value of the remaining terms of such contract.

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 portion of our revenue has been for the support of our product development efforts. These revenues are recognized using the percentage-of-completion method, and changes in estimates from time to time 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.



## Going Concern

The consolidated financial statements have been prepared assuming the Company will continue as a going concern. The Company has experienced substantial and recurring losses from operations, which losses have caused an accumulated deficit of \$218.9 million at January 31, 2020. Based on the Company's cash, cash equivalents and restricted cash balances as of January 31, 2020, the Company believes that it will be able to finance its capital requirements and operations into the quarter ending October 31, 2020. Among other things, the Company is currently evaluating a variety of different financing alternatives and we expect to continue to fund our business with sales of our securities and through generating revenue with customers.

The report of our independent registered public accounting firm on our consolidated financial statements filed with our Annual Report on Form 10-K for the year ended April 30, 2019, contains an explanatory paragraph regarding our ability to continue as a going concern, based on, among other factors, that our ability to continue as a going concern is dependent upon our ability to raise additional external capital and increase revenues. These factors, among others, raise substantial doubt about our ability to continue as a going concern. Our consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. We cannot assure you that we will be successful in our efforts to generate revenues, become profitable, raise additional outside capital or to continue as a going concern. If we are not successful in our efforts to raise additional capital sufficient to support our operations, we would be forced to cease operations, in which event investors would lose their entire investment in our company.

## Critical Accounting Policies and Estimates

To understand our financial statements, it is important to understand our critical accounting policies and estimates. We prepare our financial statements in accordance with GAAP. The preparation of financial statements also requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, costs and expenses and related disclosures. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results could differ significantly from the estimates made by our management. To the extent that there are differences between our estimates and actual results, our future financial statement presentation, financial condition, results of operations and cash flows will be affected. We believe that the accounting policies are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management's judgments and estimates.

For a discussion of our critical accounting estimates, see the section entitled Item 7.- "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the year ended April 30, 2019. There were no material changes in our critical accounting estimates or accounting policies during the nine months ended January 31, 2020.

## Recently Issued Accounting Standards

See Note 2 of the Notes to Consolidated Financial Statements.

## 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*

A performance obligation is the unit of account for revenue recognition. The Company assesses the goods or services promised in a contract with a customer and identifies as a performance obligation either: a) a good or service (or a bundle of goods or services) that is distinct; or b) a series of distinct goods or services that are substantially the same and that have the same pattern of transfer to the customer. A contract may contain a single or multiple performance obligations. For contracts with multiple performance obligations, the Company allocates the contracted transaction price to each performance obligation based upon the relative standalone selling price, which represents the price the Company would sell a promised good or service separately to a customer. The Company determines the standalone selling price based upon the facts and circumstances of each obligated good or service. The majority of the Company's contracts have no observable standalone selling price since the associated products and services are customized to customer specifications. As such, the standalone selling price generally reflects the Company's forecast of the total cost to satisfy the performance obligation plus an appropriate profit margin.

The nature of the Company's contracts may give rise to several types of variable consideration, including unpriced change orders and liquidated damages and penalties. Variable consideration can also arise from modifications to the scope of services. Variable consideration is included in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur once the uncertainty associated with the variable consideration is resolved. Our estimates of variable consideration and determination of whether to include such amounts in the transaction price are based largely on our assessment of legal enforceability, performance and any other information (historical, current, and forecasted) that is reasonably available to us.

The Company recognizes revenue when or as it satisfies a performance obligation by transferring a good or service to a customer, either (1) at a point in time or (2) over time. A good or service is transferred when or as the customer obtains control of it. The evaluation of whether control of each performance obligation is transferred at a point in time or over time is made at contract inception. Input measures such as costs incurred or time elapsed are utilized to assess progress against specific contractual performance obligations for the Company's services. The selection of the method to measure progress towards completion requires judgment and is based on the nature of the services to be provided. For the Company, the input method using costs incurred or time elapsed best represents the measure of progress against the performance obligations incorporated within the contractual agreements. When the Company's estimate of total costs to be incurred to satisfy the performance obligations exceed revenue, the Company recognizes the loss immediately.

The Company's contracts are either cost plus or fixed price contracts. Under cost plus contracts, customers are billed for actual expenses incurred plus an agreed-upon fee. Under cost plus contracts, a profit or loss on a project is recognized depending on whether actual costs are more or less than the agreed upon amount.

The Company has two types of fixed price contracts, firm fixed price and cost-sharing. Under firm fixed price contracts, the Company receives an agreed-upon amount for providing products and services specified in the contract, a profit or loss is recognized depending on whether actual costs are more or less than the agreed upon amount. Under cost-sharing contracts, the fixed amount agreed upon with the customer is only intended to fund a portion of the costs on a specific project. Under cost sharing contracts, an amount corresponding to the revenue is recorded in cost of revenues, resulting in gross profit on these contracts of zero. The Company's share of the costs is recorded as product development expense. The Company reports its disaggregation of revenue by contract type since this method best represents the Company's business. For each of the nine-month periods ended January 31, 2020 and 2019, all of the Company's contracts were classified as firm fixed price.

The following table provides information regarding the breakdown of our revenues by customer for the three and nine months ended January 31, 2020 and 2019.

	<b>Three months ended January 31,</b>		<b>Nine months ended January 31,</b>	
	<b>2020</b>	<b>2019</b>	<b>2020</b>	<b>2019</b>
	(in thousands)			
Eni S.p.A.	\$ 42	\$ 141	\$ 118	\$ 264
Premier Oil UK Limited	5	127	126	153
EGP	678	-	774	23
Other	-	-	113	-
	<u>\$ 725</u>	<u>\$ 268</u>	<u>\$ 1,131</u>	<u>\$ 440</u>

We currently focus our sales and marketing efforts on parts of North and South America, Europe and Asia. The following table shows the percentage of our revenues by geographical location of our customers for the nine months ended January 31, 2020 and 2019.

<b>Customer Location</b>	<b>Nine months ended January 31,</b>	
	<b>2020</b>	<b>2019</b>
Europe	25%	100%
South America	69%	0%
United States	6%	0%
	<u>100%</u>	<u>100%</u>

#### *Cost of revenues*

Our cost of revenues consists primarily of incurred material, labor and manufacturing overhead expenses, such as engineering expense, equipment depreciation and maintenance and facility related expenses, and includes the cost of equipment to customize the PowerBuoy® supplied by third-party suppliers. Cost of revenues also includes PowerBuoy® system delivery and deployment expenses and may include anticipated losses at completion on certain contracts.

Our ability to generate a gross profit will depend on the nature of future contracts, our success at generating revenues through sales or leases of our PowerBuoy® systems, the nature of our contracts generating revenues to fund our product development efforts, and our ability to manage costs incurred on fixed price commercial contracts.

#### *Engineering and product development costs*

Our engineering and 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 unfunded research activities. Our product development costs relate primarily to our efforts to increase the power output and reliability of our PowerBuoy® system, and to the development of new products, product applications and complementary technologies. We expense all of our engineering and product development costs as incurred.

#### *Selling, general and administrative costs*

Our selling, general and administrative costs consist primarily of professional fees, salaries and other personnel-related costs for employees and consultants engaged in sales and marketing and support of our PowerBuoy® systems and costs for executive, accounting and administrative personnel, professional fees and other general corporate expenses.

#### *Fair Value of Financial Instruments*

The fair value of our financial instruments reflects the amounts that would be paid to transfer a liability in an orderly transaction between market participants at the measurement date (exit price). The fair value of our warrant liabilities is subject to remeasurement each financial statement reporting period, as such, changes in this fair value are reflected in the statement of operations.

Our financial instruments not required to be adjusted to fair value on a recurring basis consist principally of cash, cash equivalents, and restricted cash, accounts receivable, accounts payable, and accrued expenses. We believe the carrying amount of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses approximate fair value due to their relatively short maturities.

#### *Interest income, net*

Interest income, net consists of interest received on cash, cash equivalents and money market fund and interest expense paid on certain obligations to third parties.

#### *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 maintain cash accounts that are denominated in British pounds sterling, Euros and Australian dollars. These foreign-denominated accounts had a balance of \$0.3 million as of January 31, 2020 and \$0.8 million as of January 31, 2019, compared to our total cash, cash equivalents and restricted cash balances of \$10.8 million as of January 31, 2020 and \$2.7 million as of January 31, 2019. These foreign currency balances are translated each month and 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.

We currently do not hedge our 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 and cash equivalents 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.

## Results of Operations

This section should be read in conjunction with the discussion below under “Liquidity and Capital Resources.”

### *Three months ended January 31, 2020 compared to the three months ended January 31, 2019*

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the three months ended January 31, 2020 and 2019.

	Three months ended January 31,		% change 2020 period to 2019 period
	2020	2019	
	(in thousands)		
Revenues	\$ 725	\$ 268	171%
Cost of revenues	681	400	70%
Gross profit/(loss)	44	(132)	
Operating expenses:			
Engineering and product development costs	896	1,382	-35%
Selling, general and administrative costs	2,093	2,008	4%
Total operating expenses	2,989	3,390	
Operating loss	(2,945)	(3,522)	
Gain due to the change in fair value of warrant liabilities	-	47	-100%
Interest income, net	27	2	1250%
Foreign exchange gain/(loss)	(1)	12	-108%
Loss before income taxes	(2,919)	(3,461)	
Income tax benefit	-	850	-100%
Net loss	\$ (2,919)	\$ (2,611)	12%

#### *Revenues*

Revenues were \$0.7 million in the three months ended January 31, 2020, an increase of \$0.4 million as compared to the three months ended January 31, 2019. The increase in revenue was the result of a new contract with EGP partly offset by lower revenues from contracts with Eni and PMO.

#### *Cost of revenues*

Cost of revenues were \$0.7 million in the three months ended January 31, 2020, an increase of \$0.3 million compared to the three months ended January 31, 2019. The increase in cost of revenues is due to spending on a new contract with EGP and an existing contract with PMO.

#### *Engineering and product development costs*

Engineering and product development costs for the three months ended January 31, 2020 and 2019 were \$0.9 million and \$1.4 million, respectively. The decrease of \$0.5 million is the result of lower spending on new product development in the current year period as compared to the same period in fiscal 2019.

#### *Selling, general and administrative costs*

Selling, general and administrative costs for the three months ended January 31, 2020 and 2019 were \$2.1 million and \$2.0 million, respectively. The slight increase compared to the same period in fiscal 2019 is due mainly to higher selling and marketing expenses of \$0.1 million.

### *Gain due to the change in fair value of warrant liabilities*

The change in fair value of warrant liabilities during the three months ended January 31, 2020 was an unrealized gain of zero versus an unrealized gain of \$47,000 for the three months ended January 31, 2019. The change between periods is due primarily to a lower stock price during the three months ended January 31, 2020.

### *Interest income, net*

Interest income, net during the three months ended January 31, 2020 was \$27,000, compared to \$2,000 during the three months ended January 31, 2019. The increase of \$25,000 is due to higher cash balances in the three months ended January 31, 2020 as compared to the three months ended January 31, 2019.

### *Foreign exchange gain/(loss)*

Foreign exchange loss during the three months ended January 31, 2020 was \$1,000 compared to a gain of \$12,000 during the three months ended January 31, 2019. The difference was attributable primarily to the relative change in value of the British pound sterling, Euro and Australian dollar compared to the US dollar during the two periods.

### *Income Tax Benefit*

During the three months ended January 31, 2019, the Company recorded an income tax benefit of \$0.9 million representing the proceeds from the sale of \$9.1 million of New Jersey net operating loss carryforwards and research and development tax credits. During the three months ended January 31, 2020, the Company has not received any proceeds from the sale of its New Jersey net operating loss carryforwards and research and development tax credits.

### *Nine months ended January 31, 2020 compared to the nine months ended January 31, 2019*

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the nine months ended January 31, 2020 and 2019.

	<b>Nine months ended January 31,</b>		<b>% change</b>
	<b>2020</b>	<b>2019</b>	<b>2020 period to</b>
	<b>(in thousands)</b>		<b>2019 period</b>
Revenues	\$ 1,131	\$ 440	157%
Cost of revenues	1,335	1,180	13%
Gross loss	(204)	(740)	
Operating expenses:			
Engineering and product development costs	3,403	4,105	-17%
Selling, general and administrative costs	5,629	5,909	-5%
Total operating expenses	9,032	10,014	
Operating loss	(9,236)	(10,754)	
Gain due to the change in fair value of warrant liabilities	6	183	-97%
Interest income, net	102	23	343%
Foreign exchange loss	(5)	(43)	-88%
Loss before income taxes	(9,133)	(10,591)	-14%
Income tax benefit	-	850	-100%
Net loss	\$ (9,133)	\$ (9,741)	-6%

### *Revenues*

Revenues were \$1.1 million in the nine months ended January 31, 2020, an increase of \$0.7 million as compared to the nine months ended January 31, 2019. The increase in revenue is the result of a new contract with EGP partly offset by lower revenues from contracts with Eni, PMO, and U.S. Navy.

### *Cost of revenues*

Cost of revenues were \$1.3 million in the nine months ended January 31, 2020, an increase of \$0.1 million compared to the nine months ended January 31, 2019. This result is due to increased costs associated with our new contract with EGP mostly offset by lower spending on our EGP and PMO projects as compared to the same period in fiscal 2019.

### *Engineering and product development costs*

Engineering and product development costs for the nine months ended January 31, 2020 and 2019 were \$3.4 million and \$4.1 million, respectively. The decrease of \$0.7 million is a result of lower spending on buoy builds of \$1.1 million partly offset by higher spending on new product development in the current year period as compared to the same period in fiscal 2019.

### *Selling, general and administrative costs*

Selling, general and administrative costs for the nine months ended January 31, 2020 and 2019 were \$5.6 million and \$5.9 million, respectively. The decrease of \$0.3 million was mostly due to lower spending on professional fees of \$0.4 million partly offset by higher selling and marketing expenses as compared to the same period in fiscal 2019.

### *Gain due to the change in fair value of warrant liabilities*

The change in fair value of warrant liabilities during the nine months ended January 31, 2020 was an unrealized gain of \$6,000 versus an unrealized gain of \$183,000 for the nine months ended January 31, 2019. The change between periods is due primarily to a lower stock price during the nine months ended January 31, 2020.

### *Interest income, net*

Interest income, net during the nine months ended January 31, 2020 was \$102,000 as compared to \$23,000 during the nine months ended January 31, 2019. The increase of \$79,000 is due to higher cash balances in the nine months ended January 31, 2020 as compared to the nine months ended January 31, 2019.

### *Foreign exchange gain/(loss)*

Foreign exchange loss during the nine months ended January 31, 2020 was \$5,000 compared to a loss of \$43,000 during the nine months ended January 31, 2019. The difference was attributable primarily to the relative change in value of the British pound sterling, Euro and Australian dollar compared to the US dollar during the two periods.

### *Income Tax Benefit*

During the nine months ended January 31, 2019, the Company recorded an income tax benefit of \$0.9 million representing the proceeds from the sale of \$9.1 million of New Jersey net operating loss carryforwards and research and development tax credits. During the nine months ended January 31, 2020, the Company has not received any proceeds from the sale of its New Jersey net operating loss carryforwards and research and development tax credits.

## **Liquidity and Capital Resources**

Since our inception, the cash flows from customer revenues have not been sufficient to fund our operations and provide the capital resources for the planned growth of our business. For the two years ended April 30, 2019, our aggregate revenues were \$1.1 million, our aggregate net losses were \$22.4 million and our aggregate net cash used in operating activities was \$22.8 million. Refer to "Liquidity Outlook" below for additional information.

### **Net cash used in operating activities**

Net cash flows used in operating activities during the nine months ended January 31, 2020 were \$8.6 million, a decrease of \$1.3 million compared to \$9.9 million during the nine months ended January 31, 2019. The decrease was primarily due to lower net loss of \$0.6 million and the nine months ended January 31, 2019 included a deferred credit payment of \$0.6 million.

### **Net cash used in investing activities**

Net cash used in investing activities during the nine months ended January 31, 2020 was \$61,000, an increase of \$32,000 compared to net cash used by investing activities during the nine months ended January 31, 2019. The increase in net cash used in investing activities was due to the net change in market securities and higher spending on the purchase of computers, equipment and furniture.

## Net cash provided by financing activities

Net cash provided by financing activities during the nine months ended January 31, 2020 was approximately \$2.4 million compared to net cash provided by financing activities during the nine months ended January 31, 2019 of \$0.4 million. Increase in net cash provided by financing activities during the nine months ended January 31, 2020 primarily due to more proceeds from capital raises of \$2.0 million.

## Effect of exchange rates on cash and cash equivalents

The effect of exchange rates on cash and cash equivalents was a decrease of \$13,000 in the nine months ended January 31, 2020 and a decrease of \$58,000 in the nine months ended for January 31, 2019. The effect of exchange rates on cash and cash equivalents results primarily from gains or losses on consolidation of foreign subsidiaries and foreign denominated cash and cash equivalents.

## Liquidity Outlook

Our financial statements have been prepared assuming we will continue as a going concern. We have experienced substantial and recurring losses from operations, which have contributed to an accumulated deficit of \$218.9 million at January 31, 2020. As of January 31, 2020, we had approximately \$10.8 million in cash, cash equivalents and restricted cash on hand. The Company generated revenues of \$1.1 million and \$0.4 million during the nine months ended January 31, 2020 and 2019, respectively. Based on the Company's cash, cash equivalents and restricted cash balances as of January 31, 2020, the Company believes that it will be able to finance its capital requirements and operations into the quarter ended October 31, 2020. Among other things, the Company is currently evaluating a variety of different financing alternatives and we expect to continue to fund our business with sales of our securities and through generating revenue with customers. These conditions raise substantial doubt about our ability to continue as a going concern.

We expect to devote substantial resources to continue our development efforts for our PowerBuoys® and to expand our sales, marketing and manufacturing programs associated with the planned commercialization of the PowerBuoys®. Our future capital requirements will depend on a number of factors, including but not limited to:

- our ability to commercialize our PowerBuoys®, and achieve and sustain profitability;
- our continued development of our proprietary technologies, and expected continued use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services;
- our ability to obtain additional funding, as and if needed which will be subject to a number of factors, including market conditions, and our operating performance;
- our estimates regarding expenses, future revenues and capital requirements;
- the adequacy of our cash balances and our need for additional financings;
- our ability to develop and manufacture a commercially viable PowerBuoy® product;
- our ability to successfully develop and market and develop new products, such as a hybrid PowerBuoy® or subsea battery solutions;
- our ability to identify and penetrate markets for our PowerBuoys® and our wave energy technology;
- the power output, survivability and reliability of our PowerBuoys®;
- our ability to implement our commercialization strategy as planned, or at all;
- our relationships with our strategic partners may not be successful and we may not be successful in establishing additional relationships;
- our ability to maintain the listing of our common stock on the Nasdaq Capital Market;
- our ability to raise capital through our current equity facilities;
- the impact of pending and threatened litigation on our business, financial condition and liquidity;
- changes in current legislation, regulations and economic conditions that affect the demand for renewable energy;
- our ability to compete effectively in our target markets;
- our limited operating history and history of operating losses;
- our sales and marketing capabilities and strategy in the United States and internationally; and
- our ability to protect our intellectual property portfolio.

Our business is capital intensive and to date, we have been funding our business principally through sales of our securities, and we expect to continue to fund our business with sales of our securities and, to a limited extent, with our revenues until, if ever, we generate sufficient cash flow to internally fund our business. This is largely a result of the high product development costs associated with our product development. We anticipate that our operating expenses will be approximately \$12.4 million in fiscal 2020 including expected savings from cost reduction initiatives and engineering and product development spending of more than \$5.3 million. We may choose to reduce our operating expenses through personnel reductions, and reductions in our research and development and other operating costs during the remainder of fiscal year 2020, if we are not successful in our efforts to raise additional capital. We cannot assure you that we will be able to increase our revenues and cash flow to a level which would support our operations and provide sufficient funds to pay our obligations for the foreseeable future. Further, we cannot assure you that we will be able to secure additional financing or raise additional capital or, if we are successful in our efforts to raise additional capital, of the terms and conditions upon which any such financing would be extended. If we are unable to raise additional capital when needed or generate positive cash flow, it is unlikely that we will be able to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

If our common stock is delisted from Nasdaq, our ability to raise capital through public offerings of our securities and to finance our operations could be adversely affected. See additional risk factors under “Part II, Item 1A – Risk Factors”. We also believe that delisting would likely result in decreased liquidity and/or increased volatility in our common stock and could harm our business and future prospects. In addition, we believe that, if our common stock is delisted, our stockholders would likely find it more difficult to obtain accurate quotations as to the price of the common stock and it may be more difficult for stockholders to buy or sell our common stock at competitive market prices, or at all.

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

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

#### **Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Not applicable.

#### **Item 4. CONTROLS AND PROCEDURES**

##### *Evaluation of Disclosure Controls and Procedures*

Management, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of January 31, 2020 pursuant to Rules 13a-15(b) or 15d-15(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) are controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s (“SEC”) rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file under the Exchange Act is accumulated and communicated to our management, as appropriate, to allow timely decisions regarding required disclosure. Based on such evaluation, management concluded that our disclosure controls and procedures were effective as of January 31, 2020 to ensure that non-financial statement and related disclosure information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms.

##### *Changes in Internal Control over Financial Reporting*

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the fiscal quarter ended January 31, 2020 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.



## PART II — OTHER INFORMATION

### Item 1. LEGAL PROCEEDINGS

As part of our normal business activities, we are party to a number of legal proceedings and other matters in various stages of development. Management periodically assesses our liabilities and contingencies in connection with these matters based upon the latest information available. We disclose material pending legal proceedings pursuant to SEC rules and other pending matters as we may determine to be appropriate.

For information on matters in dispute, see Note 14 to the Consolidated Financial Statements in our Annual Report on Form 10-K for the year ended April 30, 2019, and Note 14 to the Consolidated Financial Statements under Part I, Item 1 of this report.

### Item 1A. RISK FACTORS

The discussion of our business and operations should be read together with the risk factors contained in Item 1A of our Annual Report on Form 10-K for the year ended April 30, 2019 and set forth below in this Quarterly Report on Form 10-Q. These risk factors describe various risks and uncertainties to which we are or may become subject. These risks and uncertainties have the potential to affect our business, financial condition, results of operations, cash flows, strategies or prospects in a material and adverse manner. There have been no material changes in our risk factors from those disclosed in our Annual Report on Form 10-K filed with the SEC on July 22, 2019.

#### ***Our auditors have raised substantial doubts as to our ability to continue as a going concern.***

Our financial statements have been prepared assuming we will continue as a going concern. Due to the significant product development costs associated with our business and operations, we have experienced substantial and recurring losses from operations, which have contributed to an accumulated deficit of \$218.9 million as of January 31, 2020. As of January 31, 2020, the Company had approximately \$10.8 million in cash, cash equivalents and restricted cash on hand. The Company generated revenues of \$1.1 million and \$0.4 million during the nine months ended January 31, 2020 and 2019, respectively. Based on the Company's cash, cash equivalents and restricted cash balances as of January 31, 2020, the Company believes that it will be able to finance its capital requirements and operations into the quarter ending October 31, 2020.

We continue to experience operating losses and currently have only three revenue producing contracts, one with EGP for the sale of a PB3 and supply of a turn-key integrated OSL. A contract with Eni that provides for a minimum 24-month contract that includes an 18-month PB3 PowerBuoy® lease and associated project management and a contract with Premier Oil for the lease of a PB3 PowerBuoy® in one PMO's offshore fields in the North Sea. During fiscal 2019, our net burn rate (cash used in operations less cash generated by operations) including engineering and product development spending was approximately \$1.0 million per month.

We have been funding our business principally through sales of our securities, and we expect to continue to fund our business with sales of our securities and, to a limited extent, with our revenues until, if ever, we generate sufficient cash flow to internally fund our business. These factors, among others, raise substantial doubt about our ability to continue as a going concern. Our consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. We anticipate that our operating expenses will be approximately \$12.4 million in fiscal 2020 including expected savings from cost reduction initiatives and engineering and product development spending of more than \$5.3 million. However, we may choose to reduce our operating expenses through personnel reductions, and reductions in our research and development and other operating costs during fiscal year 2020, if we are not successful in our efforts to raise additional capital. We cannot assure you that we will be able to increase our revenues and cash flow to a level which would support our operations and provide sufficient funds to pay our obligations for the foreseeable future. Further, we cannot assure you that we will be able to secure additional financing or raise additional capital or, if we are successful in our efforts to raise additional capital, of the terms and conditions upon which any such financing would be extended. If we are unable to meet our obligations, we would be forced to cease operations, in which event investors would lose their entire investment in our company.

#### ***We have a history of operating losses and may not achieve or maintain profitability and positive cash flow.***

We have incurred net losses since we began operations in 1994, including net losses of \$9.1 million during the nine months ended January 31, 2020 and \$12.2 million in fiscal 2019. As of January 31, 2020, we had an accumulated deficit of \$218.9 million. To date, our activities have consisted primarily of activities related to the development and testing of our technologies and our PowerBuoy®. Thus, our losses to date have resulted primarily from costs incurred in our research and development programs and from our selling, general and administrative costs. As we continue to develop our proprietary technologies, we expect to continue to have a net use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services.

We do not know whether we will be able to successfully commercialize our PowerBuoys®, or whether we can achieve profitability. There is significant uncertainty about our ability to successfully commercialize our PowerBuoys® in our targeted markets. Even if we do achieve commercialization of our PowerBuoy® and become profitable, we may not be able to achieve or, if achieved, sustain profitability on a quarterly or annual basis.

***We must continually improve existing products, design and sell new products and invest in research and development in order to compete effectively.***

The markets for our products are characterized by rapid technological change, evolving industry standards and continuous improvements in products. Due to constant changes in our markets, future success depends on our ability to develop new technologies, products, processes and product applications. Examples of this include our subsea battery solution and our hybrid PowerBuoy®. New product development and commercialization efforts, including efforts to enter markets or product categories in which we have limited or no prior experience, have inherent risks. These risks include the costs involved, such as development and commercialization, product development or launch delays, and the failure of new products and line extensions to achieve anticipated levels of market acceptance or growth in sales or operating income. We also face the risk that our competitors will introduce innovative new products that compete with our products. If new product development and commercialization efforts are not successful, our financial results could be adversely affected.

Product and technological developments are accomplished primarily through internally-funded R&D projects. Because it is not generally possible to predict the amount of time required and costs involved in achieving certain R&D objectives, actual development costs may exceed budgeted amounts and estimated product development schedules may be extended. Our financial condition and results of operations may be materially and adversely affected if:

- Product improvements are not completed on a timely basis;
- New products are not introduced on a timely basis or do not achieve sufficient market penetration;
- There are budget overruns or delays in R&D efforts; or
- New products experience reliability or quality problems, or otherwise do not meet customer preferences or requirements.

**We are at risk of being de-listed from The Nasdaq Stock Market if we do not regain compliance with the minimum \$1 bid price per share required by Nasdaq rules.**

On March 3, 2020, we received a letter from The Nasdaq Stock Market informing us that the closing bid price of our common stock has been below \$1.00 per share for a period of 30 consecutive trading days, and as a result, we are not in compliance with the minimum bid price requirement for continued listing. Under the Nasdaq Listing Rules), we have a grace period of 180 calendar days, or until August 31, 2020, in which to regain compliance with the minimum bid price rule. To regain compliance, the closing bid price of our common stock must meet or exceed \$1.00 per share for a minimum of ten consecutive business days during this grace period. If we do not regain compliance before August 31, 2020, the Nasdaq stated that it will provide us with written notice that our securities are subject to delisting. At that time, we may appeal the Nasdaq’s determination to a Nasdaq Listing Qualifications Panel, which would stay any further delisting action by the Nasdaq pending a final decision by the panel. Alternatively, we may be eligible for an additional 180 calendar day grace period if we meet the continued listing standards, with the exception of bid price, for the Nasdaq Capital Market, and we state our intent to effect a reverse split, if necessary, to cure such deficiency.

**Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

On August 13, 2018, we issued to Aspire Capital 21,428 shares of our common stock as a commitment fee pursuant to the terms of a common stock purchase agreement dated August 13, 2018. The agreement was cancelled on October 24, 2019, and as of that date, we sold 162,162 shares of common stock with an aggregate market value of \$949,259 at an average price of \$5.85 per share.

On October 24, 2019, we issued to Aspire Capital 194,805 shares of common stock as a commitment fee pursuant to the terms of a common stock purchase agreement dated October 24, 2019. As of January 31, 2020, we have sold 1,024,205 shares of common stock with an aggregate market value of \$901,206 at an average price of \$0.88 per share pursuant to this agreement with Aspire Capital.

The following table details the Company’s share repurchases during the quarter:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plan
November 1 - November 30	-	\$ -	-	-
December 1 - December 31	-	\$ -	-	-
January 1 - January 31	-	\$ -	-	-

**Item 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**Item 4. MINE SAFETY DISCLOSURES**

Not applicable.

**Item 5. OTHER INFORMATION**

None.

**Item 6. EXHIBIT INDEX**

- 10.1 [Contract amendment between Eni s.P.a. and the Company dated February 28, 2020](#)
- 31.1 [Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 31.2 [Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 32.1 \* [Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 32.2 \* [Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)

101 The following financial information from Ocean Power Technologies, Inc.'s Quarterly Report on Form 10-Q for the quarter ended January 31, 2020, formatted in eXtensible Business Reporting Language (XBRL): (i) Consolidated Balance Sheets – January 31, 2020 (unaudited) and April 30, 2019, (ii) Consolidated Statements of Operations (unaudited) – three and nine months ended January 31, 2020 and 2019, (iii) Consolidated Statements of Comprehensive Loss (unaudited) – three and nine months ended January 31, 2020 and 2019, (iv) Consolidated Statement of Stockholders' Equity (unaudited) – three and nine months ended January 31, 2020 (v) Consolidated Statements of Cash Flows (unaudited) – nine months ended January 31, 2020 and 2019, (vi) Notes to Consolidated Financial Statements.\*\*

\* As provided in Item 601(b)(32)(ii) of Regulation S-K, this exhibit shall not be deemed to be “filed” or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liability under those sections.

\*\* As provided in Rule 406T of Regulation S-T, this exhibit shall not be deemed “filed” or a part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, and shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liability under those sections.

**SIGNATURES**

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

**Ocean Power Technologies, Inc.**  
*(Registrant)*

Date: March 9, 2020

*/s/ George H. Kirby III*  
\_\_\_\_\_  
By: George H. Kirby III  
*President and Chief Executive Officer*

Date: March 9, 2020

*/s/ Matthew T. Shafer*  
\_\_\_\_\_  
By: Matthew T. Shafer  
*Chief Financial Officer*



Registered Office,  
Piazzale Enrico Mattel, 1  
00144 Rome  
Tel. +39 06598.21  
www.eni.com

To  
OCEAN POWER TECHNOLOGIES, INC.  
28 ENGELHARD DRIVE, MONROE  
TOWNSHIP  
NEW JERSEY 08831  
USA

Vendor ID: 218606

BLANKET ORDER
Number: 2500030905
Buyer: ALESSIO BENVIGNU'
Start date: 14.03.2018
End date: 13.11.2021

**Project PLaCE (Platform Conversion for Eco-sustainable Multiple Uses).**  
**Project Code : ARS01-00891.**  
**CUP : B96G18000410005.**  
**Job : A35733 - PLACE OR4 SS B96G180005.**

**Contract n.: 2500030905 - "Lease of one OPT Power buoy PB3 to be deployed in Adriatic Sea for the test campaign of subsea batteries recharging".**

**Amendment nr. 2:** Right of Extension Notice and update of the Appendix "A" – Compensation.

With reference to i) your tender dated 10/10/2017, ii) all technical /commercial buletin and clarifications issued by COMPANY and CONTRACTOR replies during tender phase, iii) the subject CONTRACT No 2500030905 awarded on March the 15<sup>th</sup>, 2018 and accepted by CONTRACTOR on March the 16<sup>th</sup>, 2018 (hereinafter referred to CONTRACT EFFECTIVE DATE) on the following terms and conditions, this CONTRACT Amendment No. 2 is issued by the PARTIES in order to amend the CONTRACT as provided below, including the content of the original CONTRACT, its subsequent revision nr. 1 and this revision nr. 2 (hereinafter referred to as "the CONTRACT"):

The CONTRACT is made by and between the following PARTIES designated as "COMPANY" and "CONTRACTOR":

**COMPANY**

Eni spa, a corporation existing under the laws of Italy and having its principal place of business at the following address:

Address:

Via Emilia,1 - San Donato Milanese - 20097, Milan (Italy).

**CONTRACTOR**

Ocean Power Technologies Inc. a corporation existing under the laws of United States of America and having its principal place of business at the following address:

Address:

28 Engelhard Drive, Monroe Township, New Jersey 08831 USA.

The CONTRACT constitutes the entire agreement between the PARTIES with respect to the subject matter hereof and shall supersede and cancel all prior agreements or understandings, whether oral or written.

## SUMMARY

1. **DEFINITIONS AND INTERPRETATION**
2. **SCOPE OF CONTRACT**
3. **DELIVERY TERMS**
4. **CONTRACT DURATION AND OPTIONS TO EXTEND**
5. **SCHEDULE OF ACTIVITIES**
6. **CONTRACT DOCUMENTS**
7. **CONTRACT HOLDER**
8. **PENALTIES**
9. **KICK OFF MEETING**
10. **KEY PERSONNEL**
11. **INTELLECTUAL PROPERTY**
12. **EXPLOITATION OF THE RESULTS**
13. **SUBCONTRACTING**
14. **INVOICING**
15. **COMPENSATIONS AND PAYMENTS**
16. **DISCLOSURES**
17. **LIABILITY**
18. **INSURANCE**
19. **FORCE MAJEURE**
20. **TERMINATION WITHOUT CAUSE**
21. **NOTICES**
22. **ACCEPTANCE**

**eni spa**

Company share capital Euro 4.005.358.876,00 full paid up  
Rome Company Register, Tax Identification Number  
0484960588  
VAT number 00905811006, R.E.A. Rome n. 756453  
Branches:  
Via Emilia, 1 and Piazza Ezio Vanoni, 1  
20097 San Donato Milanese (Milan) - Italy

## **1. DEFINITIONS AND INTERPRETATION**

### **PB3**

means the wave energy converters designed to capture sea wave energy and to convert it into electric energy through a direct drive generator that continuously charges an on-board battery pack, based on OPT's Power Buoy technology. PB3 includes only the PB3 PowerBuoy and mooring.

### **DEFECT**

Means a defect in any part used in the PB3 or in the provision of a service associated with the PB3 LEASE, that substantially prevents that part or that service from operating or functioning as designed or in accordance with the operating conditions identified in Appendix D

### **FAT (factory acceptance test)**

Means the customized test to be performed by CONTRACTOR at the SERVICE AREA where the PB3 shall be built.

### **DELIVERY SITE**

Means the location at the Ravenna port where the PB3 is either offloaded from a ship upon arrival from the US or loaded onto a ship for shipment to the U.S.

### **DELIVERY CHECK**

Means the customized test to be performed by CONTRACTOR at the DELIVERY SITE after the delivery and before the LAUNCH.

### **DELIVERY DATE**

Means the date set out in the CONTRACT by which PB3 and EQUIPMENT is delivered by the CONTRACTOR to the DELIVERY SITE

### **LAUNCH**

Launch or load-out (the operational activity of loading the PB3 onto a barge for offshore transportation) of the SERVICES by crane or other suitable instrument after the DELIVERY CHECK

### **LAUNCH SITE**

Means the area chosen by the COMPANY at Ravenna port where the PB3 covered by the CONTRACT shall be launched by OFFSHORE INSTALLATOR

### **PRE-SAIL AWAY CHECK:**

Means the customized sea trial to be performed by CONTRACTOR close to the quay after the LAUNCH and before the sail away toward the SITE.

### **OFFSHORE COMMISSIONING TEST**

Means the customized sea trial to be performed by CONTRACTOR at the SITE on the PB3 and the other EQUIPMENT included in the TECHNICAL SPECIFICATION.

### **AREA OF OPERATIONS**

Is Adriatic Sea (Italy)

### **SITE**

Means the locations where the PB3 will be installed in the AREA OF OPERATIONS, within the respect area of the Offshore Platform identified in the Technical Documentation.

### **TRIAL PERIOD**

Means the period starting from the TRIAL PERIOD COMMENCEMENT DATE, for a period of eighteen (18) months, which can be extended for additional eighteen (18) months at COMPANY option.



**TRIAL PERIOD COMMENCEMENT DATE**

Means the date set out in the CONTRACT by which CONTRACTOR shall commence the SERVICE after positive OFFSHORE COMMISSIONING TEST

**ASSISTANCE AND MAINTENANCE SERVICE:**

Assistance and maintenance service since DELIVERY CHECK to close the CONTRACT.

**OFFSHORE INSTALLATOR**

THIRD PARTY commissioned by the COMPANY to perform transport and installation of all SERVICES at the SITE.

**ADDITIONAL ITEMS:** all the items to be supplied for the relocation to Viviana as stated in the technical specification doc. "062400BESF30002".

**DELIVERY DATE OF THE ADDITIONAL ITEMS:** Means the date set out in the CONTRACT by which all the ADDITIONAL ITEMS and OPTIONAL SUPPLY are delivered by the CONTRACTOR to the DELIVERY SITE at Ravenna Port.

**2. SCOPE OF CONTRACT**

2.1 The CONTRACT covers the lease of one OPT Power buoy PB3 to be deployed in Adriatic Sea for the test campaign of subsea batteries recharging to be performed by CONTRACTOR in conformity in all respects with the provisions of the CONTRACT, as well as the provision of the following SERVICES regarding the PB3 LEASE:

1. Provide a fully operational Power buoy PB3 designed to comply the requested service described in the Appendix D and Art. 3 DELIVERY TERMS of this CONTRACT, including the other EQUIPMENT and deliverables requested;
2. Provide support and supervision for LAUNCH and installation and commissioning and demobilization;
3. Provide assessment of PB3 performance during the at sea test trial phases.

COMPANY agrees to serve as the consignee for the shipment, by the CONTRACTOR, of the PB3 to the DELIVERY SITE. As proof of delivery, a taken over written notification by the COMPANY will be issued.

For the sake of clarity, the existing PB3 from the first TRIAL PERIOD will be redeployed for the second TRIAL PERIOD for the electrical connection to a platform topside equipment. Delivery of a new PB3 after the first TRIAL PERIOD is not required.

2.2 The CONTRACTOR warrants to the COMPANY that, for the duration of the PB3 LEASE, the PB3 parts and associated labor (both as provided by the CONTRACTOR) shall be reasonably fit and sufficient for the purpose for which the PB3 is intended as evidenced by the CONTRACT. In addition but not by way of limitation, the PB3 shall be of good material, design and workmanship, shall be free of DEFECTS, and shall satisfactorily fulfill the operating conditions set forth in Appendix D. The foregoing warranty, however, shall not apply in the event of damage to the PB3 caused, directly or indirectly, by either a FORCE MAJEURE event as that term is defined in Art. 12 of the General Conditions as supplemented by Art. 19 of the contract.

If any DEFECT in the PB3 appears during the PB3 LEASE, the COMPANY shall notify the CONTRACTOR in writing within 7 days of COMPANY's discovery of the DEFECT. Upon evidence of a DEFECT within CONTRACTOR's scope, CONTRACTOR shall at its own expense and as quickly as reasonably possible, make such alterations, repairs and replacements as may be reasonably necessary to correct said DEFECT. However, in no circumstances shall CONTRACTOR be liable to

COMPANY nor shall CONTRACTOR be required to reimburse COMPANY for an indirect, special, reliance, incidental or consequential losses, damages or expenses under this CONTRACT.

2.3 In case of activation of the second TRIAL PERIOD, the scope of the contract is integrated according to the technical specification "062400BESF30002" with all the services and supplies needed the redeployment of OPT PB3 PowerBuoy® at Viviana platform in Adriatic Sea and the electrical connection to a platform topside equipment.

The scope of the supply includes, but is not limited to, the following activities:

- Engineering, Project Management and procurement activities for the relocation to Viviana
- Supply of one new subsea cable electrical cable with wet mate connectors
- Supply of all the materials and equipments needed to perform the relocation
- Assistance during offshore works.

2.4 Other than the ADDITIONAL ITEMS, COMPANY shall have the right to exercise the optional supply (hereinafter referred to OPTIONAL SUPPLY) of the:

- 2.4.1 three spare sets of fiber lines (item 25 of Annex A)
- 2.4.2 complete wave rider buoy mooring arrangement (item 26 of Annex A)
- 2.4.3 Scale Model PB3 PowerBuoy® - approximately 1,5 m. tall, fixed model (item 27 of Annex A)
- 2.4.4 Scale Model PB3 PowerBuoy® - approximately 1,5 m. tall with motorized float (item 28 of Annex A)
- 2.4.5 Scale Model PB3 PowerBuoy® - approximately 1,0 m. tall with motorizes float (item 29 of Annex A)
- 2.4.6 Scale Model PB3 PowerBuoy® - approximately 1,0 m. tall with motorizes float (item 30 of Annex A)

Such optional items can be exercised together or individually by the CONTRACT HOLDER by means of an appropriate WORK ORDER as defined into Art. 17.2 of the General Conditions of the CONTRACT.

### **3 DELIVERY TERMS**

3.1. CONTRACTOR undertakes to deliver the PB3 and the EQUIPMENT to the DELIVERY SITE, bearing all costs for packaging, transportation, duties and taxes (DDP – Delivered Duty Paid; INCOTERMS 2010) for PB3 and EQUIPMENT. At the DELIVERY SITE, COMPANY will take over the PB3 and the EQUIPMENT and will be responsible for transporting the same from the DELIVERY SITE to the LAUNCH SITE, bearing all associated costs to such transportation.

3.1.1. For the sake of clarity, in case of activation of the second TRIAL PERIOD, the same PB3 PowerBuoy® from the first TRIAL PERIOD is being relocated and utilized for the second TRIAL PERIOD. Supply of an additional PB3 PowerBuoy® is not included.

3.2. The COMPANY is responsible for all costs associated with deployment and installation of the PB3 and EQUIPMENT, as well as all costs associated with the return of the PB3 and EQUIPMENT from the location of the deployment to the DELIVERY SITE. The CONTRACTOR shall support, as provided in Annex D, the COMPANY with deployment and installation of the PB3 and EQUIPMENT. For sake of clarity, the COMPANY shall be responsible for the care and custody of PB3 and EQUIPMENT during the first TRIAL PERIOD and the second TRIAL PERIOD, as applicable.

3.3. At the end of the first TRIAL PERIOD or the second TRIAL PERIOD (as defined in article 4), as the case may be, COMPANY will send to CONTRACTOR a notice, pursuant to the terms of article 4.5, indicating its intention to demobilize or purchase the PB3. In case COMPANY elects to demobilize the PB3, COMPANY will arrange, at its own care, costs and expenses, for the demobilization from the LAUNCH SITE to the DELIVERY SITE, and CONTRACTOR will arrange, at

its own care, costs and expenses (including all costs for packaging, transportation, duties and taxes (DDP – Delivered Duty Paid; INCOTERMS 2010) for taking over of the PB3 from the DELIVERY SITE. It is hereby understood and agreed that COMPANY will be responsible for arranging the transportation of the PB3 to the DELIVERY SITE in a staging area for storage and will ensure, at its own costs, that such staging area will remain available for a maximum period of 15 days for the CONTRACTOR to take over the PB3 and arrange for complete demobilization. Should the CONTRACTOR fail to take-over the PB3 within such 15-day period, CONTRACTOR shall be responsible to procure, at its own care and costs, that the PB3 are maintained in the same or in an alternative staging area at the DELIVERY SITE. Therefore, following the elapse of the 15-days period, COMPANY will not have any responsibility and/or liability whatsoever, including any responsibility and/or liability for any damage caused by the PB3 to any THIRD PARTY or any damage suffered by the PB3.

#### **4 CONTRACT DURATION AND OPTIONS TO EXTEND**

4.1. This CONTRACT shall become effective on the date of acceptance of CONTRACT (the "EFFECTIVE DATE") and shall continue in full force and effect until the full performance of the obligations herewith provided, subject to termination in accordance with the terms of the CONTRACT. In any event, the CONTRACT will terminate 44 months after the CONTRACT EFFECTIVE DATE unless mutually agreed in writing by both parties.

4.2. During the term of the CONTRACT, the CONTRACTOR shall lease the PB3 and the EQUIPMENT for a minimum duration of eighteen (18) months computed as from the DELIVERY DATE (a period that includes the first "TRIAL PERIOD"). Upon expiry of the first TRIAL PERIOD, COMPANY may, at its own option, communicate to CONTRACTOR, with a minimum sixty-day period advance before the expiration of the first TRIAL PERIOD, its intention to continue the lease of the PB3 and the EQUIPMENT for an additional eighteen (18) month period (the "second TRIAL PERIOD"), provided CONTRACTOR agrees in writing within 7 business days since the requested extension notice has been received, under the same terms and conditions set forth herein.

The above mentioned right of extension(s), if exercised, shall form the subject of formal Document "Right of Extension Notice".

In case of "Right of Extension" would not be exercised, the COMPANY will return the PB3 in a reasonable time frame in order to arrange the demobilize operations at the conclusions of the first TRIAL PERIOD, pursuant to the terms of article 3.3.

4.3. Written notification by COMPANY, within 7 business days, of successful completion of OFFSHORE COMMISSIONING TEST for the PB3 and EQUIPMENT determines the TRIAL PERIOD COMMENCEMENT DATE for rate application purposes.

4.4. CONTRACTOR acknowledges that the performance of the SERVICE is time critical and shall not assign to other works a priority which affects or interferes with the start, finish or timely performance of each part of the SERVICE in accordance with this CONTRACT.

4.5. COMPANY has the option, subject to CONTRACTOR acceptance, which shall not unreasonable withheld, to purchase the PB3 and EQUIPMENT at the end of the CONTRACT paying the maximum price indicated in the Appendix "A". The final price shall be negotiated by the PARTIES and will depend on trial results. In any case the price will not be higher than 498.735,00 USD. To that purpose, at the end of the first TRIAL PERIOD or the second TRIAL PERIOD, as the case may be, COMPANY shall send a notice to CONTRACTOR, with a minimum sixty-day period advance before the expiration of the first TRIAL PERIOD or the second TRIAL PERIOD, as applicable, confirming its intention to either demobilize the PB3 or purchase the same. Should COMPANY elect to demobilize the PB3, the provisions of article 3.2 and 3.3 shall apply. Should COMPANY elect to purchase the PB3 and the EQUIPMENT, the PARTIES agree that they will negotiate in good faith and enter into a sale and purchase agreement at standard terms and

conditions within a maximum period of 2 months from COMPANY's notification.

4.6 With reference to the Art. 4.2. "CONTRACT DURATION AND OPTIONS TO EXTEND" of the CONTRACT, PARTIES agree to the exercise of the "second TRIAL PERIOD" of eighteen (18) months in order to extend the duration of the CONTRACT from the 13<sup>th</sup> of May 2020 to the 13<sup>th</sup> of November 2021.

**5 SCHEDULE OF ACTIVITIES**

5.1. CONTRACTOR shall provide the PB3, and/EQUIPMENT properly tested, outfitted with equipment as per Appendix "D", and in all respects ready to operate on a continuous basis and ready for positive inspection and approval by COMPANY at DELIVERY SITE within 6 (six) months from the EFFECTIVE DATE, in due time to ensure that "Task 3 - Support for Launch and Offshore Installation and at-sea Test Trial" starts within 6 (six) months from the EFFECTIVE DATE.

Phase 1: Delivery and Commissioning	Months					
	1	2	3	4	5	6
<b>Task 1:</b> Detailed Design of the system						
<b>Task 2:</b> Delivery						
<b>Task 3:</b> Support for Launch and Offshore						

5.2 At KOM, the COMPANY and the CONTRACTOR will agree to an overall project schedule according to above timeframe program with the identified documented assumptions, including but not limited to those items such as data and information to be provided by COMPANY to CONTRACTOR in order for the CONTRACTOR to start work in accordance with the agreed schedule. The project schedule will also address inspection and testing provisions, including the COMPANY's right to attend/participate in the same and the CONTRACTOR's requirements to take reasonable steps to resolve any non-compliances that may be identified.

5.3 All the items needed for the ADDITIONAL ITEMS relocation to Viviana shall be delivered fully tested and commissioned at the DELIVERY SITE within the DELIVERY DATE OF THE ADDITIONAL ITEMS: within 20 weeks from the acceptance of this Amendment nr.2 to the CONTRACT (hereinafter referred to NEW CONTRACT EFFECTIVE DATE).

5.4 OPTIONAL SUPPLY relevant to items 25 and 26 of Annex A shall be delivered at the DELIVERY SITE within the DELIVERY DATE OF THE ADDITIONAL ITEMS (i.e. within 20 weeks from the acceptance of this Amendment nr.2 to the CONTRACT).

5.5 It is understood that CONTRACTOR undertakes to anticipate the DELIVERY DATE OF THE ADDITIONAL ITEMS with respect to the above maximum time frame of 20 weeks by managing its activities necessary for the achievement of the second TRIAL PERIOD scope of work as described in technical specification doc. "062400BESF30002".

5.6 With reference to the OPTIONAL SUPPLY relevant to items 27, 28, 29 and 30, in the event that COMPANY requires one or more of the above defined OPTIONAL SUPPLY, PARTIES shall examine in good faith the delivery schedule, given that such OPTIONAL SUPPLY relevant to items 27, 28, 29 and 30 shall be requested through a WORK ORDER as defined into Art. 17.2 of the General Conditions of the CONTRACT.

**6 CONTRACT DOCUMENTS**

Article 2, "Contractual documents and priority" of the General Conditions is not applicable. The parties agree that it is fully replaced as with the provision shown below.

The following documents shall be deemed to form and be read and construed as part of the CONTRACT:

1. This CONTRACT;
2. "Confirmation of Acceptance" Form;
3. General Conditions;
4. Appendix "A" – Compensation;
5. Appendix "D" – Technical Specifications, consisting of:
  - 5.1 POWERBUOY - SPECIFICATION FOR THE LEASE OF THE OPT PB3 BUOY; Company Document ID 023500DQSF00002; Contractor Document ID A3422-SPE-0000-001.1; Company Document ID 062400BESF30002
  - 5.1.1 Reference and Integrative Technical Documents from COMPANY: RD1 - Preliminary Assessment: ENI Battery Charging Application Using OPT's PB3 Wave Powered Buoy. RD2 - OPT's Budgetary Proposal for Subsea Battery Charging. RD3 - POWERBUOY - OPERATIVE SCENARIO; Company Document ID 023500DQRV00004; Contractor Document ID A3422-SPE-0000-003.0; ANNEX 1-2-3.
  - 5.2 Integrative Technical Documents from CONTRACTOR:
    - Modulo\_all\_Tecnico\_OPT\_FINAL REPLY AND REQUEST OPT SIGNATURE IN FINAL DOCUMENT;
    - TEC-Appendix F\_QMSC\_Matrix\_clarifications\_Final\_response\_SIGNED BY OPT;
    - TEC Appendix\_D\_compliance\_REQUEST OPT SIGNATURE IN FINAL DOCUMENT\_OPT COMMENT;
    - Addendum B - PB3 Preliminary Mooring Concept Layout - Rev A;
    - Addendum C - ENI Subsea Cable Assembly and Interface Specification - Rev B.
6. Appendix "E" – opsg hse 027 ups r01
7. Appendix "F" – Quality Management Specification – Requirement for Supply Typology: Services;

#### **7 CONTRACT HOLDER**

COMPANY's Unit in charge of the administration of the CONTRACT is PROG/CS/PMB.

#### **8 PENALTIES**

8.1. With reference to the Art. 25 Penalties of the General Conditions, the PARTIES agree that if CONTRACTOR fails to deliver the PB3 at DELIVERY SITE by the relevant DELIVERY DATE, then CONTRACTOR shall pay to COMPANY for each such failure to observe such obligation in accordance with its terms, the amount of:

- 0,75 percent (0,75%) of the CONTRACT value for each day of delay or part thereof, calculated from the applicable contractual due date (6 months from relevant EFFECTIVE DATE) up to a maximum of 10% of the CONTRACT value.

8.2 With reference to the Art. 25 "Penalties" of the General Conditions, the PARTIES agree that with reference to the activation of the second TRIAL PERIOD if CONTRACTOR fails to deliver the ADDITIONAL ITEMS (OPTION SUPPLY included) at DELIVERY SITE by the relevant DELIVERY DATE OF THE ADDITIONAL ITEMS then CONTRACTOR shall pay to COMPANY for each such failure to observe such obligation in accordance with its terms, the amount of:

- 0,75 percent (0,75%) of this CONTRACT Amendment Nr. 2 value for each day of delay or part thereof, calculated from the applicable contractual due date (20 weeks from the acceptance of this Amendment nr.2 to the CONTRACT) up to a maximum of 10% of the CONTRACT Amendment Nr. 2 value.

## **9 KICK OFF MEETING**

The PARTIES agree that a "Kick-off meeting" (KOM) will be held at a location and date designated by COMPANY between COMPANY and CONTRACTOR within ten (10) days from the EFFECTIVE DATE, during which the PARTIES will clarify all operational/technical/quality related aspects relevant to the performance of the SERVICE.

## **10 KEY PERSONNEL**

10.1. The KEY PERSONNEL are:

Neil Williams  
Chris Bukosky  
David Goldstein  
Alex Skaftourous

10.2. Curriculum Vitae in respect of KEY PERSONNEL shall be supplied to COMPANY and such KEY PERSONNEL shall be APPROVED prior to commencement of the SERVICES.

10.3. Once mobilized to perform activities required for the provision of the SERVICES, KEY PERSONNEL shall not be replaced or re-assigned by CONTRACTOR without prior APPROVAL.

## **11 INTELLECTUAL PROPERTY**

Article 15 "Intellectual property and patent rights" of the General Conditions is not applicable. The Parties agree that it is fully replaced as follows:

11.1. For the purposes of this Article the term "intellectual property rights" means any rights related to any notes and/or laboratory work, patentable and non-patentable inventions, patents, database rights, computer programs, planning and design rights, drawing and model rights, trademarks, domain names, copyright, know-how and associated information, confidential information and any other rights related to any industrial or intellectual property, which may or may not be registered (including the rights to apply for any of the foregoing).

11.2. COMPANY and CONTRACTOR shall retain any right, title or interest in their respective INTELLECTUAL PROPERTY developed, acquired or obtained prior to EFFECTIVE DATE, or after the EFFECTIVE DATE but independently of this CONTRACT (hereinafter, "BACKGROUND"), and this CONTRACT shall not be interpreted as granting any right or license under any BACKGROUND, except as expressly provided herein.

11.3. The PARTIES agree that any and all INTELLECTUAL PROPERTY rights related to any result, patentable or not, in any way jointly made, conceived or developed by both CONTRACTOR and COMPANY, under the CONTRACT and/or, achieved, derived from, related to, connected with the activities carried out by the PARTIES, including the DELIVERABLES (among which prototype "PB3") and any and all technical information developed by the PARTIES in connection with the performance of the CONTRACT (hereinafter "the JOINT FOREGROUND"), shall be owned by the PARTIES in proportion to their contributions.

11.4. CONTRACTOR shall grant to COMPANY a royalty-free, non-exclusive, irrevocable, non-transferable, non-sublicenseable license and right to use the CONTRACTOR's share on the JOINT FOREGROUND solely for its and its AFFILIATES internal use. The foregoing use by the COMPANY of JOINT FOREGROUND is limited to the use and maintenance of the PB3 that is owned or leased by the COMPANY and shall expressly exclude the manufacturing or sale of the PB3 by the COMPANY, and any use by the COMPANY of the JOINT FOREGROUND under the license provided

for in this Article shall not in any way limit or effect the use by the CONTRACTOR of JOINT FOREGROUND.

11.5. CONTRACTOR shall further grant to COMPANY a royalty-free, non-exclusive, irrevocable, non-transferable, non-sublicenseable license and right to use the CONTRACTOR BACKGROUND solely for its and its AFFILIATES internal use and for the purpose and to the extent necessary to exploit such CONTRACTOR BACKGROUND. The foregoing use by the COMPANY of CONTRACTOR BACKGROUND is limited to the use and maintenance of the PB3 that is owned or leased by the COMPANY and shall expressly exclude the manufacturing or sale of the PB3 by the COMPANY, and any use by the COMPANY of CONTRACTOR BACKGROUND under the license provided for in this Article shall not in any way limit or effect the use by the CONTRACTOR of CONTRACTOR BACKGROUND.

11.6. The COMPANY will not be held liable in any way for damages and/or claims of any nature deriving from alleged or actual violations of intellectual property rights or other rights protected by law that may arise or be caused by or attributed to, directly or indirectly, the execution of the SERVICES and/or any EQUIPMENT used by the CONTRACTOR. The CONTRACTOR undertakes to indemnify and hold harmless the COMPANY from and against any such damages and/or claims. The COMPANY shall promptly notify the CONTRACTOR, in writing, of any claim, demand, proceeding, suit or other notice of any of the foregoing, and the CONTRACTOR will be entitled to request (at the CONTRACTOR's cost) adequate authority, information and assistance by the COMPANY for the defense of the same and the COMPANY will evaluate, at its own discretion, if comply or not with this CONTRACTOR's request, subject to the right of the COMPANY to participate (at COMPANY's cost) and to be fully advised by the CONTRACTOR in advance of all action taken.

11.7. In case the PB3, or any part thereof, or the EQUIPMENT or SERVICES provided by the CONTRACTOR to the COMPANY is found in any final, non-appealable decision by a judicial body with jurisdiction to constitute infringement and/or the use of the PB3, or any part thereof, or the EQUIPMENT or SERVICES provided by the CONTRACTOR to the COMPANY is enjoined, then the CONTRACTOR shall, at its own expense and at its sole discretion, either procure for the COMPANY the right to use the PB3 or the EQUIPMENT or SERVICES or replace the same with substantially equal but non-infringing equipment or services or modify the same so it becomes substantially equal but non-infringing.

## **12 EXPLOITATION OF THE RESULTS**

12.1. At the end of this CONTRACT, in the case that COMPANY is interested in applying the Power Buoy Technology worldwide, CONTRACTOR may enter into a good-faith negotiation of a Commercialization Agreement to regulate the exploitation of the Joint Foreground.

12.2. In consideration of the economical contribution and benefits provided by COMPANY under the terms of this CONTRACT, CONTRACTOR shall provide the Power Buoy to COMPANY and/or its AFFILIATES at a cost discounted of 15% for single purchase and 25% for multiple purchases. Such discount will be compared to that of the existing price list applied by CONTRACTOR to third parties.

## **13 SUBCONTRACTING**

There will be no SUBCONTRACTING by the CONTRACTOR, per the agreed upon scope; therefore, this section is not applicable.

## **14 INVOICING**

With reference to Art. "Methods of payment and invoicing" of the General Conditions, invoices

must be sent by electronic means as per instructions available on the following website: <https://esupplier.eni.com>. Particular reference shall be made to the instructions given in section "What Eni eSupplier is and how to join".

As an alternative, invoices may be sent to the following address:

Eni spa  
Ufficio Contabilità Fornitori  
Via Fabiani 1/B - 20097 San Donato Milanese (MI)  
Email: [FATTUREFORNITORI.Mbx@eni.com](mailto:FATTUREFORNITORI.Mbx@eni.com)

Additionally, when invoices are transmitted by e-mail, the CONTRACTOR must indicate the following code in the e-mail header:

Code: AG01-S00001

Any applicable sales, use, or similar taxes levied in the country of manufacture, import or export, are included in the prices set forth in Appendix A as of the EFFECTIVE DATE.

#### **15 COMPENSATIONS AND PAYMENTS**

With this CONTRACT Amendment No. 2 The appendix "A" - Compensation, is replaced by the Annex "A" Compensation revision 1.

Compensations will be done as established in the Appendix "A" - Compensation revision 1.

Unless otherwise stated in Appendix "A", all prices for the PB3 and any EQUIPMENT or SERVICE provided by the CONTRACTOR to the COMPANY are firm and are not subject to price escalation for any reason whatsoever.

With reference to Art. 21 - "Payments" of the General Conditions, the PARTIES agree as follows:

- 15.1. COMPANY will pay CONTRACTOR's invoice(s) in USD at 60 (sixty) days from invoice date.
- 15.2. The interest rate increase is equal to 3,5%.

#### **16 DISCLOSURES**

Notwithstanding Article 6. of the General Conditions, "Confidentiality, Administrative Liability and Privacy", the COMPANY acknowledges that the CONTRACTOR is required to file and can file a current report as a FORM 8-k with the U.S. Securities and Exchange Commission that announces the execution of the CONTRACT, the date of such execution, that summarizes the material terms of the CONTRACT, and that discloses the entirety of the CONTRACT. In addition, the COMPANY agrees that the CONTRACTOR can issue a press release announcing the execution of the CONTRACT, generally describing the CONTRACT, and revealing the identity of the COMPANY provided the COMPANY have previously given a written approval.

#### **17 LIABILITY**

17.1 Notwithstanding anything to the contrary in any provision of the CONTRACT, including but not limited to the entirety of Art. 33 of the General Conditions, "Liabilities of the Parties", (i) the CONTRACTOR's limit of liability to the COMPANY, to the COMPANY GROUP under this CONTRACT whether arising from tort, breach of contract or any other cause of action shall not exceed the value of the CONTRACT.

- (ii) Notwithstanding provisions of the paragraph above, none of the following shall be considered in determining whether CONTRACTOR's aggregate liability has been reached:
  - a) [deleted]



- b) CONTRACTOR's indemnification obligations under Articles "ADMINISTRATIVE AND ANTI-CORRUPTION LIABILITY", "CONTRACTOR'S PERSONNEL", "Compliance with law, permits and authorisations", "INTELLECTUAL PROPERTY AND PATENT RIGHTS", "TAXES AND DUTIES", "LIABILITIES AND INSURANCE", "LIABILITY FOR NON-CONFORMING SERVICES" of the General Conditions;
  - c) Liabilities with respect to loss or damage arising out of or connected with CONTRACTOR GROUP's fraud, gross negligence, willful misconduct;
  - d) Insurance proceeds in respect of a claim under the CONTRACT;
  - e) CONTRACTOR's own costs and overheads in connection with the SERVICES;
  - f) Costs incurred by CONTRACTOR as a result of a dispute under this CONTRACT, including those in relation to legal, expert and other consultancy fees and arbitration expenses; or
  - g) any liquidated damages paid or payable by CONTRACTOR under this CONTRACT.
- (iii) For purposes of clarity, par. 1 above shall act solely as a limit on CONTRACTOR's liability to COMPANY under this CONTRACT and not as an indemnity or guarantee of reimbursement by COMPANY to CONTRACTOR of any kind or nature.

17.2 Should the PB3 be destroyed or lost, leasing shall cease from the date of such destruction or loss or the date the PB3 was last heard.

- 17.3 The PARTIES agree that Par. 2 of Art. 33.2 "EQUIPMENT, MATERIALS and personnel of the CONTRACTOR GROUP" of the General Conditions is modified as follow:  
2.2 to the equipment and MATERIALS of the CONTRACTOR GROUP, including any damage caused by COMPANY GROUP to the PB3.

## **18 INSURANCE**

18.1 COMPANY is insured for damage caused to Third Parties by the COMPANY GROUP during the performance of the CONTRACT. COMPANY to provide proof of insurance to CONTRACTOR within DELIVERY DATE.

18.2 PARTIES agree that Par. 3 of Art. 34.9. of the General Conditions is modified as follow:

- 18.2.1 Employers' liability insurance ("RCO") covering the CONTRACTOR's personnel with a maximum cover of not less than 3,000,000.00 U.S. dollar (three million) for each event and with a limit per person of not less than 1,000,000.00 U.S. dollar (one million). Claims made by the CONTRACTOR's personnel against the COMPANY are to be considered as claims against the CONTRACTOR and indemnified by such policy. Insurance coverage must be effective when the CONTRACTOR's personnel are abroad or are carried by means of transport belonging to the COMPANY and include the warranty for any recourse actions made by INAIL (Italian Worker's Compensation Authority) or any other public or private entity insuring the CONTRACTOR for injuries, illness or death.
- 18.2.2 THIRD PARTY liability insurance ("RCT") covering the CONTRACTOR'S activities under the CONTRACT, with a maximum cover of not less than 10,000,000.00 U.S. Dollar (ten million) for each event. If the CONTRACTOR utilizes SUBCONTRACTORS, and the same are insured under a single policy of the CONTRACTOR, such policy shall provide for the cross-liability of all the insured parties.

## **19 FORCE MAJEURE**

19.1 Supplementing that found in Art. 12.2 of the General Conditions, "Force Majeure", additional events of force majeure include, but are not limited to: wars (declared or undeclared), hurricanes, rogue waves, other exceptional natural events or disasters, terrorism, and acts of God.

19.2 Supplementing that found in Art. 12.2 of the General Conditions, "Force Majeure", neither PARTY shall be entitled to claim for compensation for delay or failure caused by Force Majeure.

## **20 TERMINATION WITHOUT CAUSE**

20.1 With reference to Article 14.2 " Withdrawal from the CONTRACT " of the General Conditions, the PARTIES agree additionally as follows:

In the event the COMPANY terminates the Contract due to termination without cause the indemnification agreed between the parties shall be based on the CONTRACTOR's documented cost of the services performed.

20.2 The CONTRACTOR shall have no right to terminate without cause. However, the CONTRACTOR shall have a right to terminate for cause in the event of material breach by the COMPANY.

## **21 NOTICES**

With reference to Art. 39 - "Notices" of the General Conditions, the PARTIES agree that the address(es) of notice are as follows:

### **COMPANY:**

Commercial Notices:  
Eni S.p.A.  
Via Emilia, 1  
20097 – San Donato M.se Italy  
Attn: Alessio Benvegna'  
Tel: +39 (0)2.520. 62431  
Email: [alessio.benvegna'@eni.com](mailto:alessio.benvegna'@eni.com)

Technical Notices:  
Eni S.p.A  
Upstream & Technical Service  
Distretto Centro Settentrionale – PMB  
Via del Marchesato, 13  
48122 Marina di Ravenna (RA)  
Att.ne Alessio Forti  
[Alessio.Forti@eni.com](mailto:Alessio.Forti@eni.com)

### **CONTRACTOR:**

All Notices:  
Alex Skaftouros  
Program Manager  
Ocean Power Technologies, Inc.  
28 Engelhard Drive, Suite B  
Monroe Township, New Jersey 08831

## **22 ACCEPTANCE**

The validity of the subject Amendment nr. 2 to the CONTRACT is conditional upon CONTRACTOR's written confirmation of acceptance of the terms and conditions set out in this Amendment 2 to the CONTRACT which includes the content of the original CONTRACT and of its subsequent revision nr. 1 (hereinafter referred to NEW CONTRACT EFFECTIVE DATE).

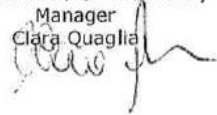
CONTRACTOR's acceptance shall be notified by sending scanned signed copy of the Acceptance

Letter to Alessio Benvegna' within 48-hour from receipt of this amendment 2 following submission of the original copy of Acceptance Letter sent by mail to the following address:

Eni spa  
Unità APRU/A6  
Attn. Alessio Benvegna'  
Via Emilia 1  
20097 San Donato Milanese (MI)

Sincerely,

Eni spa  
Upstream Procurement Services & Industrial Analysis Department  
Upstream Regions & Projects Procurement & Industrial Analysis  
Upstream Procurement Italy  
Manager  
Clara Quaglia



**OPT**  
OCEAN POWER TECHNOLOGIES

March 2, 2020

Eni spa  
Unità APRU-A6  
Attn. Alessio Benvegnù  
Via Emilia 1  
20097 San Donato Milanese (MI)

New Jersey, Monroe Township,

Project PLACE (Platform Conversion for Eco-sustainable Multiple Uses).  
Project Code : ARS01-00891.  
CUP : B96G18000410005.  
Job : A35733 - PLACE OR4 SS B96G180005.

**Contract n.:** 2500030905 - "Lease of one OPT Power buoy PB3 to be deployed in Adriatic Sea for the test campaign of subsea batteries recharging".

**Amendment nr.2:** Right of Extension Notice and update of the Appendix "A" - Compensation.

We hereby confirm our full acceptance of all terms and conditions set out in the Amendment nr. 2 to the CONTRACT which includes the content of the original CONTRACT, its subsequent revision nr. 1 and this revision nr. 2, dated March 2, 2020 ref. \_\_\_\_\_.

Best regards,



George H. Kirby III  
President and Chief Executive Officer

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28 Engelhard Drive, Suite B  
Monroe Township, NJ 08831  
Tel: 609-730-0400 \* Fax: 609-730-0404

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## GENERAL CONDITIONS

### GENERAL PROVISIONS

1. Contract acceptance
2. Contractual documents and priority
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  - 3.1 Definitions
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5. Management of Variations to the Contract
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14. Contract Termination and Withdrawal
  - 14.1 Contract Termination
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-



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- 27. Contractor Requirements
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- 29. Contractor's Obligations and Duties
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- 31. Contract Holder
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#### GUARANTEES

- 35. Insurance and bank guarantees
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-



## **GENERAL CONDITIONS**

### **GENERAL PROVISIONS**

#### **1. Contract acceptance**

The CONTRACT will be deemed concluded when the COMPANY receives written acceptance thereof, prepared by the CONTRACTOR on its own letterhead in accordance with the terms listed in the annex "CONTRACT Acceptance Form".

The CONTRACTOR will send this acceptance notice to the COMPANY's addresses listed in the CONTRACT under Art. "Contract Acceptance" within 20 (twenty) days of receipt by the CONTRACTOR of the CONTRACT.

CONTRACT acceptance means full acceptance and compliance with the provisions of the documents comprising the CONTRACT.

The acceptance must be signed by the CONTRACTOR's legal representative or authorised officer and must indicate in a clear and legible manner the signatory's name and title.

#### **2. Contractual documents and priority**

The documents comprising the CONTRACT supplement one another and must be interpreted systematically.

If a document has an ambiguous lexical meaning and/or is incomplete, clarifications and additions will be made through the other documents according to the following priority:

- CONTRACT and "Acceptance Form";
- Annex "A" - List of Prices and/or Rates;
- General Conditions;
- WORK ORDERS;
- Annex "D" - Technical Specifications (if applicable);
- Annex "E" - HSE-R requirements (Health, Safety, Environment and Radiation Protection) (if applicable);  
inclusive of:
  - DUVRI - Consolidated Document concerning interference-related risk assessment
  - PSC - Safety and Coordination Plan
  - DSSC - Coordinated Health and Safety Document
  - Documentation relating to the HSE (Health, Safety and the Environment) Management System used at the COMPANY's work location (if applicable);
- Annex "F" - Quality requirements (if applicable);
- Annex "C" - Specimen/s of Bank or Insurance Guarantee (where applicable);
- Annex "B" - Price Schedule (if applicable).

The above list of priorities will be used also in case of discrepancies among the documents or between individual clauses thereof.

#### **3. Definitions and Interpretations**

##### **3.1 Definitions**

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**CONTRACTOR**

Means the company to which the CONTRACT has been awarded

**COMPANY**

Means the company on whose behalf the CONTRACT is performed and in particular, with regard to aspects related to the environment, health, safety, quality and public safety, the person who has the role of company based on the HSE delegation/empowerment system.

**SERVICES AREA**

Means the area where the SERVICES covered by the CONTRACT shall be executed.

**EQUIPMENT**

Means the infrastructure, mobile plant, equipment, apparatus, motors, machinery, motor vehicles and tools necessary for the CONTRACTOR to execute the SERVICES, including watercraft.

**CONTRACT**

Means the agreement concluded between the PARTIES for the performance of the SERVICES. The CONTRACT is regulated by the contractual documents specified therein

**WORK ORDER**

Means the document prepared by the COMPANY and issued in relation to the CONTRACT, by which the CONTRACTOR is required to execute one or more SERVICES.

**PARTY**

Means the COMPANY or the CONTRACTOR, depending on the context.

**PARTIES**

Means both the COMPANY and the CONTRACTOR.

**CONTRACTOR's REPRESENTATIVE**

Means the person authorised by the CONTRACTOR to act on its behalf and liaise with the COMPANY and whom the COMPANY may consult at any time during the performance of the CONTRACT.

**CONTRACT HOLDER**

Means the COMPANY unit, specified and duly represented in the CONTRACT, which directly or indirectly interfaces with other COMPANY departments or third party companies and that, in addition to the functions specified in the CONTRACT, is primarily responsible for: managing relations with the CONTRACTOR, checking compliance with the plans and timeframes set forth in the CONTRACT, technical, operational and financial monitoring of SERVICES and their subsequent acceptance.

**SERVICES**

Means the overall group of activities, including the supply of any materials and transport, to be provided under the CONTRACT and described in detail in Art. "Scope of Contract".

**MATERIALS**

Means all items, meaning raw materials, semi-finished and finished products, owned by and/or supplied by the CONTRACTOR, required to perform the activities covered by the CONTRACT. This excludes any "materials" supplied directly by the COMPANY.

**THIRD PARTIES**

Means any natural person or legal entity other than the PARTIES.

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**SUBCONTRACTOR**

Means any natural person or legal entity commissioned by the CONTRACTOR to perform part of the activities provided by the CONTRACT.

**USER UNIT**

Means the COMPANY unit(s) authorised to issue the WORK ORDER as indicated in the CONTRACT.

**DELIVERABLES**

Means the documents to be produced by the CONTRACTOR in accordance with the CONTRACT (where applicable)

**TECHNICAL SPECIFICATION**

Means the collection of technical documents, specifications, maps and drawings supplied by the COMPANY, which are enclosed and form an integral part of the CONTRACT, when specifically mentioned as part of the documents referenced in Art. "Contractual documents and priority" of the CONTRACT

**AFFILIATE of a PARTY means:**

- a company (or body) controlled by that PARTY, or
- a company (or body) that controls that PARTY, or
- a company (or body) controlled by a company or body that controls that PARTY.

For the purpose of this definition, a company or body is considered "controlled" by another company or body when the latter directly or indirectly holds the majority of votes which can be exercised at an ordinary general meeting, or is entitled to appoint more than half the directors, of the former.

**COMPANY GROUP**

Means the COMPANY, its staff, including agency-supplied staff, contractors (excluding the CONTRACTOR), subcontractors, agents, "joint venture partners", AFFILIATES of the COMPANY and their staff.

**CONTRACTOR GROUP**

Means the CONTRACTOR, its staff, including agency-supplied staff, any SUBCONTRACTORS, agents, AFFILIATES of the CONTRACTOR and their staff

**Third Parties**

Means any party other than the COMPANY GROUP or the CONTRACTOR GROUP.

**WORK PERMIT**

Means the document issued by the COMPANY prior to the performance of the SERVICES, which lists the specific risks for the areas involved and the activities considered and the relevant safety and protective measures to be adopted in relation to risks inherent in the work methods as well as the conditions to be met to ensure that the SERVICES can commence and be completed under suitably safe conditions

**PLAN (or PROJECT)**

Means the definition of the SERVICES prepared by the COMPANY, consisting of a description which may also be in graphic format, or prepared by the CONTRACTOR, in complete technical form or by a properly authorised professional, where required by law

**PROJECT SUPERVISOR**



Means the COMPANY or the person appointed by the COMPANY under Art. 89 of Legislative Decree 81/2008 to plan and supervise the execution of the work.  
This function coincides with the project planner in the planning stage of the works.

**DSSC**

Means the Coordinated Health and Safety Document as defined in article 9, paragraph 2, letter b) of Legislative Decree 624 of 1996

**PSC**

Means the Safety and Coordination Plan as defined in Article 100 of Legislative Decree 81/2008.

**POS**

Means the Operational Safety Plan compiled by the CONTRACTOR, as well as the operational safety plan compiled by any SUBCONTRACTOR, as defined in Article 89, paragraph 1, letter h) of Legislative Decree 81/2008.

**PLATFORM**

Means the mobile or fixed plant designed to extract and process hydrocarbon oils and/or gases from the underlying reservoir.

**SUBCONTRATTO**

means the contract entered into by the CONTRACTOR in order to perform the CONTRACT and concerning an activity, other than those that are the subject matter of the CONTRACT, which are still connected to it functionally. The sub-supply of components and/or raw materials so unique or specific in nature that they are essential for the performance of the CONTRACT, which the CONTRACTOR therefore procures solely in order to perform the contract awarded to it, must be considered a "subcontratto".

**INSIDE INFORMATION**

Means the Inside Information as defined in the "Management System Guideline Market Abuse" available on the website of the COMPANY.

**3.2 Interpretation**

The use of singular terms and expressions does not exclude them from being construed as plurals, and vice versa, where the context allows and this meets the intention of the PARTIES.

Headings, sub-headings etc., of the CONTRACT are included for ease of reference only and shall not be considered as part of the CONTRACT nor affect the interpretation of the relevant CONTRACT Articles/clauses.

Unless specifically stated otherwise, numerical and/or alphabetical references for the Articles clauses and/or paragraphs given in the General Conditions and/or the CONTRACT refer solely and exclusively to the Articles, clauses and/or paragraphs of those General Conditions and/or the CONTRACT respectively.

Unless specifically stated otherwise, all references to days in the CONTRACT shall mean calendar days.

**4. Amendments to the Contract**

It is understood and agreed by the PARTIES that no amendment to the CONTRACT will be deemed valid unless it is agreed in writing by the PARTIES.

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Any such amendment shall be confirmed by the COMPANY through a CONTRACT revision.

## **5. Management of Variations to the Contract**

1. The COMPANY has the right, at any time, to issue a written order to the CONTRACTOR to change the type and characteristics of the SERVICES as well as the relative project execution plan, notwithstanding Articles 1660 and 1661 of the Italian Civil Code.  
Also, the CONTRACTOR shall have the right, at any moment, to submit a written request to the COMPANY regarding any variations, deemed necessary by the CONTRACTOR, to be made to the SERVICES.  
If the said changes imply an increase or decrease in the costs and/or affect the established delivery schedule the PARTIES will agree new prices and/or delivery dates based on fair and equitable criteria in accordance with any applicable provision of the CONTRACT.
2. The CONTRACTOR shall submit all details (e.g. cost estimate, methods and times of performance) within 30 calendar days from the date of the request for variation. After expiry of such period, the CONTRACTOR shall not be entitled to any revision of the prices and/or dates specified in the CONTRACT. Any times and costs connected with the studies/estimates of the variations shall be included in the aforesaid request.
3. All variations shall be authorized by the COMPANY in writing. Any variation implemented by the CONTRACTOR on its own initiative and without the prior authorisation and/or acceptance by the COMPANY will involve, in addition to compensation for any damage suffered by the COMPANY, the CONTRACTOR being obliged, if requested by the COMPANY, to restore the SERVICES to the conditions provided for under the CONTRACT. The CONTRACTOR shall bear all costs relating to the above operations.
4. Any variation of any part of the SERVICES, including without limitation any failure by the CONTRACTOR to comply with the contractual documents, standards, specifications, as well as any variations required to remedy defects and/or to correct errors, omissions, defective design attributable to the CONTRACTOR etc., shall not imply any revision of prices and/or completion dates and/or guarantees.
5. If the CONTRACTOR fails to comply with the above provisions, the COMPANY reserves the right to terminate the CONTRACT in accordance with Art. "Contract Termination".

## **6. Confidentiality, Administrative Liability and Privacy**

### **6.1 Confidentiality**

The CONTRACTOR undertakes to consider all information received verbally, in hard copy or electronic format, including but not limited to documentation, data, analysis, know-how and/or any result of any type, in any way resulting from, derived from, connected with and/or involved in the performance of the SERVICES as strictly confidential ("Confidential Information"). CONTRACTOR also undertakes to take any necessary action aimed at guaranteeing and protecting the confidentiality of the Confidential Information in respect of THIRD PARTIES.

In particular, in relation to Confidential Information, the CONTRACTOR undertakes:

- a) to keep it secret and not reveal it to THIRD PARTIES;
  - b) to use it exclusively in relation to the performance of the SERVICES and not to use, reproduce or produce extracts or summaries thereof for any purposes other than those pertinent to the performance of the SERVICES;
  - c) not to publish and/or patent any information or data contained in the Confidential Information;
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- d) to limit the disclosure of Confidential Information within its own organisation to those employees whose roles justify their having knowledge of this Confidential Information and only to the extent necessary for the performance of the SERVICES;
- e) to inform employees working within its organisation to whom Confidential Information is disclosed of the obligations concerning secrecy related to it. It is understood that the CONTRACTOR shall be responsible for ensuring that its employees comply with such obligations;
- f) to inform any SUBCONTRACTORS of the obligations undertaken regarding the confidentiality of Confidential Information, requesting, in the case of a Subcontract, that they assume the same confidentiality obligations related thereto;
- g) to supply the COMPANY, on the express request from the latter, any document containing Confidential Information, without withholding any copy of it.

These confidentiality requirements do not apply to any information which the CONTRACTOR can prove, in writing:

- a) was in the public domain before the CONTRACT came into effect;
- b) came into the public domain by being published or otherwise distributed without any fault or involvement on the part of CONTRACTOR;
- c) was acquired, on a non-confidential basis, from THIRD PARTIES, who can prove that they did not receive it from the CONTRACTOR direct or indirectly.

If the CONTRACTOR is bound by laws, decrees, regulations or other measures issued by public authorities to disclose information in violation of this confidentiality clause, it shall immediately notify and work with the COMPANY as required by the latter to effectively oppose such provisions. In any case the CONTRACTOR shall only disclose the part of the information that it is legally bound to disclose under the above indicated provisions.

It is understood that all obligations relating to Confidential Information remain valid for 3 (three) years following termination or expiry of the CONTRACT.

The CONTRACTOR shall also keep confidential the circumstances of the conclusion of the CONTRACT and/or any information relating thereto, as well as refrain from using the CONTRACT or part thereof, any name, logo or other distinctive trademark of the COMPANY, including abbreviations/acronyms, for promotional or advertising purposes.

Moreover, if any INSIDE INFORMATION of the COMPANY is disclosed to the CONTRACTOR, the same shall be registered on the Register of the persons having access to INSIDE INFORMATION and comply with the regulations in force, as well as with in-house procedures, concerning Market Abuse with particular reference to the "Management System Guideline Market Abuse", which the CONTRACTOR declares to have reviewed.

If the above confidentiality obligation is violated, even partially, it shall entitle the COMPANY to claim for damages in addition to the remedy specified in Art. "Contract Termination". The COMPANY shall have the right to disclose the data relevant to this CONTRACT (name and registered office of the supplier, amount and duration of the contract, type of contract) to companies of the COMPANY's Group for any commercial activities performed by the same.

#### 6.2 Administrative and Anti-Corruption Liability

The CONTRACTOR declares that it has reviewed and has knowledge of (a) the contents of the "Model 231", which also includes the Eni Code of Ethics, issued by the COMPANY in accordance with the legislation in force regarding the administrative liability of legal entities for offences committed by their directors, employees and/or collaborators; (b) the "Anti-Corruption Management System Guideline"; (c) the Eni Guidelines for the Protection and Promotion of

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Human Rights. The documents under (a), (b) and (c) above are available on the website of the COMPANY and the CONTRACTOR undertakes to comply with the principles contained therein.

With reference to the performance of activities covered by the CONTRACT, the CONTRACTOR undertakes to comply, and to cause its directors, staff and collaborators to comply, with the applicable laws, including the Anti-Corruption Laws applicable to Eni (meaning (i) the anti-corruption provisions in the Italian Criminal Code and in other national applicable laws, including the Legislative Decree no. 231 2001, (ii) the FCPA, (iii) the UK Bribery Act, (iv) international anti-corruption treaties such as the Organization for Economic Cooperation and the Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption.

With reference to the performance of activities covered by this CONTRACT, the CONTRACTOR declares and warrants that it has issued and implemented governance policies aimed at preventing its own directors, employees and/or collaborators from committing, or attempting to commit, any action sanctioned under Leg. Dec. 231 dated 8th June 2001, as well as any conduct in violation of Anti-Corruption Laws and undertakes vis-à-vis the COMPANY to maintain and effectively enforce these provisions for the entire duration of the CONTRACT. In particular and in accordance with these regulations, the CONTRACTOR undertakes to abstain (and to cause its directors, employees and/or collaborators to abstain) from (a) offering, promising, giving, paying or authorizing anyone to give or pay, directly or indirectly, material, financial or other advantage to a Public Official or private party, and (b) accepting or authorizing anyone to accept, directly or indirectly, material, financial or other advantage or a request or solicitation from a Public Official or private party of material, financial or other advantage in breach of the applicable Anti-Corruption Laws.

For the purposes of this CONTRACT, Public Official shall mean:

- a) anyone occupying a public legislative, judicial or administrative function;
- b) anyone acting in an official capacity for or on behalf of (i) a national, regional or local public administration, (ii) an agency, department or instrumentality of the European Union or of an Italian or non-Italian national, regional or local public administration, (iii) a company owned, controlled or invested by an Italian or foreign public administration (including, for example, employees of "national oil companies"); (iv) an international public organization, such as the European Bank for Reconstruction and Development, the International Bank for Reconstruction and Development, the International Monetary Fund, the World Bank, the United Nations or World Trade Organization; or (v) a political party, a member of a political party or a candidate for an Italian or foreign political office;
- c) anyone in charge of providing a public service, i.e. whoever performs a public service for whatever reason, where public service means an activity that is governed in the same way as a public function, except that the power vested in the latter is absent;
- d) anyone acting as representative of local communities.

With reference to the performance of activities covered by the CONTRACT, the CONTRACTOR undertakes, for the entire duration of the CONTRACT, to abide by the principles of the Eni Code of Ethics and to respect human rights as defined in the Eni Guidelines for the Protection and Promotion of Human Rights, published on the [www.eni.com](http://www.eni.com) website. In particular, it undertakes to refrain from:

- a) offering commissions, fees and other benefits to directors, employees or collaborators of the COMPANY;
  - b) entering into trade agreements with directors, employees or collaborators of the COMPANY which may negatively affect the interests of the COMPANY;
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- c) undertaking business activities or entering into agreements with THIRD PARTIES in breach of the principles set out in the Eni Code of Ethics which would negatively affect the performance of the CONTRACT;
- d) providing directors, employees or collaborators of the COMPANY with non-property benefits including gifts, means of transportation and hospitality offers which go beyond the limits of commonly accepted ethical business standards.

The CONTRACTOR declares that no conflicts of interests exist, not even potentially, in relation to the performance of this CONTRACT and undertakes to promptly report to the COMPANY if any such situation should arise during the performance of the CONTRACT.

With reference to the performance of the activities covered by the CONTRACT, the CONTRACTOR declares and warrants that:

- a) any amounts paid under the CONTRACT solely represents payment for the performance of its activities and that no part of such amounts will be transferred, directly or indirectly, to any Public Official or any private party or anyone of their Family Members (meaning the spouse, grandparents, parents, siblings, children, nieces, nephews, grandchildren, aunts, uncles and first cousins of the individual involved and his/her spouse; the spouse of any of these people; and any other individuals who share the same household) for corruption purposes or, however, in breach of applicable laws;
- b) neither any Public Official, who in virtue of his/her functions may influence or affect the performance of the activities under the CONTRACT, nor any of his/her Family Members, are or will be appointed as the CONTRACTOR's directors or employed by the CONTRACTOR as employees, consultants, intermediaries or agents;
- c) any employees or collaborators appointed in respect of the performance of the activities under the CONTRACT shall meet the same requirements as those of the CONTRACTOR and shall fulfil any obligations which apply to the CONTRACTOR under this Article; that any individual performing activities related to the CONTRACT, including any SUBCONTRACTOR or "subcontraente", shall operate only under a written contract imposing conditions and undertakings equivalent to those assumed by the CONTRACTOR.

With reference to the performance of activities covered by the CONTRACT, the CONTRACTOR undertakes to:

- a) accurately and transparently record in its accounting books any sums received or paid in relation to the CONTRACT;
- b) promptly inform the COMPANY of any criticality, even potential, identified during performance of the CONTRACT and relating to the provisions and undertakings in this Article;
- c) promptly report to the COMPANY of any change occurred in relation to any information provided to the COMPANY before the conclusion of the CONTRACT, including any changes in the CONTRACTOR's ownership structure;
- d) promptly report to the COMPANY any request or demand for any undue payment of money or other benefit of any kind received by the CONTRACTOR in connection with the performance of the CONTRACT.

The PARTIES hereby agree that any breach by the CONTRACTOR, even partial, of the declarations, warranties and undertakings in this Article, which may be reasonably expected to result in adverse consequences for the COMPANY, constitutes a material breach of the CONTRACT and shall entitle the COMPANY to unilaterally withdraw from the CONTRACT, even during performance thereof, or terminate the CONTRACT, by delivering notice via registered mail, which shall include a brief summary of the circumstances or of the legal proceedings demonstrating such breach.

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In the event of information that could reasonably imply such breach, pending the required verifications or findings, the COMPANY shall have the right to suspend the performance of the CONTRACT by delivering notice via registered mail, which shall include a brief summary of the relevant information. If the information is obtained from the media, the COMPANY shall have the right to exercise the above mentioned right when the information has been confirmed by an official document of the Judicial Authority and/or otherwise confirmed by the Judicial Authority.

The exercise of such rights will be to the sole detriment of the CONTRACTOR, which shall bear, in all cases, all additional expenses and costs.

In any case of breach by the CONTRACTOR, even partial, of the declarations, warranties and undertakings in this Article, the CONTRACTOR shall indemnify the COMPANY from any loss, damage, also in terms of reputation, liability, costs or expenses, including legal expenses, and hold in harmless from any THIRD PARTY action arising from or consequential to such a breach.

The COMPANY shall have the right to carry out an audit on the CONTRACTOR in the event that the COMPANY has a reasonable belief that the CONTRACTOR may have violated the provisions included in this Article. To this end, the CONTRACTOR undertakes to provide the COMPANY with any access, data and information required to carry out such audit and with any information regarding any adoption and implementation of the Anti-Corruption Compliance Program in relation to the activities under the CONTRACT.

### 6.3 Privacy

The PARTIES represent that they have mutually informed of the fulfilment of the obligations under Legislative Decree no. 196 of 2003, within the respective province.

Each of the PARTIES remains autonomous data controller (titolare autonomo).

## 7. **Antimafia legislation**

1. The CONTRACT validity is subject to the CONTRACTOR and its SUBCONTRACTORS meeting and continuing to meet the requirements laid down by the antimafia legislation in force.

For this purpose the CONTRACTOR undertakes to promptly inform the COMPANY of any changes in the CONTRACTOR's/SUBCONTRACTOR's corporate organization or of their Directors, which occurs during performance of the CONTRACT, and submit copy of the documents evidencing the changes of the subjects involved in the verifications related to organised crime prevention.

2. If the CONTRACTOR or its SUBCONTRACTORS, where applicable, do not meet or cease to meet the above requirements the COMPANY reserves the right to withdraw from the CONTRACT or terminate it in accordance with art. 1456 of the Italian Civil Code.
3. If the above requirements are not adhered to by its SUBCONTRACTORS, the CONTRACTOR undertakes to immediately replace them with other SUBCONTRACTORS which will be subject to the advance approval of the COMPANY.  
If the CONTRACTOR fails to fulfil the said obligations with respect to replacement, the COMPANY reserves the right to terminate the CONTRACT in accordance with Art. 1456 of the Italian Civil Code.

## 8. **Assignment of Credit**

1. The CONTRACTOR may assign its credits under the CONTRACT to any bank and financial intermediaries certified and controlled in Italy or any factoring companies of the COMPANY's Group, in compliance with applicable legislation.
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2. To this end the CONTRACTOR shall promptly notify to the COMPANY – however at least 25 calendar days before the expiry of any such credits – the identification data of the assignee as well as the credits assigned (CONTRACT, no. of invoice).
3. If the assignee is one of the entities under 1. above and the credits to be assigned are identified as per point 2. above, the assignment is deemed to be authorised after 10 working days from receipt of the CONTRACTOR's notification, unless the COMPANY expressly rejects authorization justifying the reasons therefor.
4. In all cases other than the aforesaid, the assignment of any credits due to the CONTRACTOR under the CONTRACT is excluded in accordance with Article 1260, paragraph 2 of the Italian Civil Code, with resulting liability of the CONTRACTOR to the COMPANY for any breach of the above mentioned agreement.
5. Furthermore, under no circumstances may the CONTRACTOR assign credits partially or for the benefit of several assignees, or grant a mandate for collection of outstanding payments to THIRD PARTIES, or resort to any other form of delegated collection of payments. The CONTRACTOR shall be liable to the COMPANY for any breach of the provisions of this Article.

## **9. Insolvency Procedures**

If the CONTRACTOR is submitted to any of the insolvency procedures provided for by the laws in force or it is presumed, based on irrefutable evidence, that it will be submitted to any such procedures, the COMPANY reserves the right to terminate the CONTRACT as detailed in Art. "Contract Termination".

In this case, and where no impediment(s) of a judicial nature exist, the COMPANY will pay only for the SERVICES performed by the CONTRACTOR, provided that they comply with the requirements of the CONTRACT, at the rates and prices set forth in the CONTRACT. No other compensation shall be due to the CONTRACTOR by the COMPANY.

Any materials owned by the COMPANY that are for any reason in the possession of the CONTRACTOR shall immediately be returned to the COMPANY in accordance with the instructions given by the latter.

## **10. Assignment of the Contract**

### **10.1 Assignment by the COMPANY**

1. The CONTRACTOR hereby agrees that the COMPANY may assign the CONTRACT to its own AFFILIATES; the COMPANY also has the right to assign the CONTRACT to THIRD PARTIES, subject to the CONTRACTOR's prior authorization which may not be unreasonably withheld. The assignment will become effective and binding on the CONTRACTOR upon notification by the COMPANY.
2. The assignees will take over from the COMPANY all rights and obligations arising from the CONTRACT. The CONTRACTOR undertakes to obtain all the endorsements to insurance policies required under the CONTRACT so that the assignees may have the same rights under these policies as the COMPANY.

### **10.2 Assignment by the CONTRACTOR**

1. The CONTRACTOR may not assign all or part of the CONTRACT to THIRD PARTIES without the COMPANY's prior authorization, subject to the provisions of applicable legislation.
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2. Failure to respect the above prohibition will result in the immediate termination of the CONTRACT, in accordance with the provisions in Art. "Contract Termination", without prejudice to the COMPANY's right to compensation for all damage deriving from it and reimbursement of any expenses incurred.
3. If the CONTRACTOR (either individual or grouped in RTI or in a consortium) assigns/leases its firm or a line of business, or proceeds with the change, merger or split-up of its firm, the CONTRACT may be assigned to the assignee, lessee, or any entity resulting from the said change, merger or split-up, subject to verification by the COMPANY that said entity meets the general requirements, the technical/organizational requirements and the economic/financial requirements specified in Art. "Contractor Requirements and Organization", as well as the requirements related to the qualification process.

## **11. Subcontract**

### **A) SUBCONTRACTING**

1. Without prejudice to the prohibition on
    - subcontracting 100% of the work assigned
    - multi-tier" subcontracting (that is, the award of all or part of the activities received under subcontract to another subcontractor), except, where expressly authorised, for assignment of highly specialised activities in exceptional cases and for complex contracts which require the performance of multi-skilled workall the work as well as manufacturing and processing, belonging to any category, may be subcontracted, within the limits set out in Art. "Subcontracting" of the CONTRACT, subject to the conditions set out below.  
Activities relating to the main activity covered by the CONTRACT may only be subcontracted in exceptional circumstances related to the performance of the CONTRACT.
  2. Subcontracting, within the limits mentioned above, is subject to the prior written authorization of the COMPANY and is allowed subject to:
    - the declaration of the CONTRACTOR that the SUBCONTRACTOR meets the requirements required by the CONTRACT or the applicable legislation. Such declaration shall be drafted as per the "Contractor's Declaration regarding Subcontractor's Requirements" under the "Request for Subcontract Authorization Form" attached to the CONTRACT;
    - the performance, with successful results, of the verification by the COMPANY that the above requirements are met.
  3. If the SUBCONTRACTOR details do not form part of the CONTRACT, the CONTRACTOR will send to the CONTRACT HOLDER a request for subcontract authorisation which must specify: the purpose of the subcontracted work or service; the volume of work to be awarded and the duration of the subcontract agreement; the name of the SUBCONTRACTOR, the INPS (National Institute for Social Security) and INAIL (Italian Workers' Compensation Authority) contributions status of the SUBCONTRACTOR; the amount of the subcontract agreement and of the corresponding general costs for safety at work.
  4. The request for subcontract authorisation, drawn up as per the "Request for Subcontract Authorization Form" attached to the CONTRACT, shall include the documentation indicated therein, production of which is a condition for obtaining subcontract authorisation.
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The copy of the subcontract agreement (to be attached to the above Form only if requested by the CONTRACT HOLDER) shall in any case be available at least 20 days before the commencement date of the relevant activities.

In any case, the CONTRACTOR shall ensure that all requirements in relation to the SUBCONTRACTOR are met by the same for the entire duration of the subcontract agreement and provide adequate evidence thereof to the CONTRACT HOLDER upon request.

5. The CONTRACTOR shall adopt, for the subcontracted activities, the same unit prices which were adopted at the time of award, with a reduction not higher than 20% (twenty per cent). The CONTRACTOR shall pay to the SUBCONTRACTOR the safety costs relevant to the subcontracted activities, without any rebate.  
The CONTRACTOR undertakes to comply, and cause the SUBCONTRACTOR to fully comply, with the remuneration provisions and contract terms defined in the national and regional collective labour agreements in force in the sector and in the area where the activities under the CONTRACT are performed.  
The CONTRACTOR and, through the CONTRACTOR, the SUBCONTRACTORS shall send to the CONTRACT HOLDER, before the commencement of works:
    - the documentation showing that the necessary reports have been made to the social security, insurance and accident prevention bodies, including the Cassa Edile, as well as a copy of the Operational Safety Plan in compliance with the relevant regulations;
    - the documentation required by article 26, subsection 1, letter a) of Legislative Decree No. 81/2008, or article 90, subsection 9 of Legislative Decree 81/2008, including the documentation specified in Annex XVII of the above regulation, as required by law.
  6. The CONTRACTOR undertakes to guarantee that the subcontract agreement include obligations equal to those specified in the CONTRACT concluded between the COMPANY and the CONTRACTOR.  
In particular, the CONTRACTOR is obliged to ensure that any/all SUBCONTRACTORS abide by and comply with the regulations set forth in Art. "Administrative and anti-corruption Liability" and to ensure that the SUBCONTRACTOR has reviewed and has knowledge of the provisions of the "Anti-Corruption Management System Guideline" of Eni spa, as amended, available on the website [www.eni.com](http://www.eni.com). To this regard, a specific clause must be included in the contract concluded between CONTRACTOR and SUBCONTRACTOR.
  7. For purposes of payments due under the CONTRACT (including interim payment certificates (work progress reports) and the final payment certificate) the CONTRACTOR shall send to the CONTRACT HOLDER the Consolidated Document Certifying Payment of Insurance Contributions (DURC) as well as a copy of the payments to the joint bodies provided for under collective bargaining arrangements, where due, including the same for any SUBCONTRACTORS.  
Also, the CONTRACTOR shall periodically send to the CONTRACT HOLDER, a self-declaration certifying the payment made to the SUBCONTRACTOR. The COMPANY reserves however the right to request the CONTRACTOR to submit copy of the relevant invoices. The CONTRACTOR also undertakes to check, before payment of the amount due to the SUBCONTRACTOR, that salaries, social security contributions and compulsory insurance premiums have been paid, as well as the payment of tax deductions for the SUBCONTRACTOR's personnel.
  8. The CONTRACTOR is liable to the COMPANY for complete fulfilment by the SUBCONTRACTORS of all the obligations and duties deriving from the CONTRACT.
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The CONTRACTOR is also responsible for the correct and proper choice of SUBCONTRACTORS in terms of professional experience and specific skills in relation to the subcontracted activities and undertakes to inform the SUBCONTRACTORS of the specific risks due to chemical, physical and biological agents in the workplace in accordance with Legislative Decree 81/2008 and the Environmental Standards and Safety Standards currently in force, as well as those regarding behaviour in the workplace.

In particular, the CONTRACTOR undertakes to carry out all checks aimed at ensuring that the performance of the SUBCONTRACTOR's activities strictly complies with HSE regulations and the procedures and guidelines adopted by the COMPANY. The CONTRACTOR is liable to the COMPANY for any non-compliance/irregularity by the SUBCONTRACTOR. The CONTRACTOR undertakes to maintain the audit and control activity for the entire duration of the CONTRACT and of the performance of the activities covered by the CONTRACT.

Without prejudice to the above, if the SUBCONTRACTOR fails to comply with the legal requirements relating to workers' health and safety and/or environmental protection and/or radiation protection, the COMPANY reserves the right to terminate the CONTRACT in accordance with Art. "Contract Termination" without prejudice to its right to compensation for damage.

In case of works, the CONTRACTOR shall coordinate all SUBCONTRACTORS working at the COMPANY's worksite, with specific regard to the aspects related to Health, Safety, Environment and Radiation Protection, also for the purpose of making the specific POS (Operational Safety Plans) prepared by the individual SUBCONTRACTORS compatible with one another and consistent with the POS submitted by the CONTRACTOR.

9. The subcontract authorization will be revoked if the SUBCONTRACTOR no longer meets the requirements under 2. above and/or if the same fails to fulfil the obligations set out in this Article. In the said cases the CONTRACTOR shall notify the SUBCONTRACTOR of the revocation of authorization and ensure that the SUBCONTRACTOR ceases performance of the activities and clears the site or workplace from people or things belonging to it.  
The above shall be without prejudice to the COMPANY's rights to compensation for any damage from the CONTRACTOR and, if appropriate, to the CONTRACT termination.
10. The CONTRACTOR undertakes to include in the subcontract agreement a provision equal to that included in the clause "Withdrawal by the COMPANY" of Art. "Contract Termination and Withdrawal", whereby the CONTRACTOR reserves vis-à-vis the SUBCONTRACTOR the same rights as specified in said clause as being the COMPANY's rights.
11. The CONTRACTOR undertakes to hold the COMPANY harmless from any contractual and extra contractual damages suffered, deriving from and/or connected with the fulfilment by the SUBCONTRACTORS of their contractual obligations, indemnifying the COMPANY from any demands made by THIRD PARTIES caused by the actions of the SUBCONTRACTORS.
12. Subcontract implementation

In cases where the SUBCONTRACTORS have already been authorised and details thereof have been specified in the CONTRACT, implementation of each relevant subcontract will nevertheless be expressly subject to the following conditions:

- a) that the CONTRACTOR delivers to the CONTRACT HOLDER, if so requested, a copy of the subcontract agreement containing specific details of the interference-related
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- costs for work safety. The subcontract agreement must in any case be available at least 20 days before the date of commencement of the relevant activities;
- b) that the CONTRACTOR delivers to the CONTRACT HOLDER a copy of the DUVRI (Consolidated Document concerning interference-related risk assessment) or the PSC (Safety and Coordination Plan) (where applicable), signed as accepted by the SUBCONTRACTOR;
  - c) that the CONTRACTOR delivers to the CONTRACT HOLDER a copy of the SUBCONTRACTOR's Consolidated Document Certifying Payment of Insurance Contributions (DURC);
  - d) that the CONTRACTOR submits to the COMPANY a declaration stating that it has verified that the SUBCONTRACTOR still meets the requirements declared by the CONTRACTOR upon request for subcontract authorization during the Tender phase. Such declaration shall be drafted as per the "Contractor's Declaration regarding Subcontractor's Requirements" under the "Request for Subcontract Implementation" Form attached to the CONTRACT.

Failure by the CONTRACTOR to fulfil the requirements set out in points a), b), c) and d) above will result in the immediate withdrawal of the authorisation. The COMPANY shall have the right at any moment to verify the CONTRACTOR's declarations and request the submission of any supporting documents.

13. Authorisation of subcontracts requested after the CONTRACT has been entered into

Without prejudice to the above provisions and where permitted by the reference regulations, any requests, which must be of exceptional nature, for subcontracts not foreseen during the Tender Phase and/or not authorised by the CONTRACT, must be adequately explained and sent in writing to the CONTRACT HOLDER before commencement of the activities covered by the subcontract. These requests must be formulated using the "Request for Subcontract Authorisation" form. The CONTRACT HOLDER, subject to verification that the requirements have been met, will take the actions necessary to activate the subcontract requested by the CONTRACTOR, if and once authorisation has been granted by the COMPANY.

**B) SUBCONTRATTO**

Unless otherwise specified in the CONTRACT, "subcontratti" are not subject to prior authorisation by the COMPANY, except for checking that the "subcontraente" meets the technical and professional requirements with reference to protection of health and safety in the workplace, under Legislative Decree no. 81/2008, which must be carried out by the COMPANY before commencement of any activities which require access to the SERVICES AREA. The CONTRACTOR must nevertheless:

- communicate to the CONTRACT HOLDER the name of the "subcontraente", the amount of the "subcontratto" and the purpose of the activities assigned;
  - obtain from the "subcontraente" (i) the same documentation requested for SUBCONTRACTORS in the CONTRACT and to carry out the relevant checks before the start of the activities assigned under the "subcontratto"; (ii) the declarations described in "Compliance Declaration 2";
  - ensure that all the requirements applying to the "subcontraente" continue to be met for the entire duration of the "subcontratto" and to provide adequate evidence of this to the CONTRACT HOLDER upon request;
  - require compliance with and ensure that the "subcontraente" complies with the standards contained in Art. "Administrative and anti-corruption Liability"; the CONTRACTOR also undertakes to ensure that the "subcontraente" has read and is
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aware of the provisions contained in the Eni S.p.A. "Anti-Corruption MSG" and subsequent amendments and additions as published on its website [www.eni.com](http://www.eni.com). Accordingly, a specific clause referring to this is to be included in the contract between the CONTRACTOR and the "subcontraente".

The CONTRACTOR will send to the CONTRACT HOLDER an updated "Subcontratti Reporting Form" that formed part of the Tender Documents, at least quarterly, with evidence of the checks carried out by the CONTRACTOR in relation to maintenance by the "subcontraente" of the requirements of technical and professional suitability and compliance with applicable HSE regulations, general requirements, ethical standards, regular payment of salaries and contributions, economic and financial soundness and the other requirements specified for the SUBCONTRACTOR.

The CONTRACTOR undertakes to include in the "subcontratto" a provision under which failure by any "subcontraente" to meet or continue to meet the above requirements will result in termination of the CONTRACTOR's contract with the "subcontraente", without prejudice to the COMPANY's rights to compensation for damage from the CONTRACTOR for any losses and, if appropriate, to terminate the CONTRACT between COMPANY and CONTRACTOR.

## **12. Force majeure**

1. The PARTIES will not be considered responsible for any breaches and/or delays caused by force majeure.  
Force majeure means events and/or circumstances of an exceptional and/or unforeseeable nature that the PARTIES, despite taking action to prevent and limit the event, could not stop, prevent and/or control and that have totally or partially prevented performance of the CONTRACT.
  2. Events of force majeure include, but are not limited to: wars, riots, fires, floods, earthquakes and other exceptional natural events, national and sector-specific strikes, hindrances caused by specific legislative measures and other hindrances of similar gravity beyond the control of the PARTIES.  
An event of force majeure entails suspension of the PARTIES' obligations, but will have no effect on the validity of the CONTRACT.
  3. Any/all damages sustained by CONTRACTOR deriving directly or indirectly from events of force majeure will be the responsibility of the CONTRACTOR, who will have no right to any form of compensation and/or indemnity from the COMPANY. Likewise the COMPANY will have no right to any form of compensation and/or indemnity from the CONTRACTOR for damages suffered by the COMPANY as a consequence of events of force majeure.
  4. Delays due to the following events shall not be considered as force majeure events:
    - Worksite stoppages imposed by the competent authorities due to CONTRACTOR's failure to comply with safety regulations;
    - delays caused by the CONTRACTOR in purchasing materials and/or services;
    - delays caused by SUBCONTRACTORS;
    - rejected materials due to manufacturing defects attributed to CONTRACTOR and/or SUBCONTRACTORS;
    - strikes limited to the CONTRACTOR's plants and employees including micro-disputes, unrest and the participation of the CONTRACTOR's employees in strikes of any nature except national and sector-specific strikes.
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5. Force majeure events shall be notified in writing, promptly and in any case within the 3<sup>rd</sup> (third) day from occurrence of the event, by the affected PARTY to the other PARTY. The notice must provide sufficient information about the cause of the event of force majeure and its foreseeable duration. The COMPANY reserves the right to require the CONTRACTOR to provide, in addition to the written declaration, a certified statement issued by the Chamber of Commerce for the location where the SERVICES covered by the CONTRACT are performed or by another public authority recognised by the COMPANY to confirm the truthfulness of information provided under this clause.
6. For delays caused by events of force majeure the CONTRACTOR shall be entitled to an extension of the scheduled deadline proportional to the effects such delays caused by the force majeure event had on the progress of the SERVICES. The duration of the extension will be agreed upon between the PARTIES and put in writing.
7. Should the events of force majeure persist, or should it be expected to last for a period in excess of 15 (fifteen) days, the PARTIES will meet to define the criteria for the continuation or termination of the CONTRACT.
8. If the event persists for more than 30 (thirty) days, the COMPANY reserves the right to terminate the CONTRACT in accordance with Art. "Contract Termination".
9. In any case, the CONTRACTOR shall make all efforts to minimize any effects of the force majeure occurrence.

### **13. Governing law and competent jurisdiction**

1. The CONTRACT shall be governed by Italian Law.
2. Any dispute arising between the PARTIES in relation to the CONTRACT, unless otherwise indicated in the CONTRACT, will be solely and exclusively decided by the competent jurisdiction in the location in which the COMPANY has its registered office.
3. The CONTRACTOR shall not suspend the performance of the SERVICES, in whole or in part, during proceedings contemplated by this Article.

### **14. Contract Termination and Withdrawal**

#### **14.1 Contract Termination**

1. Without prejudice to the provisions of Art. "Confidentiality, Administrative Liability and Privacy" as well as those on termination and/or withdrawal in other provisions of the CONTRACT, the COMPANY is entitled to terminate the CONTRACT under Art. 1456 of the Italian Civil Code, if:
    - 1.1 the CONTRACTOR does not commence the SERVICES by the date specified in the CONTRACT and/or the individual WORK ORDER or does not complete the SERVICES within the agreed deadlines for reasons attributable to them;
    - 1.2 the CONTRACTOR fails to perform the SERVICES in compliance with the conditions provided for by the CONTRACT and/or the individual WORK ORDERS, and particularly if it fails to provide personnel and/or equipment that
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- meets the agreed requirements, or fails to promptly replace malfunctioning equipment or parts thereof;
- 1.3 the CONTRACTOR subcontracts any part of the SERVICES without the prior written authorisation of the COMPANY or assigns the CONTRACT to THIRD PARTIES without respecting the provisions of the respective Article of the CONTRACT;
  - 1.4 the CONTRACTOR and/or any SUBCONTRACTOR, fails to respect the legislative provisions with respect to occupational health and safety, or the laws on the matter of environmental protection from pollution and/or any of the provisions of Art. "Health, Safety and the Environment" and the related documentation referred to in it;
  - 1.5 the CONTRACTOR, without the COMPANY's written authorisation, alters and/or changes the SERVICES and/or the related project execution plan, and subsequently fails to restore them to the conditions required by the CONTRACT;
  - 1.6 the CONTRACTOR and/or any SUBCONTRACTOR fail to comply with the regulations in force concerning insurance, remuneration, taxes, social security and welfare contributions for its own personnel and provisions concerning accident prevention;
  - 1.7 the CONTRACTOR fails to enter into or renew the insurance policies required by the CONTRACT or otherwise fails to fulfil its obligations under Art. "Insurances";
  - 1.8 the CONTRACTOR and/or any SUBCONTRACTOR no longer meet the requirements indicated by Art. "Contractor Requirements";
  - 1.9 the declarations and/or certificates submitted or produced by the CONTRACTOR and/or any SUBCONTRACTORS, in relation to the award of the CONTRACT or performance thereof, prove at any time to be irregular;
  - 1.10 the CONTRACTOR violates its obligation to keep information received under the CONTRACT confidential;
  - 1.11 the CONTRACTOR arbitrarily suspends the execution of the SERVICES
  - 1.12 The CONTRACTOR fails to fulfil its obligations in relation to the antimafia regulations, as detailed in Art. "Antimafia legislation" (where applicable);
2. To terminate the CONTRACT in accordance with this Article the COMPANY will send an appropriate written notice to the CONTRACTOR.
  3. When any of the reasons for termination listed above occurs, the COMPANY reserves the right to also make use of the procedure specified in Article 1454 of the Italian Civil Code, sending written notice to the CONTRACTOR to remedy the noncompliance within a time limit specified by the COMPANY therein, and in any case no less than 15 (fifteen) days from the date of receipt of such notice. If that period passes to no avail, the CONTRACT will be considered terminated and the COMPANY reserves the right to claim compensation for damages, which the CONTRACTOR must pay within 60 (sixty) days of receipt of the associated debit note.
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4. The COMPANY is also entitled to terminate the CONTRACT in the situations indicated in the Art. "Insolvency Procedures", if the Force Majeure event persists beyond the period of time indicated in the relevant Article, and if the counterpart no longer meets the requirements necessary for the qualification process.
5. Furthermore, any failure by the CONTRACTOR to comply with the obligation to notify and/or update the COMPANY of any variation in the information provided by the CONTRACTOR during the bidding stage regarding the Trust Companies and the identity of the physical persons ultimate beneficiaries, which failure is likely to negatively affect the COMPANY, shall constitute a material breach of the CONTRACT and shall entitle the COMPANY to unilaterally withdraw from the CONTRACT or terminate the CONTRACT.

#### 14.2 Withdrawal from the CONTRACT

##### Withdrawal by the CONTRACTOR

Considering the operational importance of the SERVICES for the COMPANY's operations, the CONTRACTOR may not withdraw from the CONTRACT or otherwise totally or partially suspend the execution of the SERVICES for any reason whatsoever.

##### Withdrawal by the COMPANY

Without prejudice to the provisions of the Art. "Confidentiality, Administrative Liability and Privacy" the COMPANY may, at its sole discretion and without giving any justification to the CONTRACTOR, withdraw from all or part of the CONTRACT or request the total or partial suspension of the SERVICES, at any time, by simple written communication to CONTRACTOR. The only SERVICES to remain unaffected by the withdrawal or suspension shall be those already performed in full by the date the communication was received from the COMPANY. Upon receipt of a written request from the CONTRACTOR, the COMPANY will make a lump sum payment agreed upon by the PARTIES for any SERVICES commenced but not completed by the CONTRACTOR based on the actual value of that part of the SERVICES already performed; in addition, contrary to the provisions of Article 1671 of the Italian Civil Code, only unavoidable costs and/or expenses sustained and documented by the CONTRACTOR in relation to said SERVICES shall be reimbursed.

The said withdrawal or suspension will take effect from the date on which the CONTRACTOR receives the respective communication from the COMPANY.

## **15. Intellectual property and patent rights**

### 15.1 Intellectual property rights

For the purposes of this Article the term "intellectual property rights" means any rights related to any notes and/or laboratory work, patentable and non-patentable inventions, patents, database rights, computer programs, planning and design rights, drawing and model rights, trademarks, domain names, copyright, know-how and associated information, confidential information and any other rights related to any industrial or intellectual property, which may or may not be registered (including the rights to apply for any of the foregoing).

Based on the understanding that any pre-existing "intellectual property rights" remain property of the PARTY owing the same, any/all intellectual property rights, in any way resulting from, deriving from and/or connected with the SERVICES are the exclusive property of the COMPANY.





## 15.2 Indemnity

The COMPANY will not be held liable in any way for damages and/or claims of any nature deriving from alleged or actual violations of intellectual property rights or other rights protected by law that may arise or be caused by or attributed to, directly or indirectly, the execution of the SERVICES and/or any EQUIPMENT used by the CONTRACTOR. The CONTRACTOR undertakes to indemnify and hold harmless the COMPANY from and against any such damages and/or claims.

## **TECHNICAL AND ORGANISATIONAL MANAGEMENT OF THE CONTRACT**

### **16. AREA, TIME SCHEDULES AND PLANNING OF SERVICES**

#### 16.1 Knowledge of the Area and cost assessment

1. The CONTRACTOR, by executing the CONTRACT declares that:
  - it is fully aware of the actual situation in the SERVICES AREA and of the environmental and underground conditions in which the SERVICES are to be performed
  - it is aware of, has assessed and included in the prices and/or fees of the CONTRACT any/all fiscal, tax, customs and logistic-environmental costs as well as those connected to viability, communications and market potential in the SERVICES AREA as well as each and every type of fee for the supply, materials, labour, transport, equipment, insurance, bonuses, allowances and other contributions, supervision, general expenses and profit of the CONTRACTOR;
  - it has carefully reviewed the internal regulations and procedures submitted by the COMPANY, and in particular those pertaining to health and safety in the workplace and environmental protection, has taken them into account whilst formulating its prices and has been fully informed by the COMPANY of the inherent risks, including those arising from the activities of the COMPANY and/or activities of other contractors that may also be working within the SERVICES AREA.

#### 16.2 Suspension - Interruption of the Services

1. The CONTRACT HOLDER will be entitled to authorize in writing the total or partial suspension of the SERVICES for any period of time it considers appropriate, at its sole discretion.
  2. The COMPANY will notify the CONTRACTOR in writing with respect to any suspension of the SERVICES and specify whether such a suspension shall be temporary or definitive.
  3. In case of definitive suspension of the SERVICES due to causes attributable to the COMPANY such will be regulated by Art. "Withdrawal by the COMPANY".
  4. In case of a temporary suspension attributable to the COMPANY, the CONTRACTOR will be paid as follows:
    - the CONTRACTOR will be granted an extension to the time for completion of the SERVICES equivalent to the period of suspension.
    - the definitive or temporary suspension shall be certified by a report signed by the respective Representatives of the PARTIES.
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### 16.3 Service deadline extensions

The COMPANY will extend the SERVICES completion deadline agreed upon between the PARTIES, if one of the events details below occurs. Such an extension is subject to the CONTRACTOR issuing the COMPANY a detailed written request for extension within 5 (five) working days from the incurrence of such an event:

- delays or negligence of other contractors of the COMPANY linked to the SERVICES to be performed by the CONTRACTOR, as long as said delays or negligence are not attributable to the CONTRACTOR;
- delays caused by the COMPANY's failure to provide the required information or temporary suspensions of the SERVICES as stipulated by the COMPANY.

## **17. PERFORMANCE OF THE SERVICES**

### 17.1 Contractor's equipment, materials and vehicles

1. Any/all EQUIPMENT, MATERIALS and vehicles required by the CONTRACTOR to perform the SERVICES must be in perfect working order, appropriate and comply with any/all legal requirements.
2. The EQUIPMENT and MATERIALS must, in terms of number, type, capacity and characteristics, be adequate for the type and quantity of SERVICES to be performed by the CONTRACTOR and in any case commensurate with the plans related to the SERVICES, as agreed by the PARTIES.
3. Any/all EQUIPMENT must be maintained in perfect working order by the CONTRACTOR for the entire duration of the SERVICES. In case of defects or breakdowns, any EQUIPMENT not considered to be in perfect working order must be quickly repaired or replaced by the CONTRACTOR at its own expense and risk, and in any case in such a manner and time as not to compromise the continuity of the SERVICES and/or the plans covered by the CONTRACT.
4. Any defective EQUIPMENT or MATERIALS which become the subject of complaints or observations by the COMPANY must be dealt with by the CONTRACTOR within the time limit set by the COMPANY and to its full satisfaction, under penalty of suspension of the SERVICES.
5. Any/all costs relating to the EQUIPMENT as well as those required for its functioning, use and maintenance in good working order are deemed to be included in the prices and/or rates specified in the CONTRACT.  
Maintenance of the EQUIPMENT in good working order must be certified as provided for by the legislation in force and as specified in the Manufacturers' instructions.

The CONTRACTOR hereby gives its consent for the use of its EQUIPMENT by THIRD PARTIES through the conclusion of appropriate rental contracts.

6. The CONTRACTOR is responsible for verifying the source of all the MATERIALS required for the performance of the SERVICES and ensuring their traceability.

### 17.2 Work orders

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The SERVICES covered under the CONTRACT shall be requested by the COMPANY by means of an appropriate WORK ORDER.

The WORK ORDER will contain all the necessary instructions for the CONTRACTOR to identify the nature of the SERVICES, as well as all the documents and specifications in question associated with the performance of the SERVICES.

In particular, the WORK ORDER will stipulate the dates associated with the performance of the SERVICES (start, end and any intermediate activities), the delivery date for any DELIVERABLES and any "Job Order No." assigned to the SERVICES. It will also show any HSE-R requirements that are to be met.

Based on the stipulations of the respective WORK ORDER the PARTIES will agree the standards, specifications, plans, due dates and instructions which must be complied with during the execution of the SERVICES as well as any HSE-R documents which must be prepared.

Any/all plans including any relevant updates and changes, agreed with the COMPANY will form an integral part of the CONTRACT.

The WORK ORDER is the only document which formally authorizes the CONTRACTOR to carry out any of the SERVICES. The WORK ORDER must be signed by a person authorized to do so by the COMPANY.

The SERVICES covered by each individual WORK ORDER are to be understood as linked and interdependent and the COMPANY will thus be entitled to vary the plan for the execution of the SERVICES as a consequence of external factors which, impacting on some types of SERVICES, make adjustments to the respective plans as necessary, particularly as regards to timing.

A copy of the respective WORK ORDER must be attached to the invoices issued by the CONTRACTOR.

On issue of each WORK ORDER the COMPANY will, where necessary, attach the following documentation:

- any updates of the preliminary DUVRI and, if necessary, the modification of the estimated interference-related costs with reference to the specific performance of the activities covered by the individual WORK ORDER.
- the DSSC showing the prevention and protection measures to be adopted to eliminate and/or minimize the specific risks of interference linked to the performance of the activities covered by the individual WORK ORDER.

On issue of each WORK ORDER, in addition to the items specified in Annex "E" - HSE-R Requirements and Annex "F" - Quality Requirements, the CONTRACTOR will supply the COMPANY with its own DSS (Health and Safety Document) as well as the name of its Safety Manager and the list of all the personnel dedicated to performance of the SERVICES requested. For each operator on this list, the corresponding insurance position must be indicated.

### 17.3 Audit and Inspection

1. The COMPANY will be entitled at any moment to audit any part of the SERVICES and to carry out or to have THIRD PARTIES carry out inspections and checks on the SERVICES being performed. The CONTRACTOR may not object to such inspections and checks, but must supply free of charge the necessary assistance to facilitate their performance,
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allowing the COMPANY and/or THIRD PARTIES commissioned by the COMPANY free access to its offices, warehouses, plants and/or those of the SUBCONTRACTORS used to perform the SERVICES.

## **18. ACCEPTANCE OF SERVICES**

### **18.1 Technical acceptance of the SERVICES**

The SERVICES will only be classified as accepted by the COMPANY if they comply with the requirements contained in the CONTRACT.

Technical acceptance of the SERVICES will be communicated to the CONTRACTOR in writing.

The more significant SERVICES, designated as such in the CONTRACT, and in any case those parts of the SERVICES for which the TECHNICAL UNITS require this, must be submitted for prior approval by the COMPANY.

Any SERVICES which do not comply with the requirements specified by the COMPANY must be re-performed by the CONTRACTOR, at its own risk and expense, so that the resulting parts correspond to the specification given in the CONTRACT, at the care and cost of the CONTRACTOR taking into consideration that no request for extensions to the delivery date(s) set out in accordance with the CONTRACT will be granted by the COMPANY.

Acceptance of the SERVICES will not result in the assumption by the COMPANY of any responsibility or liability in relation to their technical appropriateness or compliance with legislative provisions, which shall remain the sole responsibility of the CONTRACTOR as provided by the Italian Civil Code.

## **ADMINISTRATIVE AND ECONOMIC MANAGEMENT OF THE CONTRACT**

### **19. Fixed Prices and Rates**

1. The prices and/or rates specified in the CONTRACT are to be understood as fixed and invariable for the entire duration of the CONTRACT, with the exception of any additional and new safety interference related costs which shall be reimbursed by the COMPANY upon submission of the appropriate documentation by the CONTRACTOR.
2. The CONTRACTOR has therefore, with the CONTRACT award, agreed to bear the risk of any increase in the cost of performing the SERVICES for whatsoever reason, including extraordinary and unforeseeable events, and therefore waives the right to any adjustment of prices, notwithstanding the provisions of Article 1664 of the Italian Civil Code.
3. The CONTRACTOR declares that in determining the prices it has:
  - taken into account, for example but without limitation, the costs arising from the observance of any company procedures and rules involved in the duties to be performed and the relevant laws on Health and Safety in the workplace and Environmental Protection;
  - not subjected any of the costs deriving from the duties listed in the above paragraph to a rebate for tender purposes.

### **20. Work Ticket**

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At the end of each month the CONTRACTOR will submit to the COMPANY a Work Ticket, in triplicate, detailing the SERVICES performed.

The Work Ticket must clearly show:

1. the number and date of the Work Ticket including, in the case of a Blanket Order, the number and date of the respective WORK ORDER;
2. the CONTRACT number and date of issue;
3. the relevant Code given by the COMPANY to the CONTRACTOR;
4. the relevant SERVICES, performed by the CONTRACTOR in accordance with any specific listing, numbering and format given in the CONTRACT;
5. the "Job Order" number which shall be notified to the CONTRACTOR by the COMPANY.

The COMPANY will check the Work Ticket and, once approved, will deliver a copy of it to the CONTRACTOR signed for approval to indicate the technical acceptance of the SERVICES as referred to in the Article "Technical Acceptance of Services" .

## **21. Payments**

1. As compensation for the performance of the SERVICES in accordance with the CONTRACT, the COMPANY undertakes to pay the amounts indicated in Annex "A" - "List of Prices and/or Rates".

The amounts specified in Annex "A" - "List of Prices and/or Rates" include any and all costs incurred by the CONTRACTOR in relation to the CONTRACT, including the costs of the insurance policies in Art. "Insurances"; these amounts are to be considered net of VAT, where applicable, and gross of withholding tax.

The compensation shall be proportionate solely to the activities carried out under the CONTRACT and payments hereunder shall not be made to any Party other than the CONTRACTOR nor in any Country other than the countries of the PARTIES' incorporation or the country where the CONTRACT is performed.

2. Unless otherwise specified in the CONTRACT, the COMPANY will be entitled to make payment of the relevant amount subject to prior demonstration by the CONTRACTOR of:
  - payment of salaries by the CONTRACTOR;
  - payment of social security contributions;
  - payment of mandatory insurance contributions;
  - payment of withholding taxes

in relation to its own personnel, and, where applicable, for the SUBCONTRACTORS' personnel.

Thus, the CONTRACTOR must produce the appropriate documentation which shall be subject to the mandatory checks by the CONTRACT HOLDER and as required by the regulations in force, on fulfillment of these requirements.

Payment of amounts by the COMPANY is in any case subject to:

- 2.1 fulfillment of the obligations of the CONTRACTOR as specified in Art. "Subcontracting" (where applicable).
  - 2.2 receipt by the COMPANY of the "CONTRACT acceptance form" duly signed by the CONTRACTOR, in accordance with the methods and terms specified in Art. "Contract Acceptance".
  - 2.3 acceptance of the Work Ticket as described in Art. "Work Ticket",
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3. Any failure to pay within the terms specified in the Art. "Payments" of the CONTRACT for reasons attributable to the COMPANY will result in the application, for each day of delay, of late payment interest on the arrears due to the CONTRACTOR. Interest will be calculated at the interest rate of the principal refinancing instrument of the European Central Bank (ECB) published in the Official Gazette of the Italian Republic on the fifth working day of each six-month period by the Ministry of the Economy and Finance, increased by the percentage points indicated in the CONTRACT.

## **22. Methods of payment and invoicing**

### **1. Preliminary conditions for invoicing and relevant payments**

- 1.1 Invoices will be paid by the COMPANY to the CONTRACTOR by bank transfer in accordance with the terms and instructions detailed within Art. "Payments" of the CONTRACT.
- 1.2 No payment will be made by the COMPANY to any bank other than that notified by the CONTRACTOR, although it will be possible to change the name of the bank, giving a minimum of 60 (sixty) days' notice.
- 1.3 In order to facilitate payment, the CONTRACTOR must send the COMPANY, by the date of issue of the first invoice, the following information (if not already notified to the COMPANY for previous contracts):
  - a the name and details of the CONTRACTOR's respective bank where the company has its current account (branch or agency)
  - b current account no.
  - c BBAN code (for national payments);
  - d IBAN and BIC (for international payments).

The above information must be sent to the COMPANY as specified in Art. "Methods of payment and invoicing" of the CONTRACT.
- 1.4 The invoice may be issued by the CONTRACTOR only upon receipt of the COMPANY approved Work Ticket.

### **2. Mandatory invoice content**

Invoices should preferably relate to only one approved Work Ticket, or other document specified in Annex "A", contain its number and date and be drawn up on the basis of the same, in terms of format and content.

The invoice must clearly show the following information:

- the CONTRACT number and date of issue;
- for Blanket Orders, also the number and date of the Delivery Order/WORK ORDER;
- brief description of the SERVICES performed by the CONTRACTOR.

The VAT rate and amount or the item(s) not subject to VAT shall be shown on the invoice(s).

### **3. Method of transmission of invoices**

- 3.1 Invoices must be sent as indicated in Art. "Methods of payment and invoicing" of the CONTRACT.
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- 3.2 In order to ensure efficient payment of invoices, the CONTRACTOR must not insert headings and/or rates not specified in the CONTRACT; these headings and/or rates must absolutely form the subject of a separate invoice following their definition, as approved by the COMPANY.
- In no case may billings chargeable to different job orders be included in a single Work Ticket and/or invoice.
- 3.3 If the CONTRACT provides for volume discounts, these must be settled by the issue of relevant Credit Notes by the CONTRACTOR.
- 3.4 The PARTIES expressly agree that in the event of failure by the CONTRACTOR to fulfill the above obligations as well as the requirements set out in Art. "Payments", any delays in payment of invoices by the COMPANY may not be deemed a breach of contract and will not be subject to interest for late payment.

### **23. Taxes and duties**

The CONTRACTOR shall arrange for the payment of any/all duties, taxes, licenses and levies or fees connected with the CONTRACT and imposed by the government and/or other authority having jurisdiction over the CONTRACT.

The COMPANY shall not be liable in any way in case of non fulfillment of tax obligations by the CONTRACTOR who undertakes to comply scrupulously with the current laws on the subject.

### **24. Accounts auditing**

The COMPANY, following provision of written notice to the CONTRACTOR, shall have the right to check, at any time and up to 10 (ten) years after the expiry of the CONTRACT, all invoices and supporting documentation of the CONTRACTOR in relation to the activities covered under the CONTRACT.

The CONTRACTOR undertakes to keep detailed and true documentation to enable the COMPANY to carry out such an audit of the CONTRACTOR's accounts.

### **25. Penalties**

1. If expressly provided for in the CONTRACT, where the CONTRACTOR, fails to perform or complete the SERVICES or part thereof in accordance with the methods and within the terms of the CONTRACT and/or the respective WORK ORDERS, for reasons attributable to the CONTRACTOR, the COMPANY, without prejudice to its right to compensation for any further damage, will apply penalties to the CONTRACTOR to the extent and according to the criteria of the CONTRACT.
  2. If the period subject to penalty is exceeded by the CONTRACTOR, the COMPANY will be entitled to terminate the CONTRACT in accordance with Art. "Contract Termination" and to have THIRD PARTIES complete the SERVICES.
  3. Alternatively the COMPANY may, by way of settlement, agree with the CONTRACTOR an adequate reduction in the amount(s) paid or to be paid under the CONTRACT which takes account of any direct losses incurred by the COMPANY due to said delay or failure to perform of CONTRACTOR.
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4. The COMPANY's right to opt for one of the two remedies described above will also apply in the case of delays in relation to which no penalty is provided for under the CONTRACT.
5. The COMPANY will be entitled to deduct the amounts of these penalties from CONTRACTOR invoices.

## **HEALTH, SAFETY, ENVIRONMENT AND RADIATION PROTECTION**

### **26. Health, Safety and the Environment**

1. The SERVICES must be performed in compliance with the regulations and standards relating to health and safety of workers and public safety and protection of the environment from pollution and/or radiation protection as specified by the regulations in force.

The COMPANY shall have delivered to the CONTRACTOR, which declares that it has formally accepted, the documentation relating to health and safety in the workplace, including the DUVRI (Consolidated Document concerning interference-related risk assessment), DSSC (Coordinated Health and Safety Document), PSC (Safety and Coordination Plan) and COMPANY HSE Policy (where applicable) as detailed in Annex E - HSE-R Requirements where applicable, as well as the prevention and emergency measures adopted for the activities carried out in the SERVICES AREA. In particular this document relates to the specific risks of the environment in which the CONTRACTOR and/or SUBCONTRACTORS (where applicable) shall carry out the SERVICES, as governed also by the COMPANY policies and procedures in relation to health, safety and environment. The COMPANY will promptly send to the CONTRACTOR any updates to the said documents.

The CONTRACTOR undertakes to ensure that its own personnel and the personnel of SUBCONTRACTORS (if any) comply with all the standards and instructions in force in the work place, the prescriptions and measures contained in the aforesaid documentation, the HSE-R Requirements attached to the CONTRACT and the prescriptions on protection of workers' health and safety in the workplace contained in Legislative Decree No 81/2008 as amended and Legislative Decree No 624/1996 as amended, where applicable.

The HSE-R documentation specified in Annex E - HSE-R Requirements, which the CONTRACTOR must provide for the SERVICES (Integrated Quality Plan and the documents referred to therein) must be submitted to the COMPANY for acceptance. Without prejudice to the liability of the CONTRACTOR, the COMPANY reserved the right to confirm in writing its acceptance of such documentation within 30 (thirty) days from receipt. Once this period has passed, if the COMPANY has not sent a written response to the CONTRACTOR, the said documents shall be deemed as accepted by the COMPANY. Acceptance of such documentation does not imply the assumption of any responsibility or liability by the COMPANY in relation to any failure to apply or mistaken application of the requirements of Annex E.

In respect of ionizing radiation, the CONTRACTOR undertakes to comply with the contents of Annex E - HSE-R Requirements (where applicable), the CONTRACT and any COMPANY instructions established by the specific documentation on the subject and supplied to the CONTRACTOR.

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The CONTRACTOR must immediately communicate any accident and/or injury in the workplace, even if minimal, to the Authorities and Bodies responsible under the laws in force and to the COMPANY.

The CONTRACTOR undertakes, in addition, to supply on a monthly basis to the CONTRACT HOLDER plus a copy to the Unit in charge of HSE-R aspects, the total number of hours worked in the work place, as well as the causes, reasons and circumstances of each accident/injury which has occurred and any corrective actions taken or to be taken by the CONTRACTOR.

2. Pursuant to Article 26 of Legislative Decree 81/2008, the PARTIES acknowledge that they have met for the purpose of cooperation and coordination of the prevention and protection measures to safeguard workers' health and safety in the workplace. In particular, the meeting between the PARTIES covered discussion of: 1) the DUVRI attached to the Bid Request; 2) the results of the visit made by the CONTRACTOR to the workplace involved in the work covered by the CONTRACT, where required.  
In consideration of the above, the PARTIES have defined the prevention and protection measures needed to eliminate and/or reduce them to a minimum which have, therefore, been inserted in the DUVRI attached to the CONTRACT/WORK ORDER.  
Before starting the activities, the cooperation and coordination as well as the action proposed by the PARTIES will be recorded in an appropriate Meeting Minute signed by both PARTIES, which will assume "pro rata" responsibility for the implementation of the prevention and protection measures. This Minute will form an integral and substantive part of the DUVRI.
  3. Pursuant to Article 9 of Legislative Decree No 624/1996, the CONTRACTOR will send the COMPANY the necessary documentation for the COMPANY to produce the "Coordinated Health and Safety Document" (DSSC) which the CONTRACTOR, following signature, becomes responsible for implementing, for the parts within its specific area of competence.  
The DSSC is attached to the CONTRACT and kept in the workplace where the SERVICES are performed to allow the "Titolare" (Manager), as defined by Legislative Decree 624/1996, to amend and integrate it in good time.
  4. Pursuant to Title IV of Legislative Decree 81/2008 as amended, the COMPANY will be entitled to appoint a PROJECT SUPERVISOR.  
The CONTRACTOR undertakes to comply fully with the Safety and Coordination Plan (PSC), its own Safety Operating Plan (POS) and in any case all the plans and/or instructions which are sent and/or given to it by the COMPANY, or by the PROJECT SUPERVISOR and/or by any other person made responsible by the COMPANY under Legislative Decree 81/2008.  
The CONTRACTOR undertakes to ensure the coordination of all the SUBCONTRACTORS, if any, operating on the SERVICES AREA of the COMPANY, in order to make the specific POS (Safety Operating Plans) compiled by individual SUBCONTRACTORS (if any) mutually compatible and consistent with the POS submitted by the CONTRACTOR.
  5. During the performance of the contracted activities the CONTRACTOR shall adopt any/all precautions, measures and actions required to avoid any injury or damage to people or things and cooperate with the implementation of prevention and protection measures against work risks impacting on the activities covered under the CONTRACT.  
Without prejudice to the rules established by the HSE Disciplinary Policy as described in Annex E - HSE-R Requirements, in case of failure by the CONTRACTOR or any SUBCONTRACTORS to comply with the prescriptions contained in the said Annex "E", the DUVRI (including any failure to prove the expenditure of the interference-related costs as
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declared therein) or PSC ( and/or its own POS or in the DSSC and/or in the procedures and regulations adopted by COMPANY in the workplace as well as, in general, the legal requirements set by the regulations in force on workers' health and safety and/or environmental protection and/or radiation protection, the COMPANY shall be entitled to:

1. terminate the CONTRACT in accordance with Art. "Contract Termination", without prejudice to the fact that liability remains with the CONTRACTOR for any damage, accident or injury that may occur during the performance of the SERVICES or as a consequence of these;
2. suspend the SERVICES at the care and cost of the CONTRACTOR, charging to it any/all further costs consequent upon and/or arising from the said suspension.

The COMPANY will be entitled to carry out inspections and checks, including in the case of accidents and injuries, both using internal company functions and THIRD PARTIES. If it is subsequently found that the CONTRACTOR is not in compliance with the CONTRACT, the COMPANY reserves the right at its sole discretion to apply sanctions commensurate with the seriousness of the breach as shown in Annex E - HSE-R Requirements. The CONTRACTOR must provide the maximum cooperation to achieve the said objectives.

6. Work safety costs

The COMPANY completes and/or updates, further to the meeting held by the PARTIES as per art. 26 of Legislative Decree no. 81/2008, where necessary, the DUVRI and the relevant estimate of the interference-related costs on the basis of the "typical safety price lists" defined in the CONTRACT. In all cases of completion and/or updating, the DUVRI shall be signed by the CONTRACTOR for acceptance. The interference-related costs are quantified by the COMPANY and no rebate has been applied thereto by the CONTRACTOR.

The COMPANY has carried out the check on the adequacy of the general safety costs in relation to the size and nature of the activities covered by the CONTRACT.

The CONTRACTOR acknowledges that the interference-related costs relevant to safety at work have been calculated by the COMPANY also taking into consideration the DUVRI attached to the Bid Request, the final DUVRI, where applicable, or the PSC, or the DSSC and relevant technical documentation, the verifications carried out by CONTRACTOR during the site inspection (where appropriate), and any other documentation and information obtained further to the co-ordination and co-operation as per art. 26 of Legislative Decree no. 81/2008, as well as any in-house procedures and regulations delivered to CONTRACTOR.

7. Costs of labour

The CONTRACTOR declares that costs of labour are commensurate with the nature and characteristics of the activities under the CONTRACT.

8. Temporary Business Grouping (RTI)

In case of RTI, the entities grouped (mandate holder and mandating companies) shall ensure strict compliance with the HSE regulations, as well as the procedures and guidelines adopted by the COMPANY. The mandate holder is liable to the COMPANY for any non-compliance/irregularity by the mandating companies. The mandate holder undertakes to carry out controls to verify that the mandating companies meet the requirements for the entire duration of the CONTRACT.

## **CONTRACTOR REQUIREMENTS AND ORGANIZATION**

### **27. Contractor Requirements**

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1. The CONTRACTOR declares that for the performance of the SERVICES covered by the CONTRACT it may make use of SUBCONTRACTORS according to the procedures described in Art. "Subcontracting".

The CONTRACTOR also declares that it shall be an independent contractor with respect to the performance of the activities covered by the CONTRACT, with management at its own risk, with employment of its own capital and means and with personnel duly hired, paid and insured by the CONTRACTOR.

Therefore, neither the means, the personnel and anything else necessary for the performance of the activities hereunder shall be deemed to be part of the COMPANY's organization.

Should the CONTRACTOR elect to utilize agency-supplied and/or project workers, or any other form of collaboration for the performance of the activities or part thereof, it undertakes to inform the CONTRACT HOLDER of this intention, indicating the reasons, the number of workers and the affected activities as well as providing, where requested, the related contract.

2. With regard to the above, the CONTRACTOR will carry out the SERVICES assuming all responsibilities towards both the COMPANY Public Authorities and THIRD PARTIES, indemnifying the COMPANY from and against any costs of any kind arising from the performance of the SERVICES.
3. The CONTRACTOR must demonstrate that it holds any/all necessary permits and licenses to operate in its capacity as "entrepreneur" and undertakes to operate constantly within their framework and the framework of the current regulations on the subject.
4. If any requirement deriving from the above is lacking in such a way as to cause an irregular administrative and/or legal position of the CONTRACTOR, the COMPANY reserves the right to terminate the CONTRACT for all practical purposes in accordance with Art. "Contract Termination".
5. The CONTRACTOR, for the entire duration of the CONTRACT, shall meet the requirements listed below; the COMPANY reserves the right to request that every appropriate certification regarding the meeting of these requirements be produced and in any case to ascertain, also independently and at its discretion, the CONTRACTOR's compliance with such requirements at any time.  
If even one of the requirements listed below is lacking, the COMPANY reserves the right to terminate the CONTRACT in accordance with Art. "Contract Termination".

a) Requisite level of technical and professional capacity

With reference to the protection of health and safety at the workplace pursuant to Article 26, paragraph 1, letter a) or Article 90, paragraph 9 of Legislative Decree no. 81/2008, taking into account the activities covered by the CONTRACT.

The CONTRACTOR undertakes to promptly inform the COMPANY of any change that might occur regarding the information and documentation supplied by the CONTRACTOR to the COMPANY.

b) General requirements and requirements regarding professional ethics:

- business shall not be in a state of bankruptcy, receivership or subject to any other form of insolvency procedure ;
- no proceedings are in progress for the enforcement of one of the preventive measures under Article 6 of Italian Legislative Decree no. 159/2011 as



amended, or any disqualification case under Article 67 of Italian Legislative Decree no. 159/2011 as amended;

- the CONTRACTOR'S owner or partner or director or operations manager must not have been convicted at final appeal or sentenced or been the subject of a plea bargain under Article 444 of the Italian Penal Code for serious crimes against the State or the Community or any offence concerning their professional conduct, nor must there be any proceedings pending, and must not have been sentenced for one or more crimes of participation in a criminal organization, of corruption, fraud or money-laundering, as defined by EU acts under Article 45, paragraph 1, EC Directive 2004/18, nor must there any proceedings pending;
- the CONTRACTOR'S owner or partner or director or operations manager must not have been convicted at final appeal, sentenced, or been the subject of a plea bargain under Article 444 of the Italian Penal Code for serious crimes under the regulations on the protection of the environment against pollution, nor must there be any proceedings pending;
- the CONTRACTOR'S owner or partner or director must not have been affected by a ban on fiduciary entrustment under Article 17 of Italian Act no. 55/90;
- the CONTRACTOR must not have committed serious infringements of regulations regarding safety or any other obligation deriving from employment contracts;
- the CONTRACTOR must not have been seriously negligent or acted in bad faith when executing services already awarded by Eni or Eni Group Companies, nor have committed grave errors in the exercise of its professional activity;
- the CONTRACTOR must not have failed to fulfil its obligations relating to the payment of duties and taxes, in accordance with Italian legislation or the legislation of the state in which it is established;
- the CONTRACTOR must not have failed to fulfil its obligations relating to the payment of social security contributions, in accordance with Italian legislation or the legislation of the state in which it is established;
- the CONTRACTOR must comply with regulations concerning the right to work of disabled persons, presenting certification under Article 17 of Italian Act no. 68/1999;
- no interdiction sanctions must have been imposed on the CONTRACTOR under Art. 9, paragraph 2, letter c) of Italian Legislative Decree no. 231/01, nor other sanctions which entail prohibition from contracting for the public administration.

## **28. CONTRACTOR'S Personnel**

### **28.1 Compliance with the insurance, contributions and contractual regulations**

1. Throughout the duration of the CONTRACT, the CONTRACTOR must operate in compliance with government regulations, this CONTRACT and every other relevant collective agreement, relieving the COMPANY of any responsibility with respect to the CONTRACTOR non-compliance.
  2. In particular, the CONTRACTOR is bound to comply with the legislation regarding insurance and contributions and to apply the sector's current national labor contract for its own personnel. These personnel must be duly hired, paid and insured by the CONTRACTOR and the regulatory and pay conditions applied by the CONTRACTOR must not be less than those set out in the national labor contracts and the supplementary agreements.
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3. The CONTRACTOR undertakes to transmit copies of the following documents regarding its own personnel to the COMPANY:
  - 3.1 before the start of the activities, notifications of new work forwarded to INPS, INAIL and the Construction Fund (if it is a construction firm);
  - 3.2 every three months from the date of commencement of the SERVICES, a copy of the payments of the periodic contributions made to INPS, INAIL, the Construction Fund (if it is a construction firm) and the joint bodies provided for by collective bargaining with the description and documentation of the relevant correct payment (e.g. reference contribution models by product area).

Without prejudice to the provisions above, the CONTRACTOR shall upon the COMPANY's request, demonstrate that it has fulfilled the above specifications.

4. Personnel employed in Italy by Companies with registered offices in a country within the European Union, excluding Italy

The CONTRACTOR shall comply with the regulations and provisions in force throughout the European Union and Italy, particularly with regard to social security, national insurance and the prevention of accidents with respect to such personnel.  
In particular, with regard to the obligations on the subject of contracts, insurance and contributions, the COMPANY reserves the right to ask the CONTRACTOR to provide suitable documentary evidence that the regulations on this subject in force in the European Union, Italy and the country of origin have been fulfilled by the CONTRACTOR.
5. Personnel employed in Italy by companies with registered office in a country outside the European Union

The CONTRACTOR shall comply with the regulations and provisions in Italy, particularly with regard to social security, national insurance and the prevention of accidents, and any other provisions in force in the country of origin on the subject, with respect to such personnel.
6. The CONTRACTOR undertakes to ensure forms of rotation for its personnel throughout the duration of the CONTRACT.
7. The PARTIES agree that if any condition regarding the provisions of the Article in question are not met, the COMPANY shall be entitled to terminate the CONTRACT due to lack of essential requirements in compliance with the provisions of Art. "Contract Termination".

#### 28.2 Personnel

1. Without prejudice to the provisions of Annex "E" - HSE-R Requirements (as applicable) and the HSE Disciplinary Policy included therein, the CONTRACTOR undertakes to perform the SERVICES with personnel that possess the requisite level of technical and professional capacity for the complexity of those SERVICES and in compliance with the regulations in force on the subject of health, safety and environment. If the COMPANY deems that one or more members of the CONTRACTOR's personnel do not have the necessary technical capacity/skills for the efficient and effective execution of the SERVICES or behave in such a way as to compromise their execution and/or the progress of the activities through carelessness, negligence, incompetence or other reasons related to the security and safety of persons, the COMPANY will give notice and insist that the CONTRACTOR adopts suitable measures to be implemented within a time limit set by the
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COMPANY in order to correct the subject issue, subject to the CONTRACTOR's autonomous decision.

Failure to adopt the measures aimed at ensuring efficient execution of the SERVICES within the set time limit shall constitute a material breach and thus the COMPANY reserves the right to terminate the CONTRACT in accordance with Art. "Contract Termination".

The CONTRACTOR thus undertakes to implement the necessary actions, including also the replacement of such personnel at its own care and cost, so as to ensure that its contractual obligations are met. The CONTRACTOR, at its own care and cost, will immediately substitute personnel that are absent through illness, injury, holiday or recovery.

The substitution of the CONTRACTOR's personnel shall in no way prejudice the continuity of the SERVICES.

2. The CONTRACTOR undertakes not to remove or replace any of its key personnel, as identified in the CONTRACT, without the prior consultation with the COMPANY.
3. The CONTRACTOR undertakes to provide its personnel with a suitable identification badge containing a photograph, the worker's details, the CONTRACTOR's logo as well as any/all additional elements provided for by the laws in force at the time of the performance of the CONTRACT. The CONTRACTOR will be responsible for the obligation to ensure that its personnel display the identification badge.  
The CONTRACTOR undertakes to ensure that the employees of any SUBCONTRACTORS and/or any authorized suppliers performing activities associated with the SERVICES on behalf of the CONTRACTOR, shall also observe the aforesaid obligations.

## **OBLIGATIONS AND DUTIES OF THE PARTIES**

### **29. Contractor's Obligations and Duties**

In addition to any other provisions of the CONTRACT, with the exception of the duties expressly assigned to the COMPANY under Art. "COMPANY's Duties", anything else necessary for the full and complete performance of the SERVICES is understood to be at the care and cost of the CONTRACTOR.

Regardless of their impact on the SERVICES, these duties must be included in the prices and/or rates provided for in the CONTRACT.

By way of example, but not exhaustively, the duties and obligations borne by the CONTRACTOR shall include:

- Salaries and benefits, tax deductions, insurance, welfare and injury contributions for all the personnel employed by the CONTRACTOR in relation to performance of the SERVICES in compliance with the legislation in force, the current national collective labor agreement for the CONTRACTOR's sector and any individual agreements applicable to that company. The CONTRACTOR undertakes to pay the salaries due to its personnel during the performance of the CONTRACT by bank transfer. The SUBCONTRACTORS must also comply with this method of payment with regard to its own personnel. Documentation proving that the aforesaid bank transfers have been carried out for the personnel of the CONTRACTOR and the SUBCONTRACTORS must be kept for the entire duration of the CONTRACT and submitted to the COMPANY upon request.
  - Expenses regarding the assessment of its personnel's state of psycho-physical health and medical fitness.
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- Compensatory time for its own personnel and their replacement during that time.
- Board and lodging expenses for its personnel employed in the SERVICES, unless otherwise specified in the CONTRACT.
- Expenses for the insurance policies as detailed in Art. "Insurance".
- Expenses (including postal, telegraph, telephone and stationery expenses), taxes and any other expenses necessary in relation to performance of the SERVICES.
- Overheads, both fixed and variable, to cover all the costs needed to maintain the firm and which have been assumed to pursue the company purpose and fulfill legal obligations. This type of expense includes but is not limited to costs for the maintenance of offices, equipment of any kind, staff personnel (such as administration, office staff, etc.) and non-executive directors.
- Support of the CONTRACTOR's head office services (for any SERVICES not carried out at the CONTRACTOR's head office).
- The use, at its own expense, of vehicles used in the execution of the SERVICES unless otherwise specified in the CONTRACT.
- Obtainment of the authorizations from the appropriate Authorities and/or public and/or private bodies, approvals, easements, etc. needed in relation to the performance of the SERVICES.
- Compliance with local regulations, where applicable, provided by the COMPANY (eg. "Protocolli di Legalità", "Protocolli d'intesa", etc.).
- Prompt notice to the COMPANY of any change concerning the certificate of incorporation or the articles of association or the persons who manage the company, also for the purposes of enforcing the antimafia legislation.
- Issue of any WORK PERMITS and authorizations for the CONTRACTOR's personnel, vehicles and support equipment to enter the SERVICES AREA (when applicable).
- If the SERVICES are performed inside the offices of the COMPANY and/or its SERVICES AREA, the CONTRACTOR shall, at the COMPANY's request, communicate to the COMPANY the names of the:
  - Employer (identified for the management of the activities in the CONTRACT);
  - Director(s) (identified for the management of the activities in the CONTRACT);
  - Supervisor (identified for the management of the activities in the CONTRACT);
  - Accident Prevention and Protection Service Manager;

### **30. COMPANY's duties**

Unless expressly specified elsewhere in the CONTRACT, the COMPANY shall assume only those costs detailed below:

- Delivery to the CONTRACTOR of the technical documentation and management documentation, where required, in relation to the performance of the CONTRACT.
  - Expenses for the COMPANY personnel carrying out the activities hereunder.
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- Obtainment of the authorizations from the appropriate Authorities and/or public and/or private bodies, permits, approvals, easements, etc. needed in relation to the performance of the SERVICES, which documents, as per law, cannot be obtained by the CONTRACTOR.
- Issue of any WORK PERMITS and authorization for the CONTRACTOR's personnel, vehicles and support equipment to enter the SERVICES AREA (when applicable).
- If the activity covered by the CONTRACT is carried out on board the COMPANY's PLATFORMS, the expenses for first aid operations for the CONTRACTOR personnel and, where available, medical assistance, without any liability for the COMPANY; any related expenses will be charged to the CONTRACTOR.
- If the activity covered by the CONTRACT is carried out on board the COMPANY's PLATFORMS, the provision of board and lodging for the CONTRACTOR's personnel on board said PLATFORMS.
- Before the commencement of the activities covered by the CONTRACT, delivery to the CONTRACTOR of any further technical documentation to supplement the DUVRI as well as the information on the risks of the area and in any case on the HSE profiles relevant for the purposes of the performed of the CONTRACT, containing any further prevention and protection measures to be adopted in order to remove and/or minimize the risks of interference linked to the specific nature of the activities covered by the CONTRACT that could not be foreseen when it was concluded or when the WORK ORDER was issued (where applicable).

## **CONTRACT ADMINISTRATION AND COMMUNICATIONS**

### **31. Contract Holder**

In order to exercise its right, as sanctioned by Article 1662 of the Italian Civil Code, to check the progress of the SERVICES and to verify the state thereof, the COMPANY will appoint a CONTRACT HOLDER.

The CONTRACT HOLDER oversees the maintenance of the relationship with the CONTRACTOR, checking that the contractual commitments assumed are fulfilled in an efficient and satisfactory manner, in compliance with legislation, contractual requirements and in accordance with the COMPANY policies on procurement, safety and respect for the environment.

In particular the following duties, which shall be considered as merely for illustrative purposes and not exhaustive, will be assigned to the CONTRACT HOLDER. The same will fulfill them directly and/or through the various COMPANY departments involved in the technical, administrative and accounting management of the CONTRACT and/or through third parties:

- Checking compliance with standards on accident prevention and environmental protection;
  - Checking that the SERVICES are provided in accordance with the CONTRACT and in accordance with the highest standards of workmanship;
  - Arranging for acceptance of any SERVICES within the time limits specified in the contract, also to enable issue of the relevant invoices by the CONTRACTOR, and checking that the amount invoiced for payment is correct;
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- Ensuring compliance with clauses that have an administrative impact (penalties, guarantees, testing etc.), ensuring an adequate flow of relevant information to the administration units;
- Checking that legal and insurance requirements have been met by the CONTRACTOR, for its personnel employed on the CONTRACT and for the activities covered by the CONTRACT;
- Implementing any changes to the CONTRACT;
- Ensuring compliance with the requirements of Art. "Subcontracting" of the CONTRACT.

The CONTRACTOR shall allow, at all times, access to and permanent presence in the SERVICES AREAS for the CONTRACT HOLDER and/or their representatives.

The CONTRACTOR must make available to the COMPANY's representatives any/all technical means and documents needed to carry out the inspection and supervision activities assigned to them.

The COMPANY will not, with regard to the monitoring and supervision described above, have any liability or obligation of any sort to the CONTRACTOR or to THIRD PARTIES, including in relation to the regulations on personal safety, this being the exclusive responsibility of the CONTRACTOR.

Notwithstanding the provisions of Art. "Amendments to the Contract", the PARTIES agree that any changes to the assigned CONTRACT HOLDER will not require a contractual revision and will be formally communicated to the CONTRACTOR in writing by the COMPANY.

### **32. Communications**

Any/all correspondence relating to the CONTRACT must contain the CONTRACT number and associated references.

Unless otherwise specified in the CONTRACT, all communications required under the CONTRACT will be in writing and will be considered valid if delivered personally, against a receipt, or sent by registered letter or telefax or e-mail, to the addresses specified in the CONTRACT.

These communications will be deemed valid for all purposes from the date of receipt by the addressee.

For contractual and legal purposes, the legal domicile of the COMPANY shall be deemed to be its registered office, unless otherwise stated in the CONTRACT or subsequently notified in writing.

Each PARTY may change its address, subject to giving at least 15 (fifteen) days' written notice to the other PARTY.

## **LIABILITY AND INSURANCE**

### **33. Liabilities of the Parties**

#### **1. Liability for wilful misconduct or gross negligence**

Pursuant to art. 1229 of the Italian Civil Code, it is agreed that the liability limitations provided for in the subsequent clauses of this Article will not apply in case of damage caused by wilful misconduct or gross negligence by the COMPANY GROUP or by the CONTRACTOR GROUP.

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In case of the willful misconduct or gross negligence by the COMPANY GROUP or by the CONTRACTOR GROUP, the COMPANY or the CONTRACTOR will remain liable for damage caused by their own GROUPS and they hold harmless and indemnify the other GROUP against any claim for damages deriving from the willful misconduct or gross negligence by the GROUP they belong to.

2. EQUIPMENT, MATERIALS and personnel of the CONTRACTOR GROUP

If, as a consequence of the SERVICES (including any transport) damage occurs:

- 2.1 to the personnel of the CONTRACTOR GROUP and to their personal belongings;
- 2.2 to the equipment and MATERIALS of the CONTRACTOR GROUP;
- 2.3 to the staffing agency personnel and to their personal belongings,

the CONTRACTOR will assume full liability for such damage, exempting the COMPANY GROUP from any liability.

The CONTRACTOR will therefore indemnify and hold harmless the COMPANY GROUP from any claim which may be made by the CONTRACTOR GROUP and by the staffing agency personnel as a consequence of the above indicated damage.

3. Equipment, materials and personnel of the COMPANY GROUP

Subject to the provisions of Art. "Health, Safety and the Environment", if, as a consequence of the SERVICES, damage occurs:

- 3.1 to the personnel of the COMPANY GROUP and to their personal belongings;
- 3.2 to the equipment and materials of the COMPANY GROUP,

the COMPANY will assume full liability for such damage, exempting the CONTRACTOR GROUP from any liability.

The COMPANY will therefore indemnify and hold harmless the CONTRACTOR GROUP from any claim which may be made by the COMPANY GROUP as a consequence of the above indicated damage.

4. Damage to Third Parties

The CONTRACTOR assumes full liability for damage caused to Third Parties, including pollution damage, in the performance of the SERVICES, by the CONTRACTOR GROUP and by the staffing agency personnel hired by the CONTRACTOR, and will indemnify and hold harmless the COMPANY GROUP from any claim which may be made by Third Parties as a consequence of the above indicated damage.

The COMPANY assumes full liability for damage caused to Third Parties by the COMPANY GROUP during the performance of the CONTRACT, and will indemnify and hold harmless the CONTRACTOR GROUP from any claim which may be made by Third Parties as a consequence of the above indicated damage.

5. Liability for non-conforming SERVICES

If, owing to incorrect calculations, processing, interpretations etc., or in any case for causes ascribable to the CONTRACTOR, the SERVICES are not in conformity with the requirements of the CONTRACT, the CONTRACTOR undertakes at its own responsibility, care and cost, to effect the necessary re-workings so that the SERVICES conform with the provisions of the CONTRACT, without costs for the COMPANY by the deadline established in the CONTRACT and without prejudicial delays to the SERVICES plans.

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6. Consequential damage

The PARTIES expressly agree that the COMPANY GROUP and the CONTRACTOR GROUP shall not be liable towards each other for damage caused by the loss and/or interruption of use of the equipment, profit, production and business.

7. Liability for failure to respect the methods and times of performance of the SERVICES

The CONTRACTOR shall bear any/all expenses and consequences deriving from failure to respect the methods and the times for performance of the SERVICES as detailed in the CONTRACT, with the consequent application of penalties where such are provided for in the CONTRACT.

8. Liability for Health, Safety and the Environment

The CONTRACTOR shall bear any/all expenses and consequences deriving from the nonobservance of the regulations safeguarding health and safety of the workers and/or environmental protection and/or radiation protection provided for by regulations in force and/or referred to in Art. "Health, Safety and the Environment", by holding harmless the COMPANY GROUP from any/all liabilities even towards Third Parties.

9. Liability for cost assessments

The CONTRACTOR is solely and fully liable in case of assessment errors and for erroneous information howsoever obtained, except for those obtained from the COMPANY, as indicated in Art. "Knowledge of the area and cost assessment".

10. Liability for failure to pay wages and salaries, social security contributions, mandatory insurance premiums and withholding taxes

The CONTRACTOR holds harmless and indemnifies the COMPANY GROUP for the amounts the latter is called upon to pay for wages and salaries, social security contributions, mandatory insurance premiums and tax deductions relating to the CONTRACTOR's personnel and those of any SUBCONTRACTORS, as well as for damage suffered by personnel caused by the CONTRACTOR or by any SUBCONTRACTORS.

**34. Insurances**

1. Without prejudice to any obligations and liabilities of the CONTRACTOR with respect to the CONTRACT and/or those provided by law, the CONTRACTOR shall be bound to take out and keep valid for the entire duration of the CONTRACT the insurance policies indicated in the CONTRACT, with insurance companies having a minimum financial standing rating of not less than "BBB", as quoted by STANDARD AND POOR'S (S&P) or an equivalent rating agency at the effective date of the CONTRACT.
  2. The insurance policies and maximum cover of the policy required by the CONTRACT are minimum requirements and do not set out limits of liability of the CONTRACTOR with respect to the CONTRACT. Unless otherwise established by the CONTRACT, the CONTRACTOR shall be liable, hold harmless and indemnify the COMPANY GROUP for any event which is not covered by the CONTRACTOR's said policies.
  3. Any deductibles (excess) and uncovered items in the policies of the CONTRACTOR shall be borne by the CONTRACTOR.
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4. All policies required from the CONTRACTOR shall require that the insurance companies waive all rights of subrogation against any member of the COMPANY GROUP and their insurers, except for the Vehicle Third-Party Liability ("RC auto"), within the limits of the CONTRACTOR's liabilities under the CONTRACT.
5. For the entire duration of the CONTRACT, the policies of the CONTRACTOR shall not be cancelled or amended without prior written notice to the COMPANY (at least 30 days prior to each amendment or cancellation), in such a case the cover and insurance conditions set out in the CONTRACT are to be maintained.
6. The CONTRACTOR undertakes to ensure that the SUBCONTRACTORS are insured with insurance policies appropriate to the subcontracted activities. At the request of the COMPANY, the CONTRACTOR will provide the COMPANY with copy of the insurance certificates of the SUBCONTRACTORS.
7. The CONTRACTOR will be liable, hold harmless and indemnify the COMPANY from any/all damages and costs, including legal expenses, that arise, for any reason, for non-payment of the insurance compensation by the insurers of the CONTRACTOR or if the CONTRACTOR fails to take out or maintain the insurance cover required by the CONTRACT. In addition, in the case the CONTRACTOR fails to take out or maintain the insurance cover required by the CONTRACT, the CONTRACTOR shall remain fully liable at law and with respect to the CONTRACT, the COMPANY reserves the right to terminate the CONTRACT, as indicated in Art. "Contract Termination".
8. Subject to the COMPANY's right to request a copy of the insurance policies, the CONTRACTOR will send to the CONTRACT HOLDER, 20 (twenty) days before commencing any activity associated with the CONTRACT, copy of the insurance policies certificates of the CONTRACT which shall indicate:
  - a) the insured party/ies;
  - b) the insurance company;
  - c) the commencement date and expiry date of all insurance cover;
  - d) the maximum cover of each policy;
  - e) that the insurance covers in conformity with the contractual requirements;
  - f) that the insurance companies with which the CONTRACTOR has taken out the insurance policies waive any rights of subrogation against any member of the COMPANY GROUP and its insurers;
  - g) financial standing rating of the insurance company.

The COMPANY shall not accept any liability for the correctness of the policies or of the policy certificates provided by the CONTRACTOR. The handover of the policies or of the policy certificates shall not constitute the CONTRACTOR's fulfillment of any obligations required by the CONTRACT.

9. With respect to the requirements indicated in this Article, CONTRACTOR must produce evidence of the following policies:
    - 9.1 Employers' liability insurance ("RCO") covering the CONTRACTOR's personnel with a maximum cover of not less than 3,000,000.00 euros (three million) for each event and with a limit per person of not less than 1,000,000.00 euros (one million). Claims made by the CONTRACTOR's personnel against the COMPANY are to be considered as claims against the CONTRACTOR and indemnified by such policy. Insurance coverage must be effective when the CONTRACTOR's personnel are abroad or are carried by means of transport
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belonging to the COMPANY and include the warranty for any recourse actions made by INAIL (Italian Worker's Compensation Authority) or any other public or private entity insuring the CONTRACTOR for injuries, illness or death.

- 9.2 Insurance covering injuries to or death of the CONTRACTOR GROUP's personnel employed under the CONTRACT, according to the provisions of legislation in force. The CONTRACTOR shall however take out such policy even if it is not required by law and/or by the labour contract.
- 9.3 THIRD PARTY liability insurance ("RCT") covering the CONTRACTOR'S activities under the CONTRACT, with a maximum cover of not less than 10,000,000.00 euros (five million) for each event. If the CONTRACTOR utilizes SUBCONTRACTORS, and the same are insured under a single policy of the CONTRACTOR, such policy shall provide for the cross-liability of all the insured parties.
- 9.4 If the CONTRACTOR uses motor vehicles in the performance of the CONTRACT, Vehicle Third-Party Liability ("RC auto"), including liability for injury to passengers.
- 9.5 All risk policy covering CONTRACTOR GROUP's EQUIPMENT and PB3 for a limit amounting to the full replacement value thereof, including when the PB3 is in use of COMPANY GROUP.
- 9.6 Each and every other policy required by the COMPANY or by law.

## **GUARANTEES**

### **35. Insurance and bank guarantees**

1. Where required by the CONTRACT, the CONTRACTOR must obtain at its own care and cost a "first demand" guarantee in favor of the COMPANY, from a primary Bank or from an Insurance Company with a minimum financial standing rating not below "BBB" as quoted by STANDARD AND POOR'S (S&P) or an equivalent rating agency at the effective date of the CONTRACT. The text of the Guarantee must be drawn up in conformity with Annex "C" - Specimen/s of Bank or Insurance Guarantee. No payment will be made to the CONTRACTOR before acceptance of the Guarantee by the COMPANY.
  2. If the Guarantee is not drawn up according to Annex "C", or the duration or the amount guaranteed does not correspond with the CONTRACT provisions, or the Bank or Insurance Company does not meet the requirements referred to within this Article, the CONTRACTOR will be bound to make the necessary adaptations at its care and cost.
  3. If the commencement of the SERVICES is delayed for any cause which is not attributable to the CONTRACTOR, the guarantee shall be extended for an equal period at the CONTRACTOR's care but at the COMPANY's cost. Vice versa, the said expenses will be borne by the CONTRACTOR if the commencement of the SERVICES is delayed for any cause attributable to the CONTRACTOR.
  4. In case of failure to set up the guarantee referred to in this Article, the COMPANY reserves the right to terminate the CONTRACT, according to the provisions of Art. "Contract Termination".
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### **36. Technical guarantees**

1. The CONTRACTOR guarantees to perform the SERVICES in conformity with the CONTRACT, according to national and international standards, and conforming to the most updated methodologies within the relevant sector.
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**ANNEX "A" – LIST OF PRICES AND/OR RATES**  
 Bid Request n. 3008046 - Provision of one OPT Power buoy PB3 to be deployed in Adriatic Sea for the test campaign of subsea batteries recharging"

Struct.	Row	Description	Unit	Offer dated 28-2-18	Note
<b>1 Phase 1 &amp; Phase 2 – Delivery, Commissioning and First Trial Phase</b>					
FO					
	1	Provision of one OPT Power buoy PB3 to be deployed in Adriatic Sea for the test campaign of subsea batteries recharging. The provision will be in conformity in all respects with the provisions of the CONTRACT and its annexes, with particular reference to Annex "D" - Technical Specifications.	M0: Phase 1 End of Kick-off Meeting (KOM) after presenting bank guarantee as per Eni standard and expiration on M2 Phase 1 DELIVERY CHECK REPORT	FO	***
	2		M1: Phase 1 FAT (10+3 months – Task2) after presenting bank guarantee as per Eni standard and expiration on M2 Phase 1 DELIVERY CHECK REPORT	FO	***
	3		M2: Phase 1 DELIVERY CHECK REPORT	FO	***
	4		M4: Phase 1 OFFSHORE COMMISSIONING TEST	FO	***
	5		M5: Phase2 6 months assessment	FO	***
	6		M6: Phase2 12 months assessment	FO	***
<b>2 Phase 2: First trial phase</b>					
	7	Decommissioning and De-mobilization of one OPT Power buoy PB3. The provision will be in conformity in all respects with the provisions of the CONTRACT and its annexes, with particular reference to Annex "D" - Technical Specifications.	Phase2 start of demobilization	FO	***
	8	Umbilical Cable and Connector assembly (Commercial Cable and Two Dry-Mate Connectors)	50 meter	FO	*** Commercial cable and connector assembly ( 1 cable 80m + Dry mate connector buoy end + drymate connector seabed dummy load end)
	9	Implementation of a Fibra optic interface on the PB3 subsea connector terminal		FO	*** Cost to implement the optical capability on the PB3's subsea terminal connector ready for connection to cable.
	10	Certification of Towing and lifting points by IACS member		FO	*** This IACS accreditation is for the towing and lifting points only
	11	PB3 hosted dummy load		FO	*** Purchase of dummy load equipment, it's integration to the PB3 and development of switchable capability between it and seabed dummy load
<b>3 Phase 3 - Second Trial Phase (OPTIONAL)</b>					
	12	Operation&Maintenance, remote data collection, monitoring and reporting for at sea test trials	M7: Phase3 authorization	FO	*** Includes insurance
	13	Operation&Maintenance, remote data collection, monitoring and reporting for at sea test trials	M8: Phase3 12 months assessment	FO	*** Includes insurance
<b>4 Phase 3: Second trial phase (OPTIONAL)</b>					
	14	Decommissioning and De-mobilization of one OPT Power buoy PB3. The provision will be in conformity in all respects with the provisions of the CONTRACT and its annexes, with particular reference to Annex "D" - Technical Specifications.	M9: Phase3 start of demobilization	FO	***
<b>5 Optional Service</b>					
	15	Additional ESS 50 kWh module		FO	***
	16	Full system Certification of the system by an IACS member		FO	*** This is a full system IACS certification which includes towing and lifting points
	17	Training of max two COMPANY employees for system O&M (IN CASE OF PB3 PURCHASE)		FO	*** Based on a 5 day course being conducted on OPT premises in NU USA. Eni Travel, subsistence and expenses for Eni personnel are excluded
	18	PB3 purchase		FO	*** Same PB3 that has been on trial
	19	Purchase (x1) Triaxis Wave rider Buoy		FO	*** 1x triaxis waverider buoy including buoy, commissioning on site and commi/data collection service
<b>6 At documented cost (if applicable)</b>					
	20	Onshore Service Technician for extra lump activities including food , accommodation and transfers (US Dollar/day)	5 day minimum	FO	*** There is a 5 day minimum charge
	21	Offshore Service Technician for extra lump activities including food , accommodation and transfers (US Dollar/day)	5 day minimum	FO	*** There is a 5 day minimum charge
<b>7 CONTRACT REVISION: additional supply and services relevant to relocation of the OPT PB3 PowerBuoy® to Viviana platform</b>					
	22	Additional PM and engineering services relevant to relocation of the OPT PB3 PowerBuoy® to Viviana platform	M0- Contract Revision Award	FO	*** Includes all the PM and design services for the relocation of the OPT PB3 PowerBuoy® to Viviana platform as stated in the specification 0624008ESF30002 "Progetto PLACE - Specification for the additional supply and services relevant to relocation of the OPT PB3 PowerBuoy® to Viviana platform"
	23	Additional materials and equipments procurement and supply relevant to relocation of the OPT PB3 PowerBuoy® to Viviana platform	M1- SAT	FO	*** Includes all the materials and equipments needed for the relocation of the OPT PB3 PowerBuoy® to Viviana platform as stated in the specification 0624008ESF30002 "Progetto PLACE - Specification for the additional supply and services relevant to relocation of the OPT PB3 PowerBuoy® to Viviana platform" including, but not limited to, the subsea electrical cable, wet connectors and all the required ancillaries with the only exception of the 3 complete sets of PB3 mooring fiber lines, wave rider mooring arrangement suitable for Viviana quoted in separate position
	24	Additional assistance services relevant to relocation of the OPT PB3 PowerBuoy® to Viviana platform	M3- Ready for Operation	FO	*** Includes all the assistance services for the relocation of the OPT PB3 PowerBuoy® to Viviana platform as stated in the specification 0624008ESF30002 "Progetto PLACE - Specification for the additional supply and services relevant to relocation of the OPT PB3 PowerBuoy® to Viviana platform"
<b>8 CONTRACT REVISION: Optional supply</b>					
FO					
	25	OPTIONAL quotation for the supply of the three spare sets of fiber lines	M2- Yard Test	FO	***
	26	OPTIONAL quotation the supply of the complete wave rider buoy mooring arrangement	M2- Yard Test	FO	***
<b>9 CONTRACT REVISION: OPTIONAL supply of scale models</b>					
FO					
	27	OPTIONAL - Scale Model PB3 PowerBuoy® - approximately 1,5 m. tall, fixed model Note: This model is already in the Eni Offices of D R & D in Via Maritano 26 – 20097 San Donato Milanese.		FO	*** supply of the PB3 model as stated in the specification 0624008ESF30002 "Progetto PLACE - Specification for the additional supply and services relevant to relocation of the OPT PB3 PowerBuoy® to Viviana platform"
	28	OPTIONAL - Scale Model PB3 PowerBuoy® - approximately 1,5 m. tall with motorized float: new model to be built		FO	*** supply of the PB3 model as stated in the specification 0624008ESF30002 "Progetto PLACE - Specification for the additional supply and services relevant to relocation of the OPT PB3 PowerBuoy® to Viviana platform"
	29	OPTIONAL - Scale Model PB3 PowerBuoy® - approximately 1,0 m. tall with motorizes float: new model to be built		FO	*** supply of the PB3 model as stated in the specification 0624008ESF30002 "Progetto PLACE - Specification for the additional supply and services relevant to relocation of the OPT PB3 PowerBuoy® to Viviana platform"
	30	OPTIONAL - Scale Model PB3 PowerBuoy® - approximately 1,0 m. tall with motorizes float: new model to be built		FO	*** supply of the PB3 model as stated in the specification 0624008ESF30002 "Progetto PLACE - Specification for the additional supply and services relevant to relocation of the OPT PB3 PowerBuoy® to Viviana platform"

## CERTIFICATION PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT

I, George H. Kirby III, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or other persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 9, 2020

*/s/ George H. Kirby III*

George H. Kirby III

*President and Chief Executive Officer*

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## CERTIFICATION PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT

I, Matthew T. Shafer, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or other persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 9, 2020

*/s/ Matthew T. Shafer*  
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Matthew T. Shafer  
Chief Financial Officer

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**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc. (the "Company") for the period ended January 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, George H. Kirby III, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 9, 2020

*/s/ George H. Kirby III*

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George H. Kirby III

*President and Chief Executive Officer*

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc. (the "Company") for the period ended January 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Matthew T. Shafer, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 9, 2020

*/s/ Matthew T. Shafer*

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Matthew T. Shafer  
Chief Financial Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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