

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended April 30, 2008

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

O. P. T.

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.)*

1590 REED ROAD
PENNINGTON, NJ 08534
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (609) 730-0400

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

<u>Title of Each Class</u>	<u>Name of Exchange on Which Registered</u>
Common Stock, par value \$0.001	The Nasdaq Global Market

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

None

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

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting 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)

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

The aggregate market value of the common stock of the registrant held by non-affiliates as of October 31, 2007, the last business day of the registrant's most recently completed second fiscal quarter, was \$157.0 million based on the closing sale price of the of the registrant's common stock on that date as reported on the Nasdaq Global Market.

The number of shares outstanding of the registrant's common stock, as of June 30, 2008 was 10,210,354.

DOCUMENTS INCORPORATED BY REFERENCE

<u>Document</u>	<u>Part of the Form 10-K into Which Incorporated</u>
Proxy Statement for the registrant's 2008 Annual Meeting of Stockholders	III

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

Special Note Regarding Forward-Looking Statements

We have made statements in this Annual Report on Form 10-K (the “Annual Report”) in, among other sections, Item 1 — “Business,” Item 1A — “Risk Factors,” Item 3 — “Legal Proceedings,” and Item 7 — “Management’s Discussion and Analysis of Financial Condition and Results of Operations” that are forward-looking statements. Forward-looking statements convey our current expectations or forecasts of future events. Forward-looking statements include statements regarding our future financial position, business strategy, budgets, projected costs, plans and objectives of management for future operations. The words “may,” “continue,” “estimate,” “intend,” “plan,” “will,” “believe,” “project,” “expect,” “anticipate” and similar expressions may identify forward-looking statements, but the absence of these words does not necessarily mean that a statement is not forward-looking.

Any or all of our forward-looking statements in this Annual Report may turn out to be inaccurate. We have based these forward-looking statements 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.” 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.

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

ITEM 1. BUSINESS

Overview

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

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

- Our utility PowerBuoy system is capable of supplying electricity to a local or regional electric power grid. Our wave power stations will be comprised of a single PowerBuoy system or an integrated array of PowerBuoy systems, plus the remaining components required to deliver electricity to a power grid. We intend to sell our utility PowerBuoy system to utilities and other electrical power producers seeking to add electricity generated by wave energy to their existing electricity supply. In July 2007, our PowerBuoy interface with the electrical utility power grid was certified as compliant with international standards. An independent laboratory provided testing and evaluation services to certify that the OPT systems comply with designated national and international standards. The PowerBuoy grid interface will bear the Electrical Testing Laboratories (ETL) listing mark, and can be connected to the utility grid.
- Our autonomous PowerBuoy system is designed to generate power for use independent of the power grid in remote locations. There are a variety of potential applications for this system, including sonar and radar surveillance, tsunami warning, oceanographic data collection, offshore platforms and offshore aquaculture.

From October 2005 to October 2006, we operated a demonstration PowerBuoy system with a maximum peak, or rated, output of 40 kilowatts, or kW, off the coast of New Jersey under a contract with the New Jersey Board of Public Utilities. This PowerBuoy system was removed from the ocean in October 2006 and underwent planned maintenance and diagnostic testing of the system. This system was redeployed off the coast of New Jersey in September 2007.

Our product development and engineering efforts are focused on increasing the maximum rated output of our utility PowerBuoy system from the current 40kW, and, to a lesser extent, researching and developing new products, product applications and complementary technologies. We believe that, by increasing the maximum related output of our utility PowerBuoy system, we will be able to decrease the cost per kW of our PowerBuoy system and the cost per kilowatt hour of the energy generated. We expect to complete the design for our 150kW PowerBuoy by the end of 2008, and for our 500kW PowerBuoy by the end of 2010. We had previously planned to increase the maximum rated output to 150kW in 2007 and then to 250kW prior to achieving our goal of 500kW; however, the present schedule for development of the 150kW and 500kW PowerBuoys reflects management's decision to enhance the system design to allow for improved survivability in 100-year storm wave conditions, and to work with a third-party engineering group to attain independent certification of the 150kW PowerBuoy design. In addition, we believe that direct transition to the 500kW from the 150kW PowerBuoy system will be accelerated by the measures now being undertaken in connection with the 150kW design. We have made substantial progress in the design, analysis and commencement of fabrication of what we believe to be the first utility-grade underwater substation, or pod, for wave power. The pod serves as the point at which energy generated by multiple PowerBuoys is aggregated and the voltage is increased, prior to transmission ashore and being fed into the power grid. The required switching and protection circuits for the individual PowerBuoys are also included in the pod. In addition, our 150kW PowerBuoy

design effort is well underway. The power conversion and controls system is substantially complete for the 150kW PowerBuoy system, and we expect to commence ocean testing in 2009.

In addition, we are focusing on expanding our key commercial opportunities for both the utility and the autonomous PowerBuoy systems. We currently have commercial relationships with the following:

- Iberdrola S.A., or Iberdrola, which is a large electric utility company located in Spain and one of the largest renewable energy producers in the world, Total S.A., or Total, which is one of the world's largest oil and gas companies, and two Spanish governmental agencies, for the first phase of the construction of a 1.39 megawatt, or MW, wave power station off the coast of Santoña, Spain. The initial 40kW PowerBuoy for this project is fully fabricated, is now undergoing final on-land endurance testing, and is expected to be ready for deployment in August 2008.
- Total and Iberdrola, to evaluate the development of a wave power station off the coast of France.
- The United States Navy, to develop and build wave power systems at the US Marine Corps Base in Hawaii. One PowerBuoy system was installed in connection with this project for a total of eight months over a two-year period and another PowerBuoy system was deployed and tested during June 2007. A third PowerBuoy system is ready for deployment.
- The Scottish Government, to develop a 150kW PowerBuoy for deployment at the Orkney Islands European Marine Energy Center. This project is in progress, and the PowerBuoy is expected to be ready for deployment in 2009.
- Pacific Northwest Generating Cooperative (PNGC Power), who is providing funding toward the fabrication and ocean installation of a 150kW PowerBuoy near Reedsport, Oregon. This project is in progress, and the PowerBuoy is expected to be ready for deployment in 2009.
- The United States Navy, to provide PowerBuoy technology to a unique program for ocean data gathering. Under this program, the Navy will conduct an ocean test of our autonomous PowerBuoy as the power source for the Navy's Deep Water Acoustic Detection System. The PowerBuoy is expected to be ready for deployment by the end of 2008.

As part of our marketing efforts, we use demonstration wave power stations to establish the feasibility of wave power generation. In addition to the demonstration PowerBuoy system operated off the coast of New Jersey, we plan to develop and operate two additional demonstration wave power stations. Unlike the New Jersey power system, these demonstration wave power stations will, if approved and constructed as planned, be connected to the local power grids.

In February 2006, we received approval from the South West of England Regional Development Agency (SWRDA) to install a 5MW demonstration wave power station off the coast of Cornwall, England as part of SWRDA's "Wave Hub" project, a planned offshore facility for demonstrating and testing wave energy generation devices. SWRDA has obtained the necessary permits for this Wave Hub project, and the project has been approved for over £20 million of funding for construction of the Wave Hub infrastructure. SWRDA currently is considering the tender process for the design and construction of such infrastructure, and expects it to be installed in 2010. We are in the planning and development stage for our part of the project.

In February 2007, the US Federal Energy Regulatory Commission (FERC) granted us a preliminary permit to evaluate the feasibility of a location off the coast of Reedsport, Oregon for the proposed construction and operation of a wave power station with an anticipated maximum rated output of 50MW, of which up to the first 2MW will be a demonstration wave power station. In February 2007, we signed a cooperative agreement with PNGC Power as our utility partner for the development of a wave power station. In July 2007, we filed a Pre-Application Document and Notice of Intent with FERC for the Reedsport project, which provides notice of our intent to seek a license for the Reedsport wave park and information regarding the project. We believe this was the first Pre-Application Document and Notice of Intent filed by a wave power company, and is an important step in the full licensing process for the Reedsport project.

We plan to generate revenue from the demonstration wave power stations in Cornwall and Reedsport by selling electricity to utilities.

In January 2007, we filed applications with FERC for preliminary permits to evaluate the feasibility of two locations, off the coasts of Coos Bay, Oregon and Newport, Oregon, for the proposed construction and operation of wave power stations, each with an anticipated maximum rated output of 100MW. In March 2007, FERC granted us a preliminary permit to evaluate the Coos Bay location, and in March 2008, we filed a Pre-Application Document and Notice of Intent with FERC for Coos Bay.

In May 2008, we announced a Joint Development Agreement with Griffin Energy for the development, construction and operation of a wave power station off the coast of Western Australia. Griffin Energy is a leading Western Australia diversified energy supplier. Under the terms of the agreement, Ocean Power Technologies (Australasia) Pty. Ltd., our subsidiary based in Australia, and Griffin Energy plan to form a joint venture, to which Ocean Power Technologies (Australasia) will provide the turn-key power system, plus operations and maintenance service.

We were incorporated under the laws of the State of New Jersey in April 1984 and began commercial operations in 1994. On April 23, 2007, we reincorporated in Delaware. Our principal executive offices are located at 1590 Reed Road, Pennington, New Jersey 08534, and our telephone number is (609) 730-0400. Our website address is www.oceanpowertechnologies.com. We make available free of charge on our website our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to those reports as soon as reasonably practicable after such material is filed electronically with the Securities and Exchange Commission, or SEC. The information on our website is not a part of this Annual Report. Our common stock has been listed on the AIM market of the London Stock Exchange plc since October 2003 and on the NASDAQ Global Market since April 24, 2007, the date on which we commenced our initial public offering in the United States. In that offering, we sold 5,000,000 shares of our common stock at a price to the public of \$20.00 per share.

Our Market

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

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

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

- *Infrastructure constraints.* In many parts of the world, the existing electricity infrastructure is insufficient to meet projected, and in some places existing, demand. Expansion of generating capacity from existing energy sources is frequently hindered by significant regulatory, political and economic constraints.

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

Wave Energy

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

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

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

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

Our Competitive Advantages

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

Our PowerBuoy system uses an ocean-tested technology to generate electricity.

- We have been conducting ocean tests for over a decade in order to demonstrate the viability of our technology. We initiated our first ocean installation in 1997 and have had several deployments of our

systems for testing and operation since then, the longest of which has had continuous operation of 12 months. Our PowerBuoy systems have survived several hurricanes and winter storms while installed in the ocean.

- We had an operational demonstration PowerBuoy system off the coast of New Jersey from October 2005 until October 2006 when the system was removed from the ocean for planned maintenance and diagnostic testing. The system was redeployed off the coast of New Jersey in September 2007. We currently plan to build and deploy two additional demonstration wave power stations that, unlike the PowerBuoy system in New Jersey, will provide electricity to the local power grids. In February 2006, we received approval from the SWRDA to install a demonstration wave power station off the coast of Cornwall, England and in February 2007, FERC granted us a preliminary permit to evaluate the feasibility of a wave power station off the coast of Reedsport, Oregon, a portion of which will be for demonstration purposes. During fiscal 2008, we filed a Pre-Application Document and Notice of Intent with FERC for the Reedsport project. This provided notice of our intent to seek a license for the Reedsport Wave Park and information regarding the project.

Our PowerBuoy system's grid connection has been certified.

- In July 2007, we announced that our PowerBuoy grid connection system had been certified as compliant with designated national and international standards. This qualifies our technology for integration into utility grid systems.

Our PowerBuoy system is efficient in harnessing wave energy.

- Our PowerBuoy system is designed to efficiently convert wave energy into electricity by using onboard sensors to detect actual wave conditions and then to automatically adjust the performance of the generator using our proprietary electrical and electronics-based control systems in response to that information.
- One measure of the efficiency of an electric power generation system is load factor. The load factor is the percent of kilowatt hours produced by a system in a given period as compared to the maximum kilowatt hours that could be produced by the system in that period. A high load factor indicates a high degree of utilization of the capacity of the system and provides a means to compare the efficiencies of different energy sources to produce equivalent power outputs (without taking into account the relative costs of constructing such systems). Since we have not yet operated a complete wave power station, we do not have a measured load factor. However, based on our research and analysis, we believe the load factor for a PowerBuoy wave power station located at most of our targeted sites would be in the range of 30% to 45%.

Our PowerBuoy system takes advantage of time-tested and well-known technology.

- Our PowerBuoy system is designed to combine features of ocean-going buoys with advanced electrical and electronics-based systems. Since standard ocean-going buoys have been deployed in maritime applications for decades, their survival and risk profiles are known and proven. By using electrical, rather than mechanical, engineering solutions whenever possible, we are able to control materials, construction and other capital costs while maintaining reliability.
- Our PowerBuoy system can be built using easily sourced components supplied by third parties. Due to the PowerBuoy system's modular design, total construction time is minimized as multiple components can be built simultaneously, and generating capacity can be scaled up or down by incrementally adding or subtracting groups of PowerBuoy units. In addition, our PowerBuoy system can be deployed using common maritime techniques.

Numerous potential sites for our wave power stations are located near major population centers worldwide.

- Our systems are designed to work in sites with average annual wave energy of at least 20kW per meter of wave front, which can be found in many coastal locations around the world. In particular, we are targeting coastal North America, the west coast of Europe, the coasts of Australia and the east coast of Japan. These potential sites not only have appropriate natural resources for harnessing wave energy, but they are also located near large population centers with significant and increasing electricity requirements.

We have significant commercial relationships.

- Our current projects with Iberdrola, Total and PNGC Power provide us with an initial opportunity to sell our wave power stations to utilities. By collaborating with leaders in renewable energy development, we believe we are able to accelerate both our in-house knowledge of the utility power generation market and our reputation as a credible renewable energy equipment supplier. If these projects are successful, we intend to leverage our experiences with our Spain and France projects to add wave power stations, new customers and complementary revenue streams from operations and maintenance contracts similar to the agreement we have in connection with the Spain project.
- With the funding from the US Navy, we have been able to refine our PowerBuoy system while simultaneously preparing for commercial deployment to address a particular customer need. We believe that the successful deployment of our PowerBuoy systems for the US Navy will significantly enhance market visibility.

Our PowerBuoy system has the potential to offer a cost competitive renewable energy power generation solution.

- Our product development and engineering efforts are focused on increasing the maximum rated output of the design of our utility PowerBuoy system from the current 40kW. We expect to complete the design for our 150kW PowerBuoy by the end of 2008, and for our 500kW PowerBuoy by the end of 2010. Assuming we are able to reach manufacturing levels of at least 300 units of 500kW PowerBuoy systems per year, we believe, based upon our research and analysis, that the economies of scale we would have with our fabricators would allow us to offer a renewable electricity solution that competes with other existing renewables in key markets. We expect to complete development of our 500kW PowerBuoy system in 2010.
- Prior to achieving full production levels of the 500kW PowerBuoy system, if we achieve economies of scale for our 150kW PowerBuoy systems, we expect to be able to offer a renewable electricity solution that competes with the price of electricity from traditional sources in certain local markets where the current retail price of electricity is relatively high or where sufficient subsidies are available.

Our systems are environmentally benign and aesthetically non-intrusive.

- We believe that our PowerBuoy system does not present significant risks to marine life and does not emit significant levels of pollutants. In connection with our project at the US Marine Corps Base in Hawaii, our customer, the US Navy, obtained an independent environmental assessment of our PowerBuoy system prior to installation, as required by the National Environmental Policy Act. Although our project for the US Navy only contemplates an array of up to six PowerBuoy systems in Hawaii, we believe that PowerBuoy systems deployed in other geographic locations, including larger PowerBuoy systems under development and multiple-system wave power stations, would have minimal environmental impact due to the physical similarities with the tested system.
- Since our PowerBuoy systems are typically located one to five miles offshore, PowerBuoy wave power stations are usually not visible from the shore. Visual impact is often cited as one of the reasons that many communities have opposed plans to develop power stations, in particular wind power stations. Our PowerBuoy system has the distinct advantage of having only a minimal visual profile. Only a small portion of the unit is visible at close range, with the bulk of the unit hidden below the water.

Our Business Strategy

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

- *Concentrate sales and marketing efforts on four geographic markets.* We are focusing our sales and marketing efforts over the next three years on coastal North America, the west coast of Europe, the coasts of Australia and the east coast of Japan. We believe that each of these areas represents a strong potential market for our PowerBuoy wave power stations because they combine appropriate wave conditions, political and

economic stability, large population centers, high levels of industrialization and significant and increasing electricity requirements.

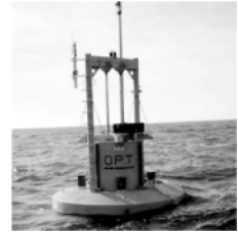
- *Continue to increase PowerBuoy system output.* Our product development and engineering efforts are focused on increasing the output of the design of our PowerBuoy systems from 40kW to 500kW. We expect to complete the design for our 150kW PowerBuoy by the end of 2008, and for our 500kW PowerBuoy by the end of 2010. The key to increasing the rated output of the PowerBuoy system is to increase the system's efficiency as well as its diameter. If we increase the size of a PowerBuoy system, we will be able to increase the amount of wave energy the system can capture and, in turn, increase the output of the system. For example, if we double the size of the unit's diameter, we will approximately quadruple its power capacity. We believe that by increasing system output, we will be able to decrease the cost per kW of our PowerBuoy system and the cost per kilowatt hour of the energy generated.
- *Construct demonstration wave power stations to encourage market adoption of our wave power stations.* Our demonstration wave power stations are intended to allow us to prove the viability of our PowerBuoy systems in a particular region. By enabling customers to experience our technology first-hand, we believe we will be able to facilitate our entry into our target markets. In addition, demonstration wave power stations provide us with the opportunity to test and refine our technology in actual operating conditions. In February 2006, we were approved by SWRDA to install a 5MW demonstration wave power station off the coast of Cornwall, England. In February 2007, FERC granted us a preliminary permit to evaluate the feasibility of a location off the coast of Reedsport, Oregon for the proposed construction and operation of a wave power station with a maximum rated output of 50MW, of which up to the first 2MW will be a demonstration wave power station utilizing our 150kW PowerBuoy systems. In July 2007, we filed with FERC for the Reedsport project what we believe to be the first Pre-Application Document and Notice of Intent filed by a wave power company. This filing provided notice to FERC of our intent to seek a license for the Reedsport wave park, and provided information regarding the project. The Cornwall and Reedsport power stations will, if approved and constructed as planned, be connected to local power grids.
- *Leverage customer relationships to enhance the commercial acceptance of our utility PowerBuoy system.* We currently have commercial relationships with Iberdrola and Total for two projects. We are in the first phase of the construction of a 1.39MW wave power station off the coast of Santoña, Spain, under which a 40kW PowerBuoy is now undergoing final on-land endurance testing, and is expected to be ready for deployment in August 2008. We, along with affiliates of Iberdrola and Total, are currently assessing the viability of a 2 to 5MW power station off the coast of France. We believe that our projects at the US Marine Corps Base in Oahu, Hawaii will serve as a prototype wave power station for the installation of wave power stations at other US Navy bases. Our relationship with PNGC Power regarding our Reedsport, Oregon project, is the first such utility relationship on the west coast of the United States. We intend to build on these existing commercial relationships both by expanding the number and size of projects we have with our current customers and by entering into new alliances and commercial relationships with other utilities and independent power producers.
- *Expand revenue streams from our autonomous PowerBuoy system.* The autonomous PowerBuoy system addresses specific power generation needs of customers requiring off-grid electricity generation in remote locations in the open ocean. Since our PowerBuoy systems are well suited for many of these uses, we do not expect that they will require subsidies or other price incentives for commercial acceptance. This equipment might be used for powering sonar and radar surveillance, tsunami warning, oceanographic data collection, offshore platforms and offshore aquaculture. We have entered into a contract with the US Navy for the testing of our autonomous PowerBuoy in connection with a unique program for ocean data gathering. We believe that successful testing of our autonomous PowerBuoy System under this contract may result in additional revenues from the US Navy and other prospective customers.
- *Maximize revenue opportunities with existing customers.* In January 2007, we entered into an agreement under which we are responsible for the monitoring, operation and maintenance of the 40kW PowerBuoy system and the ocean-based substation and infrastructure to be manufactured and deployed in connection with the first phase of the Spain project. This agreement will become effective subsequent to buoy

deployment. Under this agreement, we will be paid a fixed fee for scheduled maintenance, ongoing operations and other routine services, and fees to be negotiated for unscheduled repairs. We plan to pursue similar operations and maintenance contracts with future customers, including for our France project, in order to provide us with ongoing revenue streams.

Our Products

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

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



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

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

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

In the event of storm waves larger than 23 feet, the control system automatically locks down the PowerBuoy system and electricity generation is suspended. When the wave heights return to a normal operating range of 23 feet or less, the control system automatically unlocks the PowerBuoy system and electricity generation and transmission recommence. This safety feature prevents the PowerBuoy system from being damaged by the increased amount of energy in storm waves.

Our 40kW PowerBuoy system has a maximum diameter of 12 feet near the surface, and is 52 feet long, with approximately 13 feet of the PowerBuoy system protruding above the surface of the ocean. Larger PowerBuoy systems will be longer and have a larger diameter. For example, our 500kW PowerBuoy system, once developed and manufactured, is expected to have a maximum diameter of approximately 62 feet and be approximately 128 feet long with approximately 26 feet protruding above the ocean surface.

Utility PowerBuoy System

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

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

We refer to the entire utility power generation system at one location as a wave power station, which can either be comprised of a single PowerBuoy system or an integrated array of PowerBuoy systems connected to an underwater cable to transmit the electricity to shore. Our system is designed to be scalable as multiple PowerBuoy units can be integrated to create a wave power station with a larger output capacity. An array of PowerBuoy systems would typically be arranged in three staggered rows parallel to the incoming wave front to form a long rectangle. This staggered arrangement would maximize the level of wave energy that the wave power station can capture.

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

Status of Utility PowerBuoy Systems

We have made substantial progress in the design, analysis and commencement of fabrication of what we believe to be the first utility-grade underwater substation, or pod, for wave power. The pod serves as the point at which energy generated by multiple PowerBuoys is aggregated and the voltage is increased, prior to transmission ashore and being fed into the power grid. The required switching and protection circuits for the individual PowerBuoys are also included in the pod. Construction of our first commercial pod is now in progress, in connection with our wave power project located in Santoña, Spain.

In addition, our 150kW PowerBuoy design effort is well underway. The power conversion and controls system is substantially complete for the 150kW PowerBuoy system, and we expect to be ready for ocean testing in 2009. Although we had initially anticipated commencing ocean testing in 2008, the present schedule for development of the 150kW PowerBuoy reflects management's decision to enhance the system design to allow for improved survivability in 100-year storm wave conditions, and to work with a third-party engineering group to attain independent certification of the 150kW PowerBuoy design. We believe that direct transition to the 500kW from the 150kW PowerBuoy system will be accelerated by the measures now being undertaken in connection with the 150kW design.

Our PowerBuoy interface with the electrical utility power grid has been certified as compliant with international standards. An independent laboratory provided testing and evaluation services to certify that the OPT systems comply with designated national and international standards. The PowerBuoy grid interface will bear the ETL listing mark, and can be connected to the utility grid.

Our projects in Spain, France and Hawaii are being conducted in conjunction with third-party customers. We have completed the planning phase for the wave power project to be located at Santoña, Spain and have completed construction of a 40kW PowerBuoy system, which is now undergoing on-land endurance testing, and is expected to be ready for deployment in August 2008. Construction of the underwater infrastructure for the wave power station is in progress. This infrastructure includes the underwater substation (pod) designed by us and the undersea transmission cables that allow the power station to be connected to the grid. Customer funding under this current phase of the project provides for construction and deployment of the first PowerBuoy and its mooring, plus procurement of the pod and undersea transmission cables. Funding for the deployment of the pod and cables is under discussion with the customer. We are paid in connection with this project as we complete milestones. Under

our agreement for this current phase of construction, our revenues are limited to reimbursement for our construction costs without any mark-up and we are required to bear the first €0.5 million, or approximately \$0.8 million, of any cost overruns and to absorb certain other costs as set forth in the agreement. As of April 30, 2008, we had recognized an anticipated loss of approximately \$3.7 million under this contract, which includes costs incurred to date and our current estimate of other amounts we may be required to bear under the agreement. This anticipated loss at completion of the contract also reflects our decision made in the fourth quarter of fiscal year 2008 to absorb \$1.9 million of additional costs of the project beyond our obligation for the initial cost overruns and certain other costs as set forth in the agreement. This decision was based on the progress of the project to date, the benefits to be derived from a successful initial project and the prospect of incremental contract value to be received in connection with additional work under this contract. Consistent with our revenue recognition policies, each quarter we evaluate if additional loss amounts need to be recognized. In addition, the next phase of this project may include the manufacturing and deployment of nine additional 150kW PowerBuoy systems and connection of the ten total PowerBuoy systems in an integrated array. The economic and other terms relating to the next phase of the project have not been negotiated. The initial 40kW PowerBuoy system for this project is expected to be ready for deployment in August 2008 and we expect the next phase of this contract to be determined by the end of 2008.

The wave power station to be located off the west coast of France is in the planning and development phase. The current development contract has been extended to December 2008. Before we begin construction of this wave power station, we must enter into an additional agreement with affiliates of Total and Iberdrola. We currently plan to enter into an agreement for the next phase of development of a wave power station prior to the expiration of the current agreement in December 2008.

At the Marine Corps Base in Oahu, Hawaii, we had installed a wave power system for a total of eight months over a two-year period and another PowerBuoy system was deployed and tested during June 2007. A third PowerBuoy system is ready for deployment at the Marine Corps Base in Oahu and is awaiting suitable weather conditions for deployment. The US Navy reimburses us for our costs and pays us a fixed fee in connection with this project. In September 2007, we received \$1.9 million of additional funding under this program. Our current contract with the US Navy expires in December 2008.

Pictured below is our 40kW-rated utility PowerBuoy system awaiting deployment in Oahu, Hawaii.



In February 2006, we received approval from SWRDA to install a wave power station off the coast of Cornwall, England, and this project is currently being funded solely by us. SWRDA has obtained the necessary permits for this Wave Hub project, and the project has been approved for over £20 million of funding for the construction of the project infrastructure. SWRDA currently is considering the tender process for the design and construction of such infrastructure, and expects it to be installed in 2010. We are currently in the planning and development stage of our part of the project. This wave power station will serve as a demonstration wave power station, which we intend to operate as an independent power producer. We plan to collect revenue from the sale of power to electrical utilities.

In February 2007, FERC granted us a preliminary permit to evaluate the feasibility of a location off the coast of Reedsport, Oregon for the proposed construction and operation of a wave power station with anticipated capacity of 50MW. We plan to operate up to the first 2MW using our 150kW PowerBuoys, as an independent producer, whereby we would collect revenue from the sale of power to electrical utilities. However, we currently do not have

any revenue-generating contracts in place for the sale of energy with respect to this project. We plan to construct the additional 48MW under a supply contract with a third-party customer who, in turn, would own and operate the wave power station. We have begun the planning and development phase of the initial wave power station and in August 2007, we signed a cooperative agreement with PNGC Power. We also filed in July 2007 with FERC a Pre-Application Document and Notice of Intent for Reedsport, which provided notice of our intent to seek a license for the Reedsport wave park, and provided information regarding the project. This is an important step in the full licensing process for the Reedsport project.

Also, in March 2007, we were awarded funding from the Scottish Ministers' Wave and Tidal Energy Support Scheme, managed by the Scottish Executive. This funding is to support the design, manufacture and installation of a 150kW PowerBuoy system in Orkney, Scotland. This project is in progress, and the 150kW PowerBuoy system is expected to be ready for deployment in 2009.

In May 2008, we announced a Joint Development Agreement with Griffin Energy to explore the development, construction and operation of a wave power station off the coast of Western Australia. Griffin Energy is a leading Western Australia diversified energy supplier. Under the terms of the agreement, Ocean Power Technologies (Australasia) Pty. Ltd., our subsidiary based in Australia, and Griffin Energy plan to form a joint venture, to which Ocean Power Technologies (Australasia) would provide the turn-key power station, plus operations and maintenance service.

Autonomous PowerBuoy System

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

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

Status of Autonomous PowerBuoy Systems

Our PowerBuoy system off the coast of New Jersey was deployed from October 2005 to October 2006 when it was removed from the ocean for planned maintenance. We have conducted extensive diagnostic tests on the system, providing us with information about the effects of ocean deployments that will help us implement improvements in future PowerBuoy systems. This system was redeployed off the coast of New Jersey in September 2007. We discovered no significant problems with the system, and the system required only routine maintenance. This system was not designed to supply electricity to the power grid, but rather to provide us with operational data and marketing opportunities. We were partially funded for the construction of this PowerBuoy system by the New Jersey Board of Public Utilities. We do not anticipate recognizing any additional revenue in connection with this project, nor do we expect to incur significant additional investment.

In June 2007, we received a \$1.7 million contract from the US Navy to provide our PowerBuoy technology to a unique program for ocean data gathering. Under this 18-month program, the Navy will conduct an ocean test of our autonomous PowerBuoy as the power source for the Navy's Deep Water Acoustic Detection System. The PowerBuoy is expected to be ready for deployment by the end of 2008.

Marketing and Sales

We are developing our sales capabilities and have begun commercial marketing and selling of our PowerBuoy systems. Because our products use a new commercial technology, the decision process of a customer requires substantial educational efforts, in which many of our employees may participate.

In addition to our own direct sales, we will continue to enter into development agreements and strategic alliances with regional utility and energy companies committed to providing electricity from renewable energy

sources. We plan to leverage these relationships to sell and market our PowerBuoy wave power stations to these companies and their affiliates and to other customers in the region. We plan to expand our relationships by entering into long-term operations and maintenance contracts to support completed wave power stations. For example, in January 2007, we entered into an agreement for the monitoring, operation and maintenance of the 40kW PowerBuoy system and the ocean-based substation and infrastructure to be manufactured and deployed in connection with the current phase of the Spain project. Under this operations and maintenance agreement, we are required to provide services for two years following provisional acceptance of the PowerBuoy system and substation and infrastructure. We are to be paid a fixed fee for scheduled maintenance, ongoing operations and other routine services, subject to adjustment for unscheduled repairs.

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

Utility PowerBuoy System Marketing

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

Subsidies and Incentives

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

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

Demonstration Wave Power Stations

We use demonstration PowerBuoy systems to establish the feasibility of providing wave-generated electricity to customers. Demonstration wave power stations allow potential customers to see first-hand the viability of wave energy as a significant source of electricity. From October 2005 through October 2006, we operated a demonstration PowerBuoy system off the coast of New Jersey, which allowed us to continuously monitor the system and evaluate its performance in actual wave conditions. This PowerBuoy system was removed from the ocean for maintenance and diagnostic testing in October 2006 and was redeployed off the coast of New Jersey in September 2007. Although the system does not supply electricity to the power grid, it provides us with valuable operational data as well as important marketing opportunities.

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

The FERC has granted us a preliminary permit to develop a 50MW PowerBuoy wave power station off the coast of Oregon that will be connected to the local power grid, the first phase of which is expected to be up to a 2MW

demonstration wave power station. In July 2007, we filed with FERC a Pre-Application Document and Notice of Intent for the Reedsport project. This provided notice to FERC of our intent to seek a license for the Reedsport wave park, and provided information regarding the project. We will need additional authorization from FERC to sell electric power generated from the Oregon wave power station into the wholesale or retail markets.

Autonomous PowerBuoy System Marketing

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

Customers

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

<u>Customer</u>	<u>Fiscal 2006</u>	<u>Fiscal 2007</u>	<u>Fiscal 2008</u>
US Navy	61%	54%	58%
New Jersey Board of Public Utilities	5%	—	—
Iberdrola and Total	9%	35%	31%
Lockheed Martin	22%	—	—
Scottish Government	—	4%	10%

The US Navy accounted for a substantial portion of our revenue in fiscal 2008, but its relative contribution as a percentage of revenues is expected to decrease in future years.

Our potential customer base for our utility PowerBuoy systems consists of public utilities, independent power producers and other governmental entities and agencies. Our potential customer base for our autonomous PowerBuoy systems consists of different public and private entities who use electricity in and near the ocean. Our efforts to identify new customers are concentrated on four geographic markets: coastal North America, the west coast of Europe, the coasts of Australia and the east coast of Japan. Our efforts to identify new customers are currently led and coordinated by our chief executive officer and our vice president of business development and marketing who joined us in January 2008. We also use consultants and other personnel to assist us in locating potential customers.

Spain Project

In July 2004, we entered into a development agreement, which we refer to as the Spain development agreement, with Iberdrola Energias Renovables II, S.A. (Iberdrola Energias), an affiliate of Iberdrola, Sociedad para el Desarrollo Regional de Cantabria, S.A., or SODERCAN, which is the industrial development agency of the Spanish region of Cantabria, and Instituto para la Diversificación y Ahorro de la Energía, S.A., or IDAE, a Spanish government agency dedicated to energy conservation and diversification efforts, to jointly study the possibility of developing a wave power station off the coast of Santoña located in the Cantabria region in northern Spain. Total Eolica S.A., an affiliate of Total, joined the development agreement in June 2005. In January 2006, we completed the assessment phase of the project, which included an assessment of wave energy resources at the site, feasibility analysis for deployment at the site, determination of capacity and design, and an estimation of investments needed for the project as well as anticipated costs for operation, maintenance and repairs. Expenses associated with this phase were shared among the parties to the agreement based on agreed upon percentages. As of April 30, 2007 and 2008, we had invested less than \$0.1 million for our share of the assessment phase funding, and had recognized revenue of approximately \$0.3 million under the assessment phase.

In July 2006, Iberdrola Energias Marinas de Cantabria, S.A., or Iberdrola Cantabria, was formed for the purpose of constructing and operating a wave power station off the coast of Santoña, Spain. Iberdrola Energias is the largest shareholder of Iberdrola Cantabria. Total Eolica, SODERCAN, IDAE and we each have minority ownership

positions. Funding is shared among the parties to the agreement based on agreed upon percentages which reflect the parties' anticipated ownership interest in the wave power station. We own 10% of Iberdrola Cantabria.

In July 2006, we entered into a construction agreement with Iberdrola Cantabria, which we refer to as the Spain construction agreement. Under this agreement, we agreed to complete the first phase of the construction of a 1.39MW wave power station. As originally agreed, this phase of construction included the manufacturing and deployment of one 40kW PowerBuoy system, acquisition and installation of the underwater power transmission cable and the manufacturing and deployment of the underwater substation required for connecting the 40kW PowerBuoy system with nine additional 150kW PowerBuoy systems that together are contemplated to constitute the 1.39MW wave power station. In February 2008, the Spain construction agreement was amended. Under this amendment, the first phase of the construction of the 1.39MW wave power station consists of the manufacture and deployment of one 40kW PowerBuoy system plus the fabrication of the underwater power transmission cable and underwater substation for all ten PowerBuoy systems. Funding for the deployment of the pod and cable is under discussion with the customer. Under the Spain construction agreement, our revenues are limited to reimbursement for our construction costs without any mark-up and we are required to bear the first €0.5 million of any cost overruns and to absorb certain other costs as set forth in the agreement. The Spain construction agreement does not cover the terms for the next phase of the 1.39MW wave power station project, which encompasses the manufacturing and deployment of the nine additional 150kW PowerBuoy systems. We will need to agree to the terms for the next phase of this project and enter into a subsequent contract with Iberdrola Cantabria before we can complete the construction of the full wave power station. The initial 40kW PowerBuoy system for this project is now undergoing final on-land endurance testing, and is expected to be ready for deployment in August 2008. We expect to submit proposals to Iberdrola Cantabria in mid-2008 for funding of the installation of the underwater cable and substation, and for succeeding phases of the project.

Pictured below are views of our 40kW-rated PowerBuoy system after completion of construction at our supplier in Spain.



We are paid under the Spain construction agreement as we complete certain milestones for a total potential payment for the current phase of construction of approximately €2.7 million. As of April 30, 2008, we had recognized revenue of approximately \$2.3 million and an anticipated loss of \$3.7 million under the Spain construction agreement. The loss was recognized based on a change in estimated costs associated with the Spain construction agreement, which include costs incurred to date and our current estimate of other amounts we may be required to bear under the agreement. The anticipated loss at completion of the contract also reflects our decision made in the fourth quarter of fiscal year 2008 to absorb \$1.9 million of additional costs of the project beyond our obligation for the initial cost overruns and certain other costs as set forth in the agreement. This decision was based on the progress of the project to date, the benefits to be derived from a successful initial project and the prospect of incremental contract value to be received in connection with additional work under this contract. Our estimates of the project's costs may increase in the future, and we may elect to incur the additional costs and continue the project, to seek other suppliers for the materials or services related to the cost increases or to terminate the agreement. Any of such outcomes may have a material adverse effect on our financial condition and results of operations.

France Project

In June 2005, we entered into a development agreement, which we refer to as the France development agreement, with Total Energie Development S.A. (Total Energie), an affiliate of Total, and Iberdrola Energias, to study and assess the feasibility of a 2 to 5MW wave power station off the coast of France. Pursuant to the France development agreement, the parties have agreed to extend the current phase until December 2008. Expenses are

shared among the parties based on agreed upon percentages, which also reflect the parties' anticipated ownership interest in the wave power station. Iberdrola Energias has a majority interest, while Total Energie and we have minority interests, with our interest being 10%.

If upon completion of the feasibility study, Iberdrola Energias, Total Energie and we unanimously conclude that the operation of a wave power station off the coast of France is economically, technically and financially feasible, we will meet to discuss whether and how the wave power station should be implemented. If we proceed, Iberdrola Energias, Total Energie and we will form a company for the purpose of constructing and operating the wave power station. Each party will be entitled to retain its current percentage interest by making a proportionate capital investment. Regardless of our participation in the new company, we will supply and install equipment on market terms so that the new company can operate the wave power station. Specific terms, including price and schedule, for these supply and installation agreements are not included in the France development agreement. Iberdrola Energias and Total Energie may withdraw from the France development agreement without any further obligation. If we withdraw, however, we will remain bound by our supply and installation agreements under the contract.

As of April 30, 2008, we had contributed approximately \$31,000 for expenses and had recognized revenue of approximately \$0.1 million under the France development agreement.

US Navy

Since September 2001, we have entered into a series of contracts with the United States Office of Naval Research for the development and construction of wave power systems at the Marine Corps Base in Oahu, Hawaii. In September 2007, we received \$1.9 million of additional funding under this program. Under the contract for the current phase of the project, which was entered into in September 2005 and expires in December 2008, we are reimbursed for costs and paid a fixed fee for total potential revenue of \$4.1 million.

In June 2007, we received a \$1.7 million contract from the US Navy to provide our PowerBuoy technology to a unique program for ocean data gathering. Under this 18-month program, the Navy will conduct an ocean test of our autonomous PowerBuoy as the power source for the Navy's Deep Water Acoustic Detection System. The PowerBuoy is expected to be ready for deployment by the end of 2008.

Backlog

Our contract backlog consists of the aggregate anticipated revenue remaining to be earned at a given time from the uncompleted portions of our existing customer contracts. As of April 30, 2008, our contract backlog was \$5.5 million as compared to \$5.2 million as of April 30, 2007. We anticipate that a majority of our backlog will be recognized as revenue over the next 12 months.

The amount of contract backlog is not necessarily indicative of future revenue because modifications to or terminations of present contracts and production delays can provide additional revenue or reduce anticipated revenue. A substantial majority of our revenue is recognized using the percentage-of-completion method, and changes 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.

Manufacturing and Deployment

Manufacturing and Raw Materials

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

Our core in-house manufacturing activity is the assembly and testing of the power generation and control modules at our Pennington, New Jersey facility. The power generation and control modules include the critical electrical and electronic systems that convert the mechanical energy into usable electrical energy. The sensors and control systems use sophisticated technology to monitor ocean conditions and automatically optimize the

performance of the PowerBuoy system in response to those changing conditions. We have several patents, including those that cover our power generation, power conversion and control technologies. Due to the critical and proprietary nature of these systems, we do not outsource their assembly and testing. After a generator and control module passes our rigorous quality control procedures, it is transported as a ready-to-install component to the project site. We currently employ 47 employees who are responsible for manufacturing and testing our generators and control systems. In order to meet our growth objectives, we expect to increase our engineering and manufacturing staff by over 160 people by the end of fiscal 2011.

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

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

Deployment

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

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

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

Research and Development

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

Research and development expenses are reflected on our consolidated statements of operations as product development costs. Our company-sponsored research and development expenses were approximately \$4.2 million for fiscal 2006, \$6.2 million for fiscal 2007 and \$8.3 million for fiscal 2008. In addition, while we have in the past

self-funded the majority of our research and development expenditures, we also have customer-sponsored research and development expenses of approximately \$0.1 million for fiscal 2006, \$0.1 million for fiscal 2007 and \$0.5 million for fiscal 2008, and such expenses are reflected on our consolidated statements of operations as cost of revenues.

We expect to complete the design for our 150kW PowerBuoy by the end of 2008, and for our 500kW PowerBuoy by the end of 2010. We had planned to increase the maximum rated output to 150kW in 2007 and then to 250kW prior to achieving our goal of 500kW; however, the present schedule for development of the 150kW PowerBuoy reflects management's decision to enhance the system design to allow for improved survivability in 100-year storm wave conditions, and to work with a third-party engineering group to attain independent certification of the 150kW PowerBuoy design. We believe that direct transition to the 500kW system from the 150kW system will be facilitated by the measures now being undertaken in connection with the 150kW design. The key to increasing the rated output of the PowerBuoy system is to increase the system's efficiency as well as its diameter. If we increase the size of a PowerBuoy system, we will be able to increase the amount of wave energy the system can capture and, in turn, increase the output of the system. For example, if we double the size of the unit's diameter, we will approximately quadruple its power capacity. We believe that we will be able to increase the output capacity of the PowerBuoy system using technology that we have already developed, so our focus is on the design, manufacture, testing and deployment of the higher capacity systems. We are exploring design and construction techniques that will enable the larger PowerBuoy systems to be deployed cost effectively and without damage. For example, our 40kW PowerBuoy systems are transported to the onshore deployment sites using standard flatbed trucks. However, the assembled 150kW PowerBuoy systems will be too large for these trucks and will need to be transported in modules and assembled on-site. In addition, we may need to adjust the mooring system to account for the larger-sized PowerBuoy systems.

We have made substantial progress in the design, analysis and commencement of fabrication of what we believe to be the first utility-grade underwater substation, or pod, for wave power. The pod serves as the point at which energy generated by several PowerBuoys is aggregated and the voltage is increased, prior to transmission ashore and being fed into the power grid. The required switching and protection circuits for the individual PowerBuoys are also included in the pod. In addition, our 150kW PowerBuoy design effort is well underway. The power conversion and controls system is substantially complete for the 150kW PowerBuoy system, and we expect to commence ocean testing in 2009.

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

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

Intellectual Property

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

As of April 30, 2008, we owned a total of 37 issued United States patents and 12 United States patent applications. We have pending foreign counterparts to 12 of our issued patents and ten of our pending non-provisional patent applications.

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

- system design;

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

The expiration dates for our issued United States patents range from 2015 to 2026. We do not consider any single patent or patent application that we hold to be material to our business. The patent positions of companies like ours are generally uncertain and involve complex legal and factual questions. Our ability to maintain and solidify our proprietary position for our technology will depend on our success in continuing to obtain effective patent claims and enforcing those claims once granted. In addition, certain technologies that we developed with US federal government funding are subject to certain government rights as described in “Risk Factors — Risks Relating to Our Business.”

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

Competition

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

Although the market for equipment that generates electricity from wave energy is in its early stage of commercial development, there are a number of private companies, some with institutional funding, developing technologies to generate electricity from wave energy, and we compete or will compete with them. We believe there are 30 to 40 companies worldwide developing wave energy technologies. Most of these companies are located in the United Kingdom, continental Europe, the United States and Australia, and almost all are focused on offshore systems. Only a few of these companies have conducted ocean testing of their systems, which is the critical factor in proving the survivability and performance of any wave energy system.

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

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

To compete effectively, we have to demonstrate that our PowerBuoy systems are attractive, compared to other wave energy systems and other renewable energy systems, by differentiating our systems on the basis of performance, survivability in operation and storm wave conditions, cost effectiveness and the operations and

maintenance services that we provide. We believe that we perform favorably to our competition with respect to each of these factors.

Government Regulation

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

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

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

Sale and Transmission of Electricity

The US government regulates the electricity wholesale and transmission business through FERC. FERC regulates the rates and terms for sales of electricity at the wholesale level, and the organization, governance and financing of the companies engaged in electricity sales. As a result, FERC regulates the rates charged for sales of electric power from a wave power station into the wholesale market, although it is possible to obtain an exemption from FERC that would allow those sales to occur at market-based rates. FERC also regulates the construction, operation and maintenance of any dam, water conduit, reservoir or powerhouse along or in any of the navigable waters of the United States for the purpose of generating electric power. As a result, the construction and operation of a wave power station in the United States requires the issuance of a license by FERC. We have been granted a preliminary permit by FERC to evaluate the feasibility of a 50MW wave power station and a 100MW wave power station off the coast of Oregon. Further, we have filed with FERC the required applications for these two wave power station projects to provide our notice of intent to seek licenses for the projects and to provide required information regarding the projects. An application to FERC was not required for the current project in New Jersey because the system is not grid-connected and is for demonstration purposes.

Under Spanish law, each of the Spanish Autonomous Regions, including the Cantabria region, has the power to issue administrative authorizations for the construction and exploitation of installations for the production of renewable energy, including installations that use the energy of waves. Iberdrola Energias has applied for and received the necessary authorizations for installation of the first PowerBuoy at our Santoña, Spain wave power project.

Site Approval

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

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

Environmental Approval and Compliance

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

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

Subsidies and Incentives

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

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

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

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

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

In 2000, we entered into an agreement with Woodside Sustainable Energy Solutions Pty. Ltd., or Woodside, under which we received \$0.6 million in exchange for granting Woodside an option to purchase, at a 30% discount from the then-prevailing market rate, up to 500,000 metric tons of carbon emission credits we generate during the years 2008 through 2012. If by December 31, 2012 we do not sell to Woodside the full amount of emission credits covered by the option, we may be obligated to return all or a portion of the option fee and, in certain circumstances, pay additional amounts to Woodside.

Employees

As of April 30, 2008, we had 47 employees, including 17 employees in manufacturing, 16 in research, development and engineering functions and 14 employees in selling, general and administrative functions. Of these employees, 35 are located in Pennington, New Jersey and 12 are located in Warwick, UK. We believe that our future success will depend in part on our continued ability to attract, hire and retain qualified personnel. None of our employees is represented by a labor union, and we believe our employee relations are good.

In order to meet our short-term goals, we plan to add approximately 16 employees, including engineers with varying levels and areas of expertise, by the end of fiscal 2009. By the end of fiscal 2011, we expect to increase our staff significantly in order to meet our current manufacturing targets. The majority of our new hires will be engineers with varying levels and areas of expertise, project managers and manufacturing personnel.

Product Insurance

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

ITEM 1A. RISK FACTORS

You should carefully consider the risks described below with all of the other information included in this Annual Report before deciding to invest in our common stock. If any of the following risks actually occur, they may materially harm our business and our financial condition and results of operations. In this event, the market price of our common stock could decline and your investment could be lost.

Risks Relating to Our Business

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

We have incurred net losses since we began operations in 1994, including net losses of \$7.1 million in fiscal 2006, \$9.6 million in fiscal 2007 and \$14.7 million in fiscal 2008. As of April 30, 2008, we had an accumulated deficit of approximately \$52.9 million. These losses have resulted primarily from costs incurred in our research and development programs and from our selling, general and administrative costs. We expect to increase our operating expenses significantly as we continue to expand our infrastructure, research and development programs and commercialization activities. As a result, we will need to generate significant revenues to cover these costs and achieve profitability.

We have entered into an agreement for the first phase of construction of a wave power station off the coast of Santoña, Spain, as well as an operations and maintenance contract for the equipment to be installed in this first phase. Under both contracts, our potential profitability is limited. Under the construction contract, our revenues are limited to reimbursement for our construction costs without any mark-up and we are required to bear the first €0.5 million of any cost overruns and to absorb certain other costs as set forth in the agreement. This contract was amended in February 2008 to provide for customer funding of \$3.7 million for the current phase of the project for construction and deployment of one 40kW PowerBuoy and its mooring, plus procurement of the underwater substation (pod) and underwater power transmission cables. Funding for the deployment of the pod and cables is under discussion with the customer. We have recognized an anticipated loss under this contract of \$3.7 million. This anticipated loss at completion of the contract also reflects our decision made in the fourth quarter of fiscal year 2008 to absorb \$1.9 million of additional costs of the project beyond our obligation for the initial cost overruns and certain other costs as set forth in the agreement. This decision was based on the progress of the project to date, the benefits to be derived from a successful initial project and the prospect of incremental contract value to be received in connection with additional work under this contract. Our estimates of the project's costs may increase in the future, and we may be required to incur the additional costs to complete the project, to seek other suppliers for the materials or services related to the cost increases or to terminate the agreement. Any of such outcomes may have a material adverse effect on our financial condition and results of operations. Under the operations and maintenance contract, we are paid a fixed fee for scheduled maintenance, the profits on which are required to be refunded to cover any unscheduled maintenance fees we receive during the term of the agreement.

We do not know whether or when we will become profitable because of the significant uncertainties with respect to our ability to successfully commercialize our PowerBuoy systems in the emerging renewable energy market. Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. If we are unable to achieve and then maintain profitability, the market value of our common stock may decline.

Wave energy technology may not gain broad commercial acceptance, and therefore our revenues may not increase, and we may be unable to achieve and then sustain profitability.

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

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

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

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

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

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

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

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

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

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

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

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

Our product development costs primarily relate to our efforts to increase the maximum rated output of our current 40kW utility PowerBuoy system in successive stages to 500kW. Our product development costs were \$4.2 million in fiscal 2006 as compared to \$6.2 million in fiscal 2007 and \$8.3 million in fiscal 2008. We anticipate that our product development costs related to the planned increase in the output of our utility PowerBuoy system will increase significantly over the next several years.

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

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

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

We began developing and testing wave energy technology 11 years ago. However, to date we have only manufactured 12 PowerBuoy systems for use in testing and development. The longest continuous in-ocean deployment of our PowerBuoy system has been for 12 months. As a result, our PowerBuoy systems do not have a sufficient operating history to confirm how they will perform over their estimated 30-year useful life. Our technology has not been deployed commercially and we have not yet demonstrated that our engineering and test results can be duplicated in commercial production. We have conducted and plan to continue to conduct practical testing of our PowerBuoy system. If our PowerBuoy system ultimately proves ineffective or unfeasible, we may not be able to engage in commercial production of our products or we may become liable to our customers for quantities we are obligated but are unable to produce. If our PowerBuoy systems perform below expectations, we could lose customers and face substantial repair and replacement expense which could in turn adversely affect our business, financial condition and results of operations.

Our future success depends on our ability to increase the maximum rated power output of our utility PowerBuoy system. If we are unable to increase the maximum rated output of our utility PowerBuoy system, the commercial prospects for our utility PowerBuoy system would be adversely affected.

One of our goals is to increase the maximum rated output of our utility PowerBuoy system, which is currently 40kW, to 150kW in 2008 and ultimately to 500kW in 2010. Our success in meeting this objective depends on our ability to significantly increase the power output of our PowerBuoy system in a cost-effective and timely manner and our ability to overcome the engineering and deployment hurdles that we face, including developing design and construction techniques that will enable the larger PowerBuoy systems to be deployed cost effectively and without damage, and developing adjustments to the mooring system to account for the larger-sized PowerBuoy systems. We have experienced delays in the development and deployment of our PowerBuoy system in the past, and could experience similar delays or other difficulties in the future. The present schedule for development of the 150kW PowerBuoy reflects management's decision to enhance the system design to allow for improved survivability in 100-year storm wave conditions, and to work with a third-party engineering group to attain independent certification of the 150kW PowerBuoy design. If we cannot increase the power output of the PowerBuoy system, or if it takes us longer to do so than we anticipate, we may be unable to expand our business, maintain our competitive position, satisfy our contractual obligations or become profitable. In addition, if the cost associated with these development efforts exceeds our projections, our results of operations will be adversely affected.

If we do not reach full commercial scale, we may not be able to offer a cost competitive power station and the commercial prospects of our utility PowerBuoy system would be adversely affected.

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

We have not yet deployed a wave power station consisting of an array of two or more PowerBuoy systems. If we are unable to deploy a multiple-system wave power station, our revenues may not increase, and we may be unable to achieve and then maintain profitability.

We have not yet deployed a wave power station consisting of an array of two or more PowerBuoy systems. Our success in developing and deploying a wave power station consisting of an array of two or more PowerBuoy systems is contingent upon, among other things, receipt of required governmental permits, obtaining adequate financing, successful array design implementation and finally, successful deployment and connection of the PowerBuoy systems.

We have not conducted ocean testing or otherwise installed in the ocean a multiple-system wave power station. In particular, unlike single-system wave power stations, multiple-system wave power stations require use of an underwater substation to connect the cables from, and collect the electricity generated by, each PowerBuoy system in the array. If our underwater substation does not work as we anticipate, we will need to design an alternative system, which could delay our business plans. In addition, unanticipated issues may arise with the logistics and mechanics of deploying and maintaining multiple PowerBuoy systems at a single site and the additional equipment associated with these multiple-system wave power stations.

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

If we are unable to deploy larger PowerBuoy systems cost effectively and without damage to the systems, we may be unable to compete effectively.

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

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

In July 2006, we entered into an agreement for the first phase of the construction of a wave power station off the coast of Santoña, Spain, with our customer, Iberdrola Cantabria. We refer to this agreement as the Spain construction agreement. Iberdrola Cantabria was formed by affiliates of Iberdrola and Total, two Spanish governmental agencies and us for the purpose of constructing and operating a wave power station off the coast of Spain. Under the Spain construction agreement, we have agreed to manufacture and deploy by no later than December 31, 2009 one 40kW PowerBuoy system and the ocean-based substation and infrastructure required to connect nine additional 150kW PowerBuoy systems that together are contemplated to constitute a 1.39MW wave power station. In February 2008, the Spain construction agreement was amended to provide for the current phase of

the construction of the 1.39MW wave power station to include the manufacture and deployment of one 40kW PowerBuoy system plus the fabrication of the underwater power transmission cable and underwater substation for all ten PowerBuoy systems. The terms of the installation of the underwater transmission cable and underwater substation will be separately negotiated, and if so agreed, are expected to provide for additional funding for the installation work. Under the terms of the agreement, our revenues are limited to reimbursement for our construction costs without any mark-up. In addition, we are required to bear the first €0.5 million of any cost overruns and to absorb certain other costs as set forth in the agreement. We have recognized an anticipated loss of \$3.7 million under this contract. Our estimates of the project's costs may increase in the future, and we may elect to incur the additional costs and continue the project, to seek other suppliers for the materials or services related to the cost increases or to terminate the agreement. Any of such outcomes may have a material adverse effect on our financial condition and results of operations. The anticipated loss of \$3.7 million under the Spain construction agreement includes costs incurred to date and our current estimate of other amounts we may be required to bear under the agreement.

In addition, because the amended Spain construction agreement does not cover the terms for deployment of the underwater transmission cable and substation and the manufacturing and deployment of the nine additional PowerBuoy units, we will need to enter into a subsequent contract with Iberdrola Cantabria before we complete these elements of construction of the full wave power station. If we are unable to successfully manufacture all ten PowerBuoy units or meet the terms of the Spain construction agreement, or if we are not able to successfully negotiate a subsequent contract or contracts with Iberdrola Cantabria for the manufacture and deployment of the nine additional PowerBuoy units, we may lose a material component of our current and anticipated revenue stream. Iberdrola Cantabria has the right to terminate the agreement if we interrupt our services for more than 180 days and do not resume within a 30-day period or if the first phase of construction is not completed by December 31, 2009 for reasons attributable to us, or for a serious and repeated breach of a major obligation that is not cured within a 30-day period after we receive notice of the breach. If Iberdrola Cantabria were to terminate the Spain construction agreement for any of these reasons, we may not be able to find another company to fund development of the wave power station. In addition, we have made guarantees to Iberdrola Cantabria associated with the current phase of construction in respect of the quality, repair and replacement of the 40kW PowerBuoy system and ocean-based substation and the level of power output of the 40kW PowerBuoy system.

Under our agreement with affiliates of Iberdrola and Total to study and assess the feasibility of a wave power station off the coast of France, either of Iberdrola or Total may withdraw without further obligation. In addition, in order to proceed with development of the France wave power station, all three parties must conclude that development is feasible. If we proceed, Iberdrola, Total and we will form a new company for the purpose of constructing and operating the wave power station. If either Iberdrola or Total withdraws or does not agree that development of the wave power station is feasible, we may not be able to proceed with development of the wave power station. In addition, if we withdraw from the France project, we will remain obligated to supply and install equipment and provide the new company with assistance and information so that a new company can operate the wave power station. In addition, pursuant to the France development agreement, we are restricted from developing or building, or supplying equipment for use in, a PowerBuoy system to any other customer in France until December 2008.

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

If we are unable to successfully negotiate and enter into operations and maintenance contracts with our customers on terms that are acceptable to us, our ability to diversify our revenue stream will be impaired.

An important element of our business strategy is to maximize our revenue opportunities with our existing and future customers by seeking to enter into operations and maintenance contracts with them under which we would be paid fees for operating and maintaining wave power stations that they have purchased from us. Even if customers purchase our PowerBuoy systems, they may not enter into operations and maintenance contracts with us. We may not be able to negotiate operations and maintenance contracts that provide us with any profit opportunities. Even if we successfully negotiate and enter into such operations and maintenance contracts, our customers may terminate them prematurely or they may not be profitable for a variety of reasons, including the presence of unforeseen hurdles or costs. In addition, our inability to perform adequately under such operations and maintenance contracts

could impair our efforts to successfully market the PowerBuoy systems. Any one of these outcomes could have a material adverse effect on our business, financial condition and results of operations.

If we are unable to fulfill our obligations under our current operations and maintenance contract in a cost effective manner, our financial condition and results of operations could be adversely affected.

In January 2007, we entered into an agreement with Iberdrola Cantabria for the monitoring, operation and maintenance of the 40kW PowerBuoy system and the ocean-based substation and infrastructure to be manufactured and deployed under the Spain construction agreement. Under this operations and maintenance agreement, we are required to provide services for two years following provisional acceptance of the PowerBuoy system and substation and infrastructure. We are to be paid a fixed fee for scheduled maintenance, ongoing operations and other routine services. In connection with any unscheduled repairs we perform under the operations and maintenance agreement, Iberdrola Cantabria and we will agree on the fees, if any, and timing, for those services. To the extent we would otherwise have profits from the fixed fee at the end of the two-year initial term of the agreement, we are obligated to reimburse Iberdrola Cantabria for any fees paid to us for unscheduled repairs. If the costs we actually incur in connection with providing services under the operations and maintenance agreement exceed the fees we receive, we will incur a loss in connection with these services, which could adversely affect our financial condition and results of operations.

Our inability to effectively manage our growth could adversely affect our business and operations.

The scope of our operations to date has been limited, and we do not have experience operating on the scale that we believe will be necessary to achieve profitable operations. Our current personnel, facilities, systems and internal procedures and controls are not adequate to support our future growth. We plan to add sales, marketing and engineering offices in additional locations, including Australia, Japan, continental Europe and the west coast of the United States. We currently estimate that we will need to add approximately 90,000 square feet of leased space by the end of fiscal 2011 for sales, marketing, engineering, assembly and testing in order to meet our current manufacturing targets.

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

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

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

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

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

In fiscal 2008, we generated substantially all of our revenues from three entities. The US Navy, our largest customer, accounted for approximately 58% of our revenues during fiscal 2008, while Iberdrola and Total accounted for 31% of our revenues. In fiscal 2007, revenues from the US Navy accounted for approximately 54% of our total revenues. Our current contract for our project in Hawaii with the US Navy expires in December 2008. We will be required to enter into additional contracts with the US Navy for this project, which will require appropriation by the US Congress and the US Navy in order to receive additional funding. Additional funding for our project with the US Navy may not be approved or we may not be able to negotiate future agreements with the US Navy on acceptable terms, if at all.

Generally, we recognize revenue using the percentage-of-completion method based on the ratio of costs incurred to total estimated costs at completion. In certain circumstances, revenue under contracts that have specified milestones or other performance criteria may be recognized only when our customer acknowledges that such criteria have been satisfied. In addition, recognition of revenue (and the related costs) may be deferred for fixed-price contracts until contract completion if we are unable to reasonably estimate the total costs of the project prior to completion. Because we currently have a small number of customers and contracts, problems with a single contract can adversely affect our business, financial condition and results of operations.

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

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

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

Our investments in joint ventures could be adversely affected by our lack of sole decision-making authority, our reliance on a co-venturer's financial condition and disputes between us and our co-venturers.

It is part of our strategy to co-invest in wave power projects with third parties through joint ventures by acquiring non-controlling interests in special purpose entities. In these situations, we will not be in a position to exercise sole decision-making authority regarding the joint venture. Investments in joint ventures involve risks that would not be present were a third party not involved, including the possibility that our co-venturers might become bankrupt or fail to fund their share of required capital contributions. Our co-venturers may have economic or other business interests or goals that are inconsistent with our business interests or goals, and may be in a position to take actions that are contrary to our policies or objectives. Disputes between us and our co-venturers may result in litigation or arbitration that would increase our expenses and prevent our officers and/or directors from focusing their time and effort on our business. Consequently, actions by, or disputes with, partners or co-venturers might result in subjecting wave power projects undertaken by the joint venture to additional risk.

Our targeted markets are highly competitive. We compete with other renewable energy companies and may have to compete with larger companies that enter into the renewable energy business. If we are unable to compete effectively, we may be unable to increase our revenues and achieve or maintain profitability.

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

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

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

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

We plan to manufacture key components of our PowerBuoy systems, including the advanced control and generation systems. However, we have only manufactured our PowerBuoy systems in limited quantities for use in development and testing and have little commercial manufacturing experience. Our future success depends on our ability to significantly increase both our manufacturing capacity and production throughput in a cost-effective and efficient manner. In order to meet our growth objectives, we will need to increase our engineering and manufacturing staff by over 160 people by the end of fiscal 2011. There is intense competition for hiring qualified technical and engineering personnel, and we may not be able to hire a sufficient number of qualified engineers to allow us to meet our growth objectives.

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

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

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

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

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

parties to deploy our systems in particular geographic areas, our business, financial condition and results of operations could be adversely affected.

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

Our manufacturing operations, in particular some of the activities undertaken by our third-party suppliers and manufacturers, involve the controlled use of hazardous materials. Accordingly, our third-party contractors and we are subject to foreign, federal, state and local laws governing the protection of the environment and human health and safety, including those relating to the use, handling and disposal of these materials. We cannot completely eliminate the risk of accidental contamination or injury from these hazardous materials. In the event of an accident or failure to comply with environmental or health and safety laws and regulations, we could be held liable for resulting damages, including damages to natural resources, fines and penalties, and any such liability could adversely affect our business, financial condition and results of operations.

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

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

We derive a significant portion of our revenue from US federal government contracts, which are subject to special funding restrictions, regulatory requirements and eligibility standards and which the government may terminate at any time or determine not to extend after their scheduled expiration. During fiscal 2007 and fiscal 2008, we derived approximately 54% and 58%, respectively, of our total revenue from contracts with the US Navy.

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

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

Most of our federal contracts were awarded through a special US government program called Small Business Innovation Research, or SBIR, that is designed to promote innovative research by small businesses. The SBIR program provides funds to qualified small businesses to further their technological research and development activities and provides incentives to these companies to profit from commercialization of their technology. SBIR funding represents both revenues and outside research and development investment dollars for companies that receive it. The program is open to companies that are majority owned and controlled by individual US citizens or permanent resident aliens, or by a parent entity that meets this standard. Our revenues from the SBIR program were approximately \$1.5 million for fiscal 2007 and \$1.7 million for fiscal 2008.

As a result of the increased institutional, corporate and foreign ownership following our recent initial public offering in the US, we are no longer eligible for the SBIR program, which may adversely affect our ability to win future government contracts. We intend to continue to seek research and development funding from other sources, including funding from existing government customers under non-SBIR programs. Our inability to replace SBIR

contracts with funds from other sources could result in reduced revenues and higher internal research and development costs, which would adversely affect our operating results.

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

We market and sell, and plan to market and sell, our products in a number of foreign countries, including France, Spain, the United Kingdom, Australia and Japan, and we are therefore subject to risks associated with having international operations. International customers accounted for 9% of our revenues in fiscal 2006, 41% of our revenues in fiscal 2007 and 41% of our revenues in fiscal 2008. Risks inherent in international operations include, but are not limited to, the following:

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

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

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

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

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

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

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

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

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

Our reporting currency is the US dollar, and we conduct our business and incur costs in the local currency of most countries in which we operate. As a result, we are subject to currency translation risk. In fiscal 2007, 35% of our revenues were generated from customers outside the United States and denominated in Euros, 4% of our revenues were generated from outside the United States and denominated in British pound sterling and 2% of our revenues were generated from customers outside the United States and denominated in Australian dollars and in fiscal 2008, 31% of our revenues were generated from customers outside the United States and denominated in Euros, and 10% of our revenues were generated from customers outside the United States and denominated in British pound sterling. We expect a large percentage of our revenues to be generated outside the United States and denominated in foreign currencies in the future. Changes in exchange rates between foreign currencies and the US dollar could affect our revenues and cost of revenues, and could result in exchange losses. In addition, we incur currency transaction risk whenever one of our operating subsidiaries enters into either a purchase or a sales transaction using a different currency from our reporting currency. For example, our agreement with Iberdrola Cantabria for the current phase of the construction of a wave power station off the coast of Santoña, Spain is denominated in Euros, and we expect that we will enter into a number of purchase and supply contracts with local Spanish companies, also denominated in Euros, in connection with the project. We cannot accurately predict the impact of future exchange rate fluctuations on our results of operations. Currently, we do not engage in any exchange rate hedging activities and, as a result, any volatility in currency exchange rates may have an immediate adverse effect on our business, results of operations and financial condition.

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

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

be deterred by these regulations and policies, which could result in a significant reduction in the potential demand for our PowerBuoy systems.

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

If we are unable to obtain all necessary regulatory permits and approvals, we will not be able to implement our planned projects.

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

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

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

Our PowerBuoy systems are deployed in the ocean where they are subject to many hazards including severe storms and hurricanes, which could damage them and result in service interruptions. Our systems are also subject to more frequent lock-downs caused by higher waves during winter storm and hurricane seasons, which will reduce annual energy output. We cannot predict whether we will be able to recover from our insurance providers the additional costs that we may incur due to damage caused to our PowerBuoy systems, or whether we will continue to be able to obtain insurance for hurricane- and storm-related damages or, if obtainable and carried, whether this insurance will be adequate to cover our liabilities. Any future hurricane-or storm-related costs could adversely affect our business, financial condition and results of operations.

Since our PowerBuoy systems can only be deployed in certain geographic locations, our ability to grow our business could be adversely affected.

Our systems are designed to work in sites with average annual wave energy of at least 20kW per meter of wave front. Not all coastal areas worldwide have appropriate natural resources for our PowerBuoy systems to harness wave energy. Seasonal and local variations, water depth and the effect of particular locations of islands and other geographical features may limit our ability to deploy our PowerBuoy systems in coastal areas. If we are unable to identify and deploy PowerBuoy systems at sufficient sites near major population centers, our ability to grow our business could be adversely affected.

If we are unable to attract and retain management and other qualified personnel, we may not be able to achieve our business objectives.

Our success depends on the skills, experience and efforts of our senior management and other key development, manufacturing, and sales and marketing employees. We cannot be certain that we will be able to attract, retain and motivate such employees. The loss of the services of one or more of these employees could have a

material adverse effect on our business. There is a risk that we will not be able to retain or replace these key employees. We have entered into employment agreements with Dr. George Taylor, our chief executive officer, Charles Dunleavy, our senior vice president and chief financial officer, Mark Draper, our chief operating officer and the chief executive officer of our UK subsidiary, and Herbert Nock, our vice president of business development and marketing; however, the agreements permit the employees to terminate their employment with little notice. Implementation of our expansion plans will be highly dependent upon our ability to hire and retain additional senior executives.

In addition, our anticipated growth will require us to hire a significant number of qualified technical, commercial and administrative personnel. In order to meet our short-term goals, we plan to add approximately 16 employees by the end of fiscal 2009, including engineers with varying areas of expertise. By the end of fiscal 2011, we expect to increase our staff significantly in order to meet our current manufacturing targets. The majority of our new hires will be engineers with varying levels and areas of expertise, project managers and manufacturing personnel. There is intense competition from other companies and research and academic institutions for qualified personnel in the areas of our activities. If we cannot continue to attract and retain, on acceptable terms, the qualified personnel necessary for the continued development of our business, we may not be able to sustain our operations or grow at a competitive pace.

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

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

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

In the event we are unable to satisfy regulatory requirements relating to internal control over financial reporting, or if our internal controls are not effective, our business and financial results may suffer.

Effective internal controls are necessary for us to provide reasonable assurance with respect to our financial reports and to effectively prevent fraud. If we cannot provide reasonable assurance with respect to our financial reports and effectively prevent fraud, our business and operating results could be harmed. Pursuant to the Sarbanes-Oxley Act of 2002, we are required to furnish a report by management on internal control over financial reporting, including management's assessment of the effectiveness of such control. Internal control over financial reporting may not prevent or detect misstatements because of its inherent limitations, including the possibility of human error, the circumvention or overriding of controls, or fraud. Therefore, even effective internal controls can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements. In addition, projections of any evaluation of the effectiveness of internal control over financial reporting to future periods are subject to the risk that the control may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. If we fail to maintain the adequacy of our internal controls, including any failure to implement new or improved controls, or if we experience difficulties in their implementation, our business and operating results could be harmed, we could fail to meet our reporting obligations, and there could also be a material adverse effect on our stock price.

Risks Related to Intellectual Property

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

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

Our contracts with the government could negatively affect our intellectual property rights, and our ability to commercialize our products could be impaired.

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

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

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

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

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

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

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

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

Risks Related to our Common Stock

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

As a result of our reincorporation in Delaware in April 2007, provisions of our certificate of incorporation and bylaws may discourage, delay or prevent a merger, acquisition or other change in control that stockholders may consider favorable, including transactions in which our stockholders might otherwise receive a premium for their shares. These provisions may also prevent or frustrate attempts by our stockholders to replace or remove our management. These provisions include:

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

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

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

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

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

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

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

The market price of our common stock may fluctuate significantly in response to factors that are beyond our control. The stock market in general has recently experienced extreme volatility that has often been unrelated or disproportionate to the operating performance of particular companies. These broad market fluctuations could result in fluctuations in the price of our common stock, which could cause purchasers of our common stock to incur substantial losses. The market price for our common stock may be influenced by many factors, including:

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

Provisions in our bylaws will require disclosure of information by shareholders that would not otherwise be required to be disclosed under applicable US state or US federal laws.

In accordance with the rules of the AIM market of the London Stock Exchange, we are required to disclose information regarding beneficial owners of three percent or more of our outstanding common stock to the AIM market. In order to allow us to comply with the AIM rules, our bylaws contain a provision requiring any beneficial owner of three percent or more of our outstanding common stock to notify us of his or her shareholdings, as well as of any change in his or her beneficial ownership of one percent or more of our outstanding common stock. Comparatively, none of the US state or US federal laws that are applicable to us or the rules of the SEC or the Nasdaq Global Market require stockholders to report this beneficial ownership information to us or us to disclose this information to the public or a regulatory body. We do not intend to make any such information public, unless required by law or the rules of the AIM market, the SEC or the Nasdaq Global Market.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

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

We also have an office and warehouse facilities in Warwick, United Kingdom, where we occupy 3,840 square feet under a lease expiring on January 1, 2009. Twelve employees, all members of the executive, engineering, administration and business development teams, operate out of this office, which serves as a hub for our European presence.

We plan to add sales, marketing and engineering offices in additional locations, including Australia, Japan, continental Europe and the west coast of the United States. We currently estimate that we will need to add approximately 90,000 square feet of leased space by the end of fiscal 2011 for sales, marketing, engineering, assembly and testing in order to meet our current manufacturing targets.

ITEM 3. LEGAL PROCEEDINGS

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

ITEM 4. SUBMISSION OF MATTERS TO VOTE OF SECURITY HOLDERS

Not applicable.

PART II**ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES****Stock Price Information and Stockholders**

Our common stock has been listed on the Nasdaq Global Market since April 24, 2007 under the symbol "OPTT" and on the AIM market of the London Stock Exchange since October 2003 under the symbol "OPT." As of June 30, 2008, there were 550 registered holders of our common stock.

The following table sets forth the high and the low sale prices of our common stock as quoted by the Nasdaq Global Market for the period indicated.

	Nasdaq Global Market	
	High	Low
Year Ended April 30, 2008		
First quarter	\$ 17.85	\$ 13.87
Second quarter	\$ 15.82	\$ 11.74
Third quarter	\$ 18.26	\$ 11.50
Fourth quarter	\$ 14.14	\$ 9.73
Year Ended April 30, 2007		
Fourth quarter	\$ 20.00	\$ 14.25

The following table sets forth, for the periods indicated, the high and low closing sale prices for our common stock on the AIM market as reported by the London Stock Exchange. The sales prices have been adjusted to give effect to a one-for-ten reverse stock split of our common stock that was effected on April 20, 2007. The sales prices

for our shares of common stock on the AIM market are quoted in pound sterling (£), the lawful currency of the United Kingdom.

	AIM Market	
	High	Low
Year Ended April 30, 2008		
First quarter	£8.85	£7.00
Second quarter	£8.15	£5.80
Third quarter	£8.45	£5.83
Fourth quarter	£6.95	£4.90
Year Ended April 30, 2007		
First quarter	£10.00	£6.60
Second quarter	£8.90	£6.15
Third quarter	£9.05	£5.35
Fourth quarter	£12.35	£8.05

Dividend Policy

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

UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Use of Proceeds

On April 30, 2007, we sold 5,000,000 shares of our common stock in our initial public offering in the United States at a price of \$20.00 per share, pursuant to a registration statement on Form S-1 (File No. 333-138595), which was declared effective by the SEC on April 24, 2007. The managing underwriters in the offering were UBS Securities LLC, Banc of America Securities LLC, and Bear, Stearns & Co., Inc. The underwriting discounts and commissions and offering expenses payable by us aggregated \$10.1 million, resulting in net proceeds to us of \$89.9 million.

From the effective date of the registration statement through April 30, 2008, we used \$0.6 million to construct demonstration wave power stations, \$3.7 million to fund the continued development and commercialization of our PowerBuoy system, \$1.7 million to expand our sales and marketing capabilities and \$0.2 million to fund the expansion of assembly, test and field service facilities. We have invested the balance of the net proceeds from the offering in short- and long-term, investment grade, interest-bearing instruments, in accordance with our investment policy. We have not used any of the net proceeds from the offering to make payments, directly or indirectly, to any director or officer of ours, or any of their associates, to any person owning ten percent or more of our common stock or to any affiliate of ours. There has been no material change in our planned use of the balance of the net proceeds from the offering as described in our final prospectus filed with the SEC pursuant to Rule 424(b) under the Securities Act of 1933.

ITEM 6. SELECTED FINANCIAL DATA

You should read the following selected consolidated financial data in conjunction with our consolidated financial statements and the related notes appearing at the end of this Annual Report and the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of this Annual Report. The selected consolidated financial data have been derived from our audited consolidated financial statements which are included elsewhere in this Annual Report, or from audited consolidated financial statements not included in this Annual Report.

	Fiscal Years Ended April 30,				
	2004	2005	2006	2007	2008
Consolidated Statement of Operations Data:					
Revenues	\$ 4,713,202	\$ 5,365,235	\$ 1,747,715	\$ 2,531,315	\$ 4,772,017
Cost of revenues	4,319,850	5,170,521	2,059,318	3,983,742	7,960,042
Gross profit (loss)	393,352	194,714	(311,603)	(1,452,427)	(3,188,025)
Operating expenses:					
Product development costs	255,958	904,618	4,224,997	6,219,893	8,255,123
Selling, general and administrative costs	1,745,955	2,553,911	3,190,687	4,893,580	7,732,577
Total operating expenses	2,001,913	3,458,529	7,415,684	11,113,473	15,987,700
Operating loss	(1,608,561)	(3,263,815)	(7,727,287)	(12,565,900)	(19,175,725)
Other income (expense):					
Interest income, net	555,717	1,297,156	1,408,361	1,389,702	4,434,844
Other income (expense)	(3,500,096)(1)	1,545	74,294	13,906	—
Foreign exchange gain (loss)	1,585,345	1,507,145	(978,242)	1,523,527	84,158
Loss before incomes taxes	(2,967,595)	(457,969)	(7,222,874)	(9,638,765)	(14,656,723)
Income tax benefit	118,119	29,335	143,963	—	—
Net loss	\$ (2,849,476)	\$ (428,634)	\$ (7,078,911)	\$ (9,638,765)	\$ (14,656,723)
Basic and diluted net loss per share	\$ (0.71)	\$ (0.08)	\$ (1.37)	\$ (1.83)	\$ (1.44)
Basic and diluted weighted average shares outstanding	4,037,501	5,135,550	5,162,340	5,260,794	10,200,729

	As of April 30,				
	2004	2005	2006	2007	2008
Consolidated Balance Sheet Data:					
Cash, cash equivalents and certificates of deposit	\$ 39,565,574(2)	\$ 38,787,176	\$ 32,439,365	\$ 115,895,619(3)	\$ 88,836,304
Working capital	38,422,395	37,903,207	30,886,029	111,187,195	85,870,307
Long-term investments	—	—	—	—	12,233,437
Total assets	40,747,479	41,596,387	33,996,138	119,711,546	107,550,965
Long-term debt, net of current portion	250,000	245,844	233,959	231,585	188,784
Accumulated deficit	(21,124,608)	(21,553,242)	(28,632,153)	(38,270,918)	(52,927,641)
Total stockholders’ equity	37,853,246	37,836,531	31,066,704	112,541,209	100,098,609

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

(3) On April 30, 2007, we completed our initial public offering in the United States resulting in net proceeds to us of \$89.9 million.

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

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

Overview

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

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

We were incorporated in New Jersey in April 1984, began commercial operations in 1994, and were re-incorporated in Delaware in 2007. We currently have six wholly-owned subsidiaries, which include Ocean Power Technologies Ltd., Reedsport OPT Wave Park LLC, Oregon Wave Energy Partners I, LLC, Oregon Wave Energy Partners II, LLC, California Wave Energy Partners I, and Fairhaven OPT Ocean Power LLC, and we own approximately 88% of the ordinary shares of Ocean Power Technologies (Australasia) Pty Ltd. Our revenues have been generated from research contracts and development and construction contracts relating to our wave energy technology. The development of our technology has been funded by capital we raised and by development engineering contracts we received starting in fiscal 1995. In fiscal 1996, we received the first of several research contracts with the US Navy to study the feasibility of wave energy. As a result of those research contracts, we entered into our first development and construction contract with the US Navy in fiscal 2002 under a still on-going project for the development and construction of a grid-connected wave power station at the US Marine Corps Base in Oahu, Hawaii. We generated our first revenue relating to our autonomous PowerBuoy system from contracts with Lockheed Martin Corporation in fiscal 2003, and we entered into our first development and construction contract with Lockheed Martin in fiscal 2004 for the development and construction of a prototype demonstration autonomous PowerBuoy system. In fiscal 2005, we entered into a development agreement with an affiliate of Iberdrola S.A., a large electric utility company located in Spain and one of the largest renewable energy producers in the world, and other parties to jointly study the possibility of developing a wave power station off the coast of northern Spain. An affiliate of Total S.A., which is one of the world's largest oil and gas companies, joined the development agreement in June 2005. In January 2006, we completed the assessment phase of the project, and in July 2006 we entered into an agreement with Iberdrola Energias Marinas de Cantabria, S.A. to complete the first phase of the construction of a 1.39MW wave power station. In addition, we have entered into a contract with affiliates of Iberdrola and Total to assess the viability of a 2 to 5MW power station off the coast of France.

In 2007, we received a \$1.8 million contract from the Scottish Executive for the construction of a 150kW PowerBuoy demonstration system at Orkney, Scotland. This project is in progress, and the PowerBuoy is expected to be ready for deployment in 2009. In June 2007, we received a \$1.7 million contract from the US Navy to provide our PowerBuoy technology to a unique program for data gathering in the ocean. Under this 18-month program, the US Navy will conduct an ocean test of our autonomous PowerBuoy as the power source for the Navy's Deep Water Acoustic Detection System. In August 2007, we announced the award of a \$0.5 million contract from PNGC Power, an Oregon-based electric power cooperative, providing funding toward the fabrication and installation of a 150kW PowerBuoy system off the coast of Oregon. As of April 30, 2008, our backlog was \$5.5 million, an increase of \$0.3 million from the year ended April 30, 2007.

Our fiscal year ends on April 30. For fiscal 2008, we generated revenues of \$4.8 million and incurred a net loss of \$14.7 million, and for fiscal 2007 we generated revenues of \$2.5 million and incurred a net loss of \$9.6 million. As of April 30, 2008, our accumulated deficit was \$52.9 million. We have not been profitable since inception, and we do not know whether or when we will become profitable because of the significant uncertainties with respect to our ability to successfully commercialize our PowerBuoy systems in the emerging renewable energy market. Since fiscal 2002, the US Navy has accounted for a significant portion of our revenues. We expect that over time, revenues derived from utilities and other non-government commercial customers will increase more rapidly than sales to government customers and will, within a few years, represent the majority of our revenues.

Financial Operations Overview

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

Revenues

We have historically generated revenues primarily from the development and construction of our PowerBuoy systems for demonstration purposes and, to a lesser extent, from customer-sponsored research and development. For fiscal 2007 and 2008, we derived approximately 91% and 89%, respectively, of our revenues from government and commercial development and construction contracts and 9% and 11%, respectively, of our revenues from customer-sponsored research and development. Generally, we recognize revenue using the percentage-of-completion method based on the ratio of costs incurred to total estimated costs at completion. In certain circumstances, revenue under contracts that have specified milestones or other performance criteria may be recognized only when our customer acknowledges that such criteria have been satisfied. In addition, recognition of revenue (and the related costs) may be deferred for fixed-price contracts until contract completion if we are unable to reasonably estimate the total costs of the project prior to completion. Because we have a small number of contracts, revisions to the percentage of completion determination or delays in meeting performance criteria or in completing projects may have a significant effect on our revenue for the periods involved.

Under our agreement for the current phase of construction of a wave power station off the coast of Santoña, Spain, our revenues are limited to reimbursement for our construction costs without any mark-up and we are required to bear a portion of any cost overruns and to absorb certain other costs as set forth in the agreement. During the fourth quarter of fiscal 2008, we made the decision to absorb additional costs related to the current phase of the project beyond our obligation for the initial cost overruns and certain other costs as set forth in the agreement. This decision was based primarily on the progress of the project to date, the benefits to be derived from a successful initial project and the prospect of incremental contract value to be received in connection with additional work under this contract.

Our revenues increased in each of fiscal 2007 and 2008. The revenue increase reflected a higher level of activity in connection with our Spain construction contract, our contracts with the US Navy, and our contract for the construction, installation and in-ocean demonstration of our latest 150kW PowerBuoy that will be installed at the European Marine Energy Centre (EMEC) at Orkney, Scotland.

The US Navy has been our largest customer since fiscal 2002. The US Navy accounted for approximately 58% of our revenues in fiscal 2008, approximately 54% of our revenues in fiscal 2007 and approximately 61% of our

revenues in fiscal 2006. We anticipate that, if our commercialization efforts are successful, the relative contribution of the US Navy to our revenue will decline in the future.

We currently focus our sales and marketing efforts on coastal North America, the west coast of Europe, the coasts of Australia and the east coast of Japan. For both fiscal 2007 and 2008, we derived 41% of our revenues from outside the United States. The following table provides information regarding the breakdown of our revenues by geographical location of our customers for fiscal years 2006, 2007 and 2008:

Customer Location	Percentage of Revenues		
	Year Ended April 30, 2006	Year Ended April 30, 2007	Year Ended April 30, 2008
United States	91%	59%	59%
Europe	9	39	41
Australia	—	2	—
Total	100%	100%	100%

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 PowerBuoy parts and services supplied by third-party suppliers. Cost of revenues also includes PowerBuoy system delivery and deployment expenses and an anticipated loss at completion on our contract for a wave power station off the coast of Spain.

We operated at a gross loss of \$3.2 million in 2008, \$1.5 million in fiscal 2007, and \$0.3 million in fiscal 2006. Our ability to generate a gross profit will depend on the nature of future contracts, our success at increasing sales of our PowerBuoy systems and on our ability to manage costs incurred on fixed price commercial contracts.

Product development costs

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

Our product development costs increased significantly in each of fiscal 2006, 2007 and 2008 as a result of the development of our current 40kW utility PowerBuoy system, which was introduced in fiscal 2006, and also development of our 150kW PowerBuoy. We expect our product development costs to increase in absolute dollars as we continue to increase the output and efficiency of our PowerBuoy systems.

We introduced our current 40kW PowerBuoy system in fiscal 2006. One system was deployed off the coast of New Jersey from October 2005 to October 2006, when it was removed from the ocean for routine maintenance and diagnostic testing. This system was redeployed off the coast of New Jersey in September 2007. Another 40kW system was deployed and tested in Hawaii for the US Navy project during the month of June 2007. Work is currently in progress on the design, construction and installation of two 150kW PowerBuoy systems in connection with projects in the Orkney Islands, Scotland and Oregon.

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.

Our selling, general and administrative costs increased in fiscal 2006, 2007 and 2008. This increase is due to the expansion of our sales and marketing capabilities, including increased headcount, and as a result of our becoming a public company in the United States in April 2007. We expect our selling, general and administrative costs will continue to increase as we further expand our sales and marketing capabilities.

Interest income, net

Interest income, net consists primarily of interest received on cash and cash equivalents, investments in commercial bank-issued certificates of deposit and US Treasury bills. Prior to April 30, 2007, most of our cash, cash equivalents and bank-issued certificates of deposit resulted from the remaining proceeds of our October 2003 offering on the AIM market. On April 30, 2007, we completed our initial public offering in the United States, which produced net proceeds of \$89.9 million. Total cash, cash equivalents, certificates of deposit and long-term investments were \$101.1 million as of April 30, 2008, \$115.9 million as of April 30, 2007 and \$32.4 million as of April 30, 2006. Interest income in fiscal 2008 increased significantly over prior years due to the increase in invested cash.

Foreign exchange gain (loss)

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

We invest in certificates of deposit and maintain cash accounts that are denominated in British pounds, Euros and Australian dollars. These foreign denominated certificates of deposit and cash accounts had a balance of \$9.6 million as of April 30, 2008 and \$15.6 million as of April 30, 2007, compared to our total certificates of deposits, long-term investments and cash account balances of \$101.1 million as of April 30, 2008 and \$115.9 million as of April 30, 2007. These foreign currency balances are translated at each month end to our functional currency, the US dollar, and any resulting gain or loss is recognized in our results of operations.

In addition, a portion of our operations is conducted through our subsidiaries in countries other than the United States, specifically Ocean Power Technologies Ltd. in the United Kingdom, the functional currency of which is the British pound sterling, and Ocean Power Technologies (Australasia) Pty Ltd. in Australia, the functional currency of which is the Australian dollar. Both of these subsidiaries have foreign exchange exposure that results from changes in the exchange rate between their functional currency and other foreign currencies in which they conduct business. All of our international revenues for the years ended April 30, 2007 and 2008 were recorded in Euros, British pounds or Australian dollars.

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.

Income tax benefit

As of April 30, 2008, we had federal and foreign research and development tax credits of \$1.8 million and federal and foreign net operating loss carryforwards of \$47.5 million to offset future taxable income. If not utilized, the credit carryforwards and net operating loss carryforwards will expire at various dates through 2028. We may not achieve profitability in time to utilize the tax credit and net operating loss carryforwards in full or at all. In addition, the future utilization of our net operating loss carryforwards may be limited based upon changes in ownership, including changes resulting from our United States offering in April 2007 and the AIM offering in 2003, pursuant to regulations promulgated under the Internal Revenue Code. These limitations may result in the expiration of net

operating loss and credit carryforwards prior to utilization. As discussed in Note 13 to our consolidated financial statements included in this Annual Report, we have established a valuation allowance for our net deferred tax assets, which were \$13.2 million as of April 30, 2007 and \$19.5 million as of April 30, 2008.

In 2006, we sold a portion of our New Jersey state net operating losses and our New Jersey research and development credits under a program offered by the State of New Jersey, and recognized an income tax benefit of \$0.1 million in fiscal 2006. Because we believe we are no longer eligible to participate in this program, we did not sell in fiscal 2007 or 2008 and do not in the future expect to sell any additional New Jersey state net operating loss carryforward or research and development credits.

Results of Operations

Fiscal Years Ended April 30, 2007 and 2008

The following table contains statement of operations information, which serves as the basis of the discussion of our results of operations for the years ended April 30, 2007 and 2008:

	Fiscal Year Ended April 30, 2007		Fiscal Year Ended April 30, 2008		Change 2008 Period to 2007 Period	
	Amount	As a % of Revenues	Amount	As a % of Revenues	\$ Change	% Change
Revenues	\$ 2,531,315	100%	\$ 4,772,017	100%	\$ 2,240,702	89%
Cost of revenues	3,983,742	157	7,960,042	167	3,976,300	100
Gross loss	(1,452,427)	(57)	(3,188,025)	(67)	(1,735,598)	119
Operating expenses:						
Product development costs	6,219,893	246	8,255,123	173	2,035,230	33
Selling, general and administrative costs	4,893,580	193	7,732,577	162	2,838,997	58
Total operating expenses	11,113,473	439	15,987,700	335	4,874,227	44
Operating loss	(12,565,900)	(496)	(19,175,725)	(402)	(6,609,825)	53
Interest income	1,389,702	55	4,434,844	93	3,045,142	219
Other income	13,906	1	—	—	(13,906)	(100)
Foreign exchange gain	1,523,527	60	84,158	2	(1,439,369)	(94)
Loss before income taxes	(9,638,765)	(380)	(14,656,723)	(307)	(5,017,958)	52
Income tax benefit	—	—	—	—	—	—
Net loss	\$ (9,638,765)	(380)%	\$ (14,656,723)	(307)%	\$ (5,017,958)	52%

Revenues

Revenues increased by \$2.2 million in fiscal 2008, or 89%, to \$4.8 million as compared to \$2.5 million in fiscal 2007. The increase in revenues was primarily attributable to the following factors:

- Revenues relating to our utility PowerBuoy system increased by \$1.3 million due to an increase in on-going work on our Hawaii project for the US Navy, work on the first phase of construction of a 1.39MW wave power station off the coast of Spain and work on the design, manufacture and installation of an OPT wave power station consisting of a single 150kW PowerBuoy device in Orkney, Scotland.
- Revenues relating to our autonomous PowerBuoy system increased by \$0.9 million as a result of work on our \$1.7 million contract with the US Navy to provide our PowerBuoy technology to a program for data gathering in the ocean.

Cost of revenues

Cost of revenues increased by \$4.0 million, or 100%, to \$8.0 million in fiscal 2008, as compared to \$4.0 million in fiscal 2007. This increase in cost of revenues reflected the higher level of activity on revenue-bearing contracts of approximately \$1.6 million, and the recognition of an additional \$2.4 million of anticipated loss at completion on our contract for a wave power station off the coast of Spain. The additional anticipated loss was recognized based on a change in estimated costs associated with this contract and our decision in the fourth quarter of fiscal 2008 to absorb an additional \$1.9 million in costs beyond our contractual obligation for initial cost overruns and certain other costs as set forth in the agreement.

Product development costs

Product development costs increased \$2.0 million, or 33%, to \$8.3 million in fiscal 2008, as compared to \$6.2 million in fiscal 2007. The substantial increase in product development costs was primarily attributable to our efforts to increase the power output of our utility PowerBuoy system, including the 150kW PowerBuoy system. We anticipate that our product development costs related to the planned increase in the output of our utility PowerBuoy system will increase significantly over the next several years and that the amount of these expenditures will not necessarily be affected by the level of revenue generated over that time period.

Selling, general and administrative costs

Selling, general and administrative costs increased \$2.8 million, or 58%, to \$7.7 million in fiscal 2008, as compared to \$4.9 million in fiscal 2007. The increase was primarily attributable to an increase of \$0.5 million related to additional marketing expenses and consulting costs, \$1.8 million in professional fees, franchise taxes and costs incurred as a result of our becoming a public company in the United States, and \$0.5 million in additional payroll and incentive-based costs relating to company growth.

Interest income

Interest income increased by \$3.0 million to \$4.4 million in fiscal 2008, compared to \$1.4 million in fiscal 2007, due to the investment of the net proceeds of \$89.9 million from our United States initial public offering on April 30, 2007.

Foreign exchange gain

Foreign exchange gain was \$0.1 million in fiscal 2008, compared to a foreign exchange gain of \$1.5 million in fiscal 2007. The difference was primarily attributable to the relative change in value of the British pound compared to the US dollar during the two periods.

Fiscal Years Ended April 30, 2006 and 2007

The following table contains statement of operations information, which serves as the basis of the discussion of our results of operations for the years ended April 30, 2006 and 2007:

	Fiscal Year Ended April 30, 2006		Fiscal Year Ended April 30, 2007		Change 2007 Period to 2006 Period	
	Amount	As a % of Revenues	Amount	As a % of Revenues	\$ Change	% Change
Revenues	\$ 1,747,715	100%	\$ 2,531,315	100%	\$ 783,600	45%
Cost of revenues	2,059,318	117	3,983,742	157	1,924,424	93
Gross loss	(311,603)	(18)	(1,452,427)	(57)	(1,140,824)	366
Operating expenses:						
Product development costs	4,224,997	242	6,219,893	246	1,994,896	47
Selling, general and administrative costs	3,190,687	183	4,893,580	193	1,702,893	53
Total operating expenses	7,415,684	425	11,113,473	439	3,697,789	50
Operating loss	(7,727,287)	(442)	(12,565,900)	(496)	(4,838,613)	63
Interest income, net	1,408,361	81	1,389,702	55	(18,659)	(1)
Other income	74,294	4	13,906	1	(60,388)	(81)
Foreign exchange (loss) gain	(978,242)	(56)	1,523,527	60	2,501,769	256
Loss before income taxes	(7,222,874)	(413)	(9,638,765)	(380)	(2,415,891)	33
Income tax benefit	143,963	8	—	—	(143,963)	(100)
Net loss	\$ (7,078,911)	(405)%	\$ (9,638,765)	(380)%	\$ (2,559,854)	36%

Revenues

Revenues increased by \$0.8 million in fiscal 2007, or 45%, to \$2.5 million as compared to \$1.7 million in fiscal 2006. The increase in revenues was primarily attributable to the following factors:

- Revenues relating to our utility PowerBuoy system increased by \$1.1 million due to work that commenced on the first phase of construction of a 1.39MW wave power station off the coast of Spain, increased revenues relating to our US Navy project in Hawaii from a higher activity level, and work that commenced on the design, manufacture and installation of an OPT wave power station consisting of a single 150kW PowerBuoy device in Orkney, Scotland.
- Revenues relating to our autonomous PowerBuoy system decreased by \$0.3 million primarily as a result of the completion of a development and construction contract with Lockheed Martin in the fiscal year ended April 30, 2006.

Cost of revenues

Cost of revenues increased by \$1.9 million, or 93%, to \$4.0 million in fiscal 2007, as compared to \$2.1 million in fiscal 2006. The decrease in gross profit in fiscal 2007 was primarily due to an anticipated loss of \$1.3 million that was recognized in fiscal 2007 on our contract for a wave power station off the coast of Spain, partially offset by an increase in gross profit recognized in connection with our US Navy project in Hawaii. The anticipated loss of \$1.3 million was recognized based on a change in estimated costs associated with this contract. In addition, \$0.3 million of compensation expense was recorded as cost of revenues under Statement of Financial Accounting Standards, or SFAS, No. 123 (revised 2004), *Share-Based Payment*, or SFAS No. 123R, which requires companies to recognize compensation expense for all stock-based payments to employees. Because we adopted SFAS No. 123R effective May 1, 2006, we did not record similar compensation expense in fiscal 2007.

Product development costs

Product development costs increased \$2.0 million, or 47%, to \$6.2 million in fiscal 2007, as compared to \$4.2 million in fiscal 2006. The substantial increase in product development costs was primarily attributable to our efforts to increase the power output of our utility PowerBuoy system, including the 150kW PowerBuoy system. In addition, we recorded \$0.3 million of compensation expense as product development costs under SFAS No. 123R. Because we adopted SFAS No. 123R effective May 1, 2006, we did not record similar compensation expense in fiscal 2007. As a percentage of revenues, product development costs increased slightly to 246% in fiscal 2007 from 242% in fiscal 2006.

Selling, general and administrative costs

Selling, general and administrative costs increased \$1.7 million, or 53%, to \$4.9 million in fiscal 2007, as compared to \$3.2 million in fiscal 2006. The increase was primarily attributable to an increase of \$0.4 million related to additional marketing expenses and consulting costs, \$0.3 million in professional fees, \$0.5 million in employee incentive-based compensation and \$0.5 million of compensation expense recorded under SFAS No. 123R. Because we adopted SFAS No. 123R effective May 1, 2006, we did not record similar compensation expense in fiscal 2007.

Interest income, net

Interest income, net remained relatively flat at \$1.4 million in fiscal 2007, compared to fiscal 2006, due to a reduction in the balance of our cash, cash equivalents and certificates of deposit between the two periods (before giving effect to the receipt of the net proceeds of our United States initial public offering on April 30, 2007), offset by higher interest rates during fiscal 2007.

Foreign exchange (loss) gain

Foreign exchange gain was \$1.5 million in fiscal 2007, compared to a foreign exchange loss of \$1.0 million in fiscal 2006. The difference was primarily attributable to the relative change in value of the British pound compared to the US dollar during the two periods.

Income tax benefit

During fiscal 2007, we recorded no income tax benefit, compared to an income tax benefit of \$0.1 million recorded in fiscal 2006. The income tax benefit recorded in fiscal 2006 resulted from our sale of New Jersey state net operating losses and research and development credits under a program offered by the State of New Jersey. Because we believe we are no longer eligible to participate in this program, we did not sell any New Jersey state net operating losses or research and development credits in fiscal 2007, nor do we expect to sell any in the future.

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 three years ended April 30, 2008, our revenues were \$9.1 million, our net losses were \$31.4 million and our net cash used in operating activities was \$26.1 million. Over that same period, we raised \$90.4 million in financing activities, including \$89.9 million from the closing of our United States initial public offering on April 30, 2007.

At April 30, 2008, our total cash, cash equivalents, certificates of deposit, and long-term investments were \$101.1 million. Our cash and cash equivalents are highly liquid investments with maturities of three months or less at the date of purchase and consist primarily of time deposits with large commercial banks, Treasury bills and an investment in a money market fund. Long-term investments consists of a US Treasury bill having a maturity in excess of one year.

The primary drivers of our cash flows have been our ability to generate revenues and decrease losses related to our contracts, as well as our ability to obtain and invest the capital resources needed to fund our development.

Net cash used in operating activities was \$13.7 million for fiscal 2008 and \$7.5 million for fiscal 2007. The change was the result of an increase in net loss of \$5.0 million, an increase in non-cash charges of \$2.2 million, and a decrease in cash provided by operating assets and liabilities of \$3.3 million. The change in non-cash charges was primarily due to a reduction in foreign exchange gains of \$1.4 million due to a smaller increase in the value of the British pound against the US dollar, and an increase in stock option expense of \$0.8 million. The decrease in cash provided by operating assets and liabilities was primarily the result of increases in accounts payable and accrued expenses in fiscal 2007 of \$3.4 million, an increase in other current assets during fiscal 2008 of \$0.9 million, and an increase in unearned revenue during fiscal 2008 of \$0.7 million. The increase in accounts payable and accrued expenses during fiscal 2007 was primarily related to increases in employee incentive payments and an accrual for an anticipated loss at completion on our contract for a wave power station off the coast of Spain. The increase in other current assets during fiscal 2008 was primarily due to prepayments of certain insurance premiums, increased interest receivable on invested cash, and deposits related to our operations. The increase in unearned revenues in fiscal 2008 resulted from billings in excess of revenues earned on two contracts.

Net cash used in investing activities was \$4.4 million for fiscal 2008 and \$9.3 million for fiscal 2007. The change was primarily the result of a net decrease in purchases of securities with maturities longer than 90 days during fiscal 2008. Also, there was an addition to restricted cash, related to a bank credit facility, of \$1.0 million during fiscal 2007.

Net cash used in financing activities was \$0.6 million in fiscal 2008. In fiscal 2007, financing activities provided \$90.8 million in cash, primarily as a result of the net proceeds from our initial public offering in the United States.

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

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

We believe that our current cash and cash equivalents and certificates of deposit will be sufficient to meet our anticipated cash needs for working capital and capital expenditures at least through fiscal 2009. If existing resources are insufficient to satisfy our liquidity requirements or if we acquire or license rights to additional product technologies, we may seek to sell additional equity or debt securities or obtain a credit facility. The sale of additional equity or convertible securities could result in dilution to our stockholders. If additional funds are raised through the issuance of debt securities, these securities could have rights senior to those associated with our common stock and could contain covenants that would restrict our operations. Financing may not be available in amounts or on terms acceptable to us. If we are unable to obtain required financing, we may be required to reduce the scope of our planned product development and marketing efforts, which could harm our financial condition and operating results.

Contractual Obligations

Our major outstanding contractual obligations relate to our facilities leases. We have summarized in the table below our fixed contractual cash obligations as of April 30, 2008.

	Payments Due by Period				
	Total	Less than One Year	One to Three Years	Four to Five Years	More than Five Years
Long-term debt	\$ 232,000	\$ 43,000	(1)	(1)	\$ —
Operating leases	1,182,000	271,000	\$ 477,000	\$ 227,000	207,000
Total	\$ 1,414,000	\$ 314,000	\$ 477,000	\$ 227,000	\$ 207,000

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

Off-Balance Sheet Arrangements

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

Critical Accounting Policies and Estimates

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

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

Revenue recognition and unearned revenues

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

Upon anticipating a loss on a contract, we recognize the full amount of the anticipated loss in the current period. We had loss reserves of \$2.1 million as of April 30, 2008 and \$1.8 million as of April 30, 2007 related to two contracts. In fiscal 2008, we recognized a loss of \$2.4 million on our contract for a wave power station off the coast of Spain. The additional anticipated loss was recognized based on a change in estimated costs associated with this contract and our decision in the fourth quarter to absorb an additional \$1.9 million in costs beyond our obligation for initial cost overruns and certain other costs as set forth in the agreement.

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

Stock-based compensation

In December 2004, the Financial Accounting Standards Board, or FASB, issued SFAS No. 123R, which requires companies to recognize compensation expense for all stock-based payments to employees, including grants of employee stock options, in their statement of operations based on the fair value of the awards. We adopted SFAS No. 123R effective May 1, 2006 using the modified prospective method. Under this method, compensation cost is recognized for all share-based payments granted subsequent to April 30, 2006, awards modified after April 30, 2006, and the remaining portion of the fair value of unvested awards at April 30, 2006. Prior to May 1, 2006, we used the intrinsic value method to determine values used in our pro forma stock-based compensation disclosures.

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

Determining the appropriate fair-value model and calculating the fair value of stock-based awards at the date of grant using any valuation model requires judgment. We use the Black-Scholes option pricing model to estimate the fair value of employee stock options, as permitted by the provisions of SFAS No. 123R. Option pricing models, including the Black-Scholes model, require the use of input assumptions, including expected volatility, expected term and the expected dividend rate. Because our stock has been publicly traded in the United States only since April 2007, we do not have a significant observable share-price volatility for the United States capital markets; therefore, we estimate our expected volatility based on that of what we consider to be similar publicly-traded companies and expect to continue to do so until such time as we have adequate historical data from our traded share price in the United States. We did not estimate our expected volatility based on the price of our common stock on the AIM market of the London Stock Exchange on which our shares have traded since October 2003, because we do not believe, based on the historically low trading volume of our shares on that market, that the volatility of our common stock on the AIM market is an appropriate indicator of the expected volatility of our common stock. Prior to fiscal 2007, we estimated the expected term of our options using our best estimate of the period of time from the grant date that we expect the options to remain outstanding. Beginning in fiscal 2007, we estimate the expected term using the average midpoint between the vesting terms and the contractual terms of our options as permitted by SAB 107. If we determine another method to estimate expected volatility or expected term is more reasonable than our current methods, or if another method for calculating these input assumptions is prescribed by authoritative guidance, the fair value calculated for future stock-based awards could change significantly. Higher volatility and longer expected terms have a significant impact on the value of stock-based compensation determined at the date of grant. The expected dividend rate is not as significant to the calculation of fair value of our stock-based awards.

In addition, SFAS No. 123R requires us to develop an estimate of the number of stock-based awards that will be forfeited due to employee turnover. Quarterly changes in the estimated forfeiture rate can have a significant effect on reported stock-based compensation. If the actual forfeiture rate is higher than the estimated forfeiture rate, then an adjustment is made to increase the estimated forfeiture rate, which will result in a decrease to the expense recognized in the consolidated financial statements during the quarter of the change. If the actual forfeiture rate is lower than the estimated forfeiture rate, then an adjustment is made to decrease the estimated forfeiture rate, which will result in an increase to the expense recognized in the consolidated financial statements. These adjustments affect our cost of revenues, product development costs and selling, general and administrative costs. Through the year ended April 30, 2008, the effect of forfeiture adjustments on our consolidated financial statements has been insignificant. The expense we recognize in future periods could differ significantly from the current period and/or our forecasts due to adjustments in the assumed forfeiture rates.

As a result of the adoption of SFAS No. 123R, we recorded stock compensation expense related to employees of \$1.1 million and \$1.8 million in fiscal 2007 and 2008, respectively.

Income taxes

We account for income taxes in accordance with SFAS No. 109, *Accounting for Income Taxes*. Under this method, we determine deferred tax assets and liabilities based upon the differences between the financial statement carrying amounts and the tax bases of assets and liabilities, as well as credit and net operating loss carryforwards,

using enacted tax rates in effect for the year in which such items are expected to affect taxable income. The tax consequences of most events recognized in the current year's financial statements are included in determining income taxes currently payable. However, because tax laws and financial accounting standards differ in their recognition and measurement of assets, liabilities, equity, revenues, expenses, gains and losses, differences arise between the amount of taxable income and pretax financial income for a year and between the tax bases of assets or liabilities and their reported amounts in the financial statements. Because we assume that the reported amounts of assets and liabilities will be recovered and settled, respectively, a difference between the tax basis of an asset or a liability and its reported amount in the balance sheet will result in a taxable or a deductible amount in some future years when the related liabilities are settled or the reported amounts of the assets are recovered, giving rise to a deferred tax asset or deferred tax liability. We then assess the likelihood that our deferred tax assets will be recovered from future taxable income and, to the extent we believe that recovery is not likely, we establish a valuation allowance. As discussed in Note 13 to our consolidated financial statements included in this Annual Report, we have established a valuation allowance for our net deferred tax assets, which were \$13.2 million as of April 30, 2007 and \$19.5 million as of April 30, 2008.

Recent Accounting Pronouncements

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements*, which establishes a framework for reporting fair value and expands disclosures about fair value measurements. SFAS No. 157 as issued is effective for fiscal years beginning after November 15, 2007. On February 12, 2008, FASB Staff Position No. FAS 157-2, *Effective Date of FASB Statement No. 157*, was issued, which delays the effective date to fiscal years beginning after November 15, 2008 for certain nonfinancial assets and liabilities. We are currently evaluating the impact of adopting SFAS No. 157.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*. SFAS No. 159 allows companies to elect to measure certain assets and liabilities at fair value and is effective for fiscal years beginning after November 15, 2007. This standard is not expected to have any impact on our financial condition or results of operations.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), *Business Combinations* (SFAS No. 141R), which establishes the principles and requirements for how an acquirer recognizes the assets acquired, the liabilities assumed, and any noncontrolling interest in the acquirer at the acquisition date, measured at their fair values as of that date, with limited exceptions. This statement applies to business combinations for which the acquisition date is after the beginning of the first annual reporting period beginning after December 15, 2008. Earlier adoption is not permitted. We will adopt SFAS No. 141R upon its effective date as appropriate for any future business combinations.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements*. SFAS No. 160 establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. It clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be recorded as equity in the consolidated financial statements. This statement also requires that consolidated net income shall be adjusted to include the net income attributed to the noncontrolling interest. Disclosure on the face of the statement of operations of the amounts of consolidated net income attributable to the parent and to the noncontrolling interest is required. SFAS No. 160 is effective for fiscal years beginning after December 15, 2008. Earlier adoption is not permitted. This standard is not expected to have any impact on our financial condition or results of operations.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We generally place our investments in money market funds, Treasury bills and certificates of deposit with maturities of less than one year. We actively manage our portfolio of cash equivalents, short-term investments and long-term investments, but in order to ensure liquidity, we will only invest in instruments with high credit quality where a secondary market exists. We have not held and do not hold any derivatives related to our interest rate exposure. Due to the average maturity and conservative nature of our investment portfolio, a change in interest rates would not have a material effect on the value of the portfolio. We do not have market risk exposure on our long-term debt because it consists of an interest-free loan from the New Jersey Board of Public Utilities.

Management estimates that had the average yield on our cash, cash equivalents, certificates of deposit and long-term investments decreased by 100 basis points, our interest income for the year ended April 30, 2008 would have decreased by \$1.1 million. This estimate assumes that the decrease occurred on the first day of fiscal 2008 and reduced the yield of each investment by 100 basis points. The impact on our future interest income of future changes in investment yields will depend largely on the gross amount of our cash, cash equivalents, and investments.

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

We invest in certificates of deposit and maintain cash accounts that are denominated in British pounds, Euros and Australian dollars. These foreign denominated certificates of deposit and cash accounts had a balance of \$9.6 million as of April 30, 2008 and \$15.6 million as of April 30, 2007, compared to our total certificates of deposits, long-term investments and cash account balances of \$101.1 million as of April 30, 2008 and \$115.9 million as of April 30, 2007. These foreign currency balances are translated at each month end to our functional currency, the US dollar, and any resulting gain or loss is recognized in our results of operations.

In addition, a portion of our operations is conducted through our subsidiaries in countries other than the United States, specifically Ocean Power Technologies Ltd. in the United Kingdom, the functional currency of which is the British pound sterling, and Ocean Power Technologies (Australasia) Pty Ltd. in Australia, the functional currency of which is the Australian dollar. Both of these subsidiaries have foreign exchange exposure that results from changes in the exchange rate between their functional currency and other foreign currencies in which they conduct business. All of our international revenues for the year ended April 30, 2008 were recorded in Euros, British pounds or Australian dollars. If the foreign currency exchange rates had fluctuated by 10% as of April 30, 2008, the impact on our foreign exchange gains and losses would have been \$1.0 million.

We currently do not hedge exchange rate exposure. However, we assess the anticipated foreign currency working capital requirements and capital asset acquisitions of our foreign operations and attempt to maintain a portion of our cash 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.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements and supplementary data required by this item are listed in Item 15 — “Exhibits and Financial Statement Schedules” of this Annual Report.

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

Not applicable.

ITEM 9A. CONTROLS AND PROCEDURES

The company, under the supervision and with the participation of its management, including the Chief Executive Officer and the Chief Financial Officer, has evaluated the effectiveness of the company’s disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) as of April 30, 2008 (the “Evaluation Date”). Based on such evaluation, the Chief Executive Officer and the Chief Financial Officer have concluded that, as of the Evaluation Date, the company’s disclosure controls and procedures are effective, and are reasonably designed to ensure that all material information relating to the company required to be included in the company’s reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC.

The annual report of management on the company's internal control over financial reporting is provided under "Financial Statements and Supplementary Data" on page F-2.

The attestation report of KPMG LLP, the company's independent registered public accounting firm, regarding the company's internal control over financial reporting is provided under "Financial Statements and Supplementary Data" on page F-4.

During the quarter ended April 30, 2008, there were no changes in the company's internal control over financial reporting that materially affected, or are reasonably likely to materially affect, such internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information with respect to this item is set forth in the Proxy Statement for the 2008 Annual Meeting of Stockholders (the "Proxy Statement") under the headings "Election of Directors," "Executive Officers," "Section 16(a) Beneficial Ownership Reporting Compliance," "Code of Ethics and Business Conduct," and "Corporate Governance and Board Matters," and is incorporated herein by reference. The Proxy Statement will be filed with the SEC within 120 days after the end of the fiscal year covered by this Form 10-K.

ITEM 11. EXECUTIVE COMPENSATION

Information with respect to this item is set forth in the Proxy Statement under the headings "Executive Compensation" and "Director Compensation," and is incorporated herein by reference. The Proxy Statement will be filed with the SEC within 120 days after the end of the fiscal year covered by this Form 10-K.

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

Information with respect to this item is set forth in the Proxy Statement under the headings "Security Ownership of Certain Beneficial Owners and Management" and "Executive Compensation," and is incorporated herein by reference. The Proxy Statement will be filed with the SEC within 120 days after the end of the fiscal year covered by this Form 10-K.

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

Information with respect to this item is set forth in the Proxy Statement under the headings "Certain Relationships and Related Party Transactions" and "Corporate Governance and Board Matters," and is incorporated herein by reference. The Proxy Statement will be filed with the SEC within 120 days after the end of the fiscal year covered by this Form 10-K.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information with respect to this item is set forth in the Proxy Statement under the heading "Ratification of the Selection of Independent Registered Public Accounting Firm," and is incorporated herein by reference. The Proxy Statement will be filed with the SEC within 120 days after the end of the fiscal year covered by this Form 10-K.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

- (a) (1) Financial Statements: See Index to Consolidated Financial Statements on page F-1.
- (3) Exhibits: See Exhibits Index on pages 60 to 61.

SIGNATURES

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

OCEAN POWER TECHNOLOGIES, INC.

Date: July 14, 2008

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

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ GEORGE W. TAYLOR</u> George W. Taylor	Director, Chief Executive Officer (Principal Executive Officer)	July 14, 2008
<u>/s/ SEYMOUR S. PRESTON III</u> Seymour S. Preston III	Chairman of the Board of Directors	July 14, 2008
<u>/s/ CHARLES F. DUNLEAVY</u> Charles F. Dunleavy	Director, Chief Financial Officer, Senior Vice President, Treasurer and Secretary (Principal Financial Officer and Principal Accounting Officer)	July 14, 2008
<u>/s/ ERIC A. ASH</u> Eric A. Ash	Director	July 14, 2008
<u>/s/ THOMAS J. MEANEY</u> Thomas J. Meaney	Director	July 14, 2008
<u>/s/ PAUL F. LOZIER</u> Paul F. Lozier	Director	July 14, 2008

Exhibits Index

Exhibit Number	Description
3.1	Restated Certificate of Incorporation of the registrant (incorporated by reference from Exhibit 3.1 to Form 10-Q filed September 14, 2007)
3.2	Amended and Restated Bylaws of the registrant (incorporated by reference from Exhibit 3.1 to Form 10-Q filed September 14, 2007)
4.1	Specimen certificate of common stock (incorporated by reference from Exhibit 4.1 to Form S-1/A filed March 19, 2007)
10.1+	Engineering, Procurement and Construction of a Wave Energy Power Plant at "Punta del Pescador" (Santoña, Spain), dated July 27, 2006, between Iberdrola Energias Marinas de Cantabria, S.A. and Ocean Power Technologies Limited (incorporated by reference from Exhibit 10.1 to Form S-1 filed November 13, 2006)
10.2+	Contract Number N00014-05-C-0384, dated September 20, 2005, between the Office of Naval Research, U.S. Navy and Ocean Power Technologies, Inc., as amended by the Amendment of Solicitation/ Modification of Contract dated March 22, 2007 (incorporated by reference from Exhibit 10.2 to Form S-1 filed November 13, 2006)
10.3+	Contract Number N00014-02-C-0053, dated February 8, 2002, between the Office of Naval Research, U.S. Navy and Ocean Power Technologies Inc., as modified (incorporated by reference from Exhibit 10.3 to Form S-1 filed November 13, 2006)
10.4	Option Agreement for Purchase of Emissions Credits, dated November 24, 2000 between Ocean Power Technologies, Inc. and its affiliates and Woodside Sustainable Energy Solutions Pty. Ltd. (incorporated by reference from Exhibit 10.4 to Form S-1 filed November 13, 2006)
10.5	1994 Stock Option Plan (incorporated by reference from Exhibit 10.4 to Form S-1 filed November 13, 2006)*
10.6	Incentive Stock Option Plan (incorporated by reference from Exhibit 10.6 to Form S-1 filed November 13, 2006)*
10.7	2001 Stock Plan (incorporated by reference from Exhibit 10.7 to Form S-1 filed November 13, 2006)*
10.8	2006 Stock Incentive Plan (incorporated by reference from Exhibit 10.8 to Form S-1/A filed March 19, 2007)*
10.9	Amended and Restated Voting and Right of First Refusal Agreement, dated April 18, 2005, between Ocean Power Technologies, Inc., George W. Taylor and JoAnne E. Burns (incorporated by reference from Exhibit 10.9 to Form S-1 filed November 13, 2006)
10.10	Agreement to Refinance, dated November 14, 1993 between Joseph R. Burns, Michael Y. Epstein, George W. Taylor and Ocean Power Technologies, Inc. (incorporated by reference from Exhibit 10.10 to Form S-1 filed November 13, 2006)
10.11	Employment Agreement, dated October 23, 2003, between Charles F. Dunleavy and Ocean Power Technologies, Inc. (incorporated by reference from Exhibit 10.11 to Form S-1 filed November 13, 2006)*
10.12	Employment Agreement, dated October 23, 2003, between George W. Taylor and Ocean Power Technologies, Inc. (incorporated by reference from Exhibit 10.12 to Form S-1 filed November 13, 2006)*
10.13	Consultant Agreement, dated August 1, 1999, between Thomas J. Meaney and Ocean Power Technologies, Inc. (incorporated by reference from Exhibit 10.13 to Form S-1 filed November 13, 2006)
10.14	Employment Agreement, dated September 9, 2004, between Mark R. Draper and Ocean Power Technologies Ltd. (incorporated by reference from Exhibit 10.14 to Form S-1 filed November 13, 2006)*
10.15	Employment Agreement, dated September 30, 2005, between John A. Baylouny and Ocean Power Technologies, Inc. (incorporated by reference from Exhibit 10.15 to Form S-1 filed November 13, 2006)*

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<u>Exhibit Number</u>	<u>Description</u>
10.16	Lease Agreement, dated August 30, 2005 between Ocean Power Technologies, Inc. and Reed Road Industrial Park LLC #1, as amended on January 27, 2006 (incorporated by reference from Exhibit 10.16 to Form S-1 filed November 13, 2006)
10.17	Lease, dated January 15, 2007, between University of Warwick Science Park Innovation Centre Limited and Ocean Power Technologies Ltd. (incorporated by reference from Exhibit 10.17 to Form S-1/A filed March 19, 2007)
10.18	Agreement for Renewable Energy Economic Development Grants, dated November 3, 2003, between State of New Jersey Board of Public Utilities and Ocean Power Technologies, Inc. (incorporated by reference from Exhibit 10.18 to Form S-1/A filed March 19, 2007)
10.19+	Contract for the Development and Application of a Sea Wave Energy Generation System in France, dated as of June 17, 2005, between Iberdrola Energias Renovables II, S.A. Sociedad Unipersonal, Total Energie Development SA, Ocean Power Technologies Ltd. and Ocean Power Technologies, Inc. (incorporated by reference from Exhibit 10.19 to Form S-1/A filed March 19, 2007)
10.20	Contract Number DM259735, dated September 17, 2005 between Lockheed Martin Corporation Maritime Systems and Sensors (MS2) and Ocean Power Technologies, Inc., as modified (incorporated by reference from Exhibit 10.20 to Form S-1/A filed March 19, 2007)
10.21	Marketing Cooperation Agreement, dated September 9, 2006, between Ocean Power Technologies, Inc. and Lockheed Martin Corporation through its Maritime Systems and Sensors business unit (incorporated by reference from Exhibit 10.21 to Form S-1/A filed April 10, 2007)
10.22+	Contract Number N00014-07-C-0617, dated May 24, 2007, between the Office of Naval Research, U.S. Navy and Ocean Power Technologies, Inc. (incorporated by reference from Exhibit 99.1+ to Form 8K filed June 8, 2007)
10.23	Amendment to Contract for the Development and Application of a Sea Wave Energy Generating System in France, dated as of April 2, 2007, between Iberdrola Energias Renovables, S.A.S., Total Energie Development, S.A., Ocean Power Technologies Ltd. and Ocean Power Technologies, Inc. (incorporated by reference from Exhibit 10.1 to Form 10-Q filed September 14, 2007)
10.24	Modification of Contract, dated September 13, 2007, modifying Contract Number N00014-02-C-0053, between the Office of Naval Research, U.S. Navy and Ocean Power Technologies, Inc., as modified (incorporated by reference from Exhibit 10.1 to Form 10-Q filed December 17, 2007)
10.25	Modification of Contract, dated September 26, 2007, modifying Contract Number N00014-05-C-0384, between the Office of Naval Research, U.S. Navy and Ocean Power Technologies, Inc., as modified. (incorporated by reference from Exhibit 10.2 to Form 10-Q filed December 17, 2007)
10.26	Employment Agreement, dated December 21, 2007, between Herbert T. Nock and Ocean Power Technologies, Inc.*
10.27	Addendum to the Agreement for the Engineering, Procurement and Construction of a Wave Energy Power Plant at "Punta del Pescador" (Santoña, Spain), between Iberdrola Energias Marinas de Cantabria, S.A. and Ocean Power Technologies Limited, dated February 18, 2008
10.28	Lease, dated February 1, 2008, between KUC Properties Limited and Ocean Power Technologies Ltd.
21.1	Subsidiaries of the registrant (incorporated by reference from Exhibit 21.1 to Form S-1/A filed March 19, 2007)
23.1	Consent of KPMG LLP
31.1	Certification of Chief Executive Officer
31.2	Certification of Chief Financial Officer
32.1	Certification of Chief Executive Officer pursuant to Section 906 of Sarbanes-Oxley Act of 2002
32.2	Certification of Chief Financial Officer pursuant to Section 906 of Sarbanes-Oxley Act of 2002

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

* Management contract or compensatory plan or arrangement

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Index to Consolidated Financial Statements

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Reports of Management

Management's Report on Consolidated Financial Statements

The accompanying consolidated financial statements have been prepared by the Company's management in conformity with generally accepted accounting principles to reflect the financial position of the Company and its operating results. The financial information appearing throughout this Annual Report is consistent with the consolidated financial statements. Management is responsible for the information and representations in such consolidated financial statements, including the estimates and judgments required for their preparation. The consolidated financial statements have been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report, which appears herein.

The Audit Committee of the Board of Directors, which is composed entirely of directors who are not officers or employees of the Company, meets regularly with management and the independent registered public accounting firm. The independent registered public accounting firm has had, and continues to have, direct access to the Audit Committee without the presence of other management personnel, and have been directed to discuss the results of their audit work and any matters they believe should be brought to the Committee's attention. The independent registered public accounting firm reports directly to the Audit Committee.

Management's Report on Internal Control Over Financial Reporting

The Company's management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed 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 in the United States of America. The Company's internal control over financial reporting includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the Company; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

The Company's management assessed the effectiveness of the Company's internal control over financial reporting as of April 30, 2008. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control — Integrated Framework*. Based on this assessment using those criteria, management concluded that the Company's internal control over financial reporting was effective as of April 30, 2008.

The effectiveness of the Company's internal control over financial reporting as of April 30, 2008 has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report, which appears herein.

/s/ GEORGE W. TAYLOR

George W. Taylor
Chief Executive Officer

/s/ CHARLES F. DUNLEAVY

Charles F. Dunleavy
Chief Financial Officer

Report of Independent Registered Public Accounting Firm

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

We have audited the accompanying consolidated balance sheets of Ocean Power Technologies, Inc. and subsidiaries as of April 30, 2008 and 2007, and the related consolidated statements of operations, stockholders' equity and comprehensive loss, and cash flows for each of the years in the three-year period ended April 30, 2008. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Ocean Power Technologies, Inc. and subsidiaries as of April 30, 2008 and 2007, and the results of their operations and their cash flows for each of the years in the three-year period ended April 30, 2008, in conformity with U.S. generally accepted accounting principles.

As discussed in Note 2 to the consolidated financial statements, effective May 1, 2006, the Company adopted the fair value method of accounting for stock-based compensation as required by Statement of Financial Accounting Standards No. 123R, *Share-Based Payment*.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Ocean Power Technologies, Inc.'s internal control over financial reporting as of April 30, 2008, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated July 14, 2008 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP

Philadelphia, Pennsylvania
July 14, 2008

Report of Independent Registered Public Accounting Firm

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

We have audited Ocean Power Technologies, Inc.'s internal control over financial reporting as of April 30, 2008, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Ocean Power Technologies, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Ocean Power Technologies, Inc. maintained, in all material respects, effective internal control over financial reporting as of April 30, 2008, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Ocean Power Technologies, Inc. and subsidiaries as of April 30, 2008 and 2007, and the related consolidated statements of operations, stockholders' equity and comprehensive loss, and cash flows for each of the years in the three-year period ended April 30, 2008, and our report dated July 14, 2008 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

Philadelphia, Pennsylvania
July 14, 2008

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES
Consolidated Balance Sheets

	April 30,	
	2007	2008
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 107,505,473	88,836,304
Certificates of deposit	8,390,146	—
Accounts receivable	865,081	1,728,637
Unbilled receivables	313,080	577,452
Other current assets	441,342	1,375,249
Total current assets	117,515,122	92,517,642
Property and equipment, net	387,923	628,454
Patents, net of accumulated amortization of \$176,840 and \$204,585, respectively	597,280	717,288
Restricted cash	983,376	1,123,848
Long-term investments	—	12,233,437
Other noncurrent assets	227,845	330,296
Total assets	\$ 119,711,546	107,550,965
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 1,708,408	1,457,575
Accrued expenses	4,593,413	4,490,008
Unearned revenues	—	699,752
Other current liabilities	26,106	—
Total current liabilities	6,327,927	6,647,335
Long-term debt	231,585	188,784
Deferred rent	10,825	16,237
Deferred credits	600,000	600,000
Total liabilities	7,170,337	7,452,356
Commitments and contingencies (note 14)		
Stockholders' equity:		
Preferred stock, \$0.001 par value; authorized 5,000,000 shares, none issued or outstanding	—	—
Common stock, \$0.001 par value; authorized 105,000,000 shares, issued and outstanding 10,186,254 and 10,210,354 shares, respectively	10,186	10,210
Additional paid-in capital	150,842,671	153,057,265
Accumulated deficit	(38,270,918)	(52,927,641)
Accumulated other comprehensive loss	(40,730)	(41,225)
Total stockholders' equity	112,541,209	100,098,609
Total liabilities and stockholders' equity	\$ 119,711,546	107,550,965

See accompanying notes to consolidated financial statements.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Consolidated Statements of Operations

	Year Ended April 30,		
	2006	2007	2008
Revenues	\$ 1,747,715	2,531,315	4,772,017
Cost of revenues	2,059,318	3,983,742	7,960,042
Gross loss	(311,603)	(1,452,427)	(3,188,025)
Operating expenses:			
Product development costs	4,224,997	6,219,893	8,255,123
Selling, general and administrative costs	3,190,687	4,893,580	7,732,577
Total operating expenses	7,415,684	11,113,473	15,987,700
Operating loss	(7,727,287)	(12,565,900)	(19,175,725)
Interest income, net	1,408,361	1,389,702	4,434,844
Other income	74,294	13,906	—
Foreign exchange gain (loss)	(978,242)	1,523,527	84,158
Loss before income taxes	(7,222,874)	(9,638,765)	(14,656,723)
Income tax benefit	143,963	—	—
Net loss	\$ (7,078,911)	(9,638,765)	(14,656,723)
Basic and diluted net loss per share	\$ (1.37)	(1.83)	(1.44)
Weighted average shares used to compute basic and diluted net loss per share	5,162,340	5,260,794	10,200,729

See accompanying notes to consolidated financial statements.

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

	Common Shares		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Stockholders' Equity
	Shares	Amount				
Balance, May 1, 2005	5,151,221	\$ 5,151	59,423,955	(21,553,242)	(39,333)	37,836,531
Net loss	—	—	—	(7,078,911)	—	(7,078,911)
Foreign currency translation adjustment	—	—	—	—	7,242	7,242
Total comprehensive loss	—	—	—	—	—	(7,071,669)
Compensation related to stock option grants issued to employees	—	—	44,000	—	—	44,000
Compensation related to stock option grants issued for services	—	—	85,139	—	—	85,139
Shares issued for amounts received in prior years	2,732	3	49,997	—	—	50,000
Proceeds from exercise of stock options	17,166	17	122,686	—	—	122,703
Balance, April 30, 2006	5,171,119	5,171	59,725,777	(28,632,153)	(32,091)	31,066,704
Net loss	—	—	—	(9,638,765)	—	(9,638,765)
Foreign currency translation adjustment	—	—	—	—	(8,639)	(8,639)
Total comprehensive loss	—	—	—	—	—	(9,647,404)
Compensation related to stock option grants issued to employees	—	—	1,082,181	—	—	1,082,181
Compensation related to stock option grants issued for services	—	—	70,235	—	—	70,235
Adjustment for reverse stock split rounding	(9)	—	—	—	—	—
Sale of common stock, net of issuance costs	5,000,000	5,000	89,898,819	—	—	89,903,819
Proceeds from exercise of stock options	15,144	15	65,659	—	—	65,674
Balance, April 30, 2007	10,186,254	10,186	150,842,671	(38,270,918)	(40,730)	112,541,209
Net loss	—	—	—	(14,656,723)	—	(14,656,723)
Foreign currency translation adjustment	—	—	—	—	(495)	(495)
Total comprehensive loss	—	—	—	—	—	(14,657,218)
Compensation related to stock option grants issued to employees	—	—	1,788,841	—	—	1,788,841
Compensation related to stock option grants issued for services	—	—	137,982	—	—	137,982
Proceeds from exercise of stock options	24,100	24	287,771	—	—	287,795
Balance, April 30, 2008	10,210,354	\$ 10,210	153,057,265	(52,927,641)	(41,225)	100,098,609

See accompanying notes to consolidated financial statements.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES
Consolidated Statements of Cash Flows

	Year Ended April 30,		
	2006	2007	2008
Cash flows from operating activities:			
Net loss	\$ (7,078,911)	(9,638,765)	(14,656,723)
Adjustments to reconcile net loss to net cash used in operating activities:			
Foreign exchange (gain) loss	978,242	(1,523,527)	(84,158)
Depreciation and amortization	233,132	269,075	241,721
Loss on disposal of equipment	—	24,572	—
Compensation expense related to stock option grants	129,139	1,152,416	1,926,823
Realization of deferred credits	(75,000)	—	—
Deferred rent	—	10,825	5,412
Changes in operating assets and liabilities:			
Accounts receivable	668,424	(827,287)	(878,643)
Unbilled receivables	611,037	(95,896)	(270,136)
Other current assets	161,505	(99,436)	(918,380)
Other noncurrent assets	—	—	(76,571)
Accounts payable	(632,778)	1,233,484	(122,323)
Accrued expenses	(121,840)	2,126,616	496,838
Unearned revenues	(2,383)	(14,405)	699,752
Other current liabilities	57,803	(85,470)	(26,106)
Net cash used in operating activities	<u>(5,071,630)</u>	<u>(7,467,798)</u>	<u>(13,662,494)</u>
Cash flows from investing activities:			
Purchases of certificates of deposit	(62,677,400)	(55,187,304)	(8,968,170)
Maturities of certificates of deposit	87,397,606	47,279,314	17,358,316
Purchase of long-term investments	—	—	(12,233,437)
Restricted cash	—	(983,376)	—
Purchases of equipment	(330,047)	(107,271)	(419,835)
Payments of patent costs	(57,396)	(217,763)	(112,705)
Investments in joint ventures	(30,747)	(122,001)	(27,714)
Net cash provided by (used in) investing activities	<u>24,302,016</u>	<u>(9,338,401)</u>	<u>(4,403,545)</u>
Cash flows from financing activities:			
Sale of common stock, net of issuance costs	—	90,773,935	(870,116)
Proceeds from exercise of stock options	122,703	65,674	287,795
Net cash provided by (used in) financing activities	<u>122,703</u>	<u>90,839,609</u>	<u>(582,321)</u>
Effect of exchange rate changes on cash and cash equivalents	<u>(980,694)</u>	<u>1,514,854</u>	<u>(20,809)</u>
Net increase (decrease) in cash and cash equivalents	18,372,395	75,548,264	(18,669,169)
Cash and cash equivalents, beginning of period	13,584,814	31,957,209	107,505,473
Cash and cash equivalents, end of period	<u>\$ 31,957,209</u>	<u>107,505,473</u>	<u>88,836,304</u>
Supplemental disclosure of noncash investing and financing activities:			
Issuance of shares in connection with amounts received in prior years	\$ 50,000	—	—
Capitalized patent costs financed through accounts	—	30,343	35,048
Stock issuance costs financed through accounts payable and accrued expenses	—	870,116	—
Capitalized equipment costs financed through accounts payable	—	—	36,964

See accompanying notes to consolidated financial statements.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements

(1) Background

Ocean Power Technologies, Inc. (the Company) was incorporated on April 19, 1984 in the State of New Jersey, commenced active operations in 1994 and re-incorporated in the State of Delaware in April 2007. The Company develops and is commercializing proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. The Company markets and sells its products in the United States and internationally.

(2) Summary of Significant Accounting Policies

(a) Consolidation

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

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

(b) Use of Estimates

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

(c) Revenue Recognition

The Company recognizes revenue on government and commercial contracts under the percentage-of-completion method. The percentage of completion is determined by relating the costs incurred to date to the estimated total costs. The cumulative effects resulting from revisions of estimated total contract costs and revenues are recorded in the period in which the facts requiring revision become known. Upon anticipating a loss on a contract, the Company recognizes the full amount of the anticipated loss in the current period. During the years ended April 30, 2007 and 2008, the Company recorded provisions of approximately \$1,290,000 and \$2,370,000, respectively, related to anticipated losses on contracts. Reserves related to loss contracts in the amounts of approximately \$1,780,000 and \$2,070,000 are included in accrued expenses in the accompanying consolidated balance sheets as of April 30, 2007 and 2008, respectively.

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

(d) Cash Equivalents

Cash equivalents consist of investments in short-term financial instruments with maturities of three months or less from the date of purchase. Cash and cash equivalents include \$13,254,000 and \$15,617,000 of certificates of deposit with an initial term of less than three months at April 30, 2007 and 2008, respectively, and \$93,000,000 and

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements — (Continued)

\$1,251,000 invested in a money market fund as of April 30, 2007 and 2008, respectively. In addition, \$70,881,000 was invested in short-term Treasury bills as of April 30, 2008.

(e) Restricted Cash and Credit Facility

The Company had \$983,376 and \$1,123,848 of restricted cash as of April 30, 2007 and 2008, respectively. The cash is restricted under the terms of a security agreement (the Agreement) between Ocean Power Technologies, Inc and Barclays Bank. Under the Agreement, this cash is on deposit at Barclays Bank and serves as security for letters of credit that are expected to be issued by Barclays Bank on behalf of Ocean Power Technologies Ltd., under a €800,000 credit facility established by Barclays Bank for Ocean Power Technologies Ltd. The credit facility is for the issuance of letters of credit and bank guarantees, 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, and is cancelable at the discretion of the bank.

(f) Property and Equipment

Property and equipment is stated at cost, less accumulated depreciation and amortization. Depreciation and amortization is calculated using the straight-line method over the estimated useful lives (three to seven years) of the assets. Leasehold improvements are amortized using the straight-line method over the shorter of the estimated useful life of the asset or the remaining lease term. Expenses for maintenance and repairs are charged to operations as incurred. Depreciation was \$213,374, \$247,515 and \$213,977 for the years ended April 30, 2006, 2007 and 2008, respectively.

(g) Foreign Exchange Gains and Losses

The Company has invested in certain certificates of deposit and has maintained cash accounts that are denominated in British pound sterling, Euros and Australian dollars. Such certificates of deposit and cash accounts had a balance of approximately \$15,646,000 and \$9,646,000 as of April 30, 2007 and 2008, respectively. Such positions may result in realized and unrealized foreign exchange gains or losses from exchange rate fluctuations, which are included in foreign exchange gain (loss) on the accompanying consolidated statements of operations.

(h) Patents

External costs related to the filing of patents, including legal and filing fees, are capitalized. Amortization is calculated using the straight-line method over the life of the patents (17 years). Expenses for the development of technology are charged to operations as incurred. Amortization expense was \$19,758, \$21,560 and \$27,744 for the years ended April 30, 2006, 2007 and 2008, respectively. Amortization expense for the next five fiscal years related to amounts capitalized for patents as of April 30, 2008 is estimated to be approximately \$28,000 per year.

(i) Long-Lived Assets

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

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements — (Continued)

impairment in accordance with SFAS No. 144 and determined that no impairment review was necessary for the years ended April 30, 2006, 2007 or 2008.

(j) Concentration of Credit Risk

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

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 the periods indicated:

Customer	Years Ended April 30,		
	2006	2007	2008
US Navy	61%	54%	58%
Iberdrola and Total	9%	35%	31%
Lockheed Martin	22%	—%	—%

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

(k) Net Loss per Common Share

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

In computing diluted net loss per share, 1,205,030, 1,303,574, and 1,445,302 options to purchase shares of common stock were excluded from the computations for the years ended April 30, 2006, 2007 and 2008, respectively.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements — (Continued)

(l) **Stock-Based Compensation**

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

	<u>Year Ended</u> <u>April 30, 2006</u>
Net loss, as reported	\$ (7,078,911)
Add stock-based employee compensation expense included in reported net loss	44,000
Deduct total stock-based employee compensation expense determined under fair value-based method for all awards	<u>(680,000)</u>
Pro forma net loss	\$ <u>(7,714,911)</u>
Basic and diluted net loss per share, as reported	\$ (1.37)
Basic and diluted net loss per share, pro forma	<u>\$ (1.49)</u>

In accordance with SFAS No. 123, as amended by SFAS No. 148, the fair value of option grants is estimated on the date of grant using the Black-Scholes option pricing model for pro forma disclosure purposes with the following weighted-average assumptions used for grants: dividend yield of 0%; risk-free interest rate of 4.9%; an expected option life of 9.3 years; and volatility of 72% for the year ended April 30, 2006. These assumptions were used to determine the weighted average per share fair value of \$10.20 for stock options granted during the year ended April 30, 2006.

On May 1, 2006, the Company adopted the provisions of SFAS No. 123 (revised 2004), *Share-Based Payment* (SFAS No. 123R), which requires that the costs resulting from all share-based payment transactions be recognized in the consolidated financial statements at their fair values. The Company adopted SFAS No. 123R using the modified prospective application method under which the provisions of SFAS No. 123R apply to new awards and to awards modified, repurchased, or canceled after the adoption date. Additionally, compensation cost for the portion of the awards for which the requisite service had not been rendered that were outstanding as of May 1, 2006 will be recognized in the consolidated statements of operations over the remaining service period after such date based on the award's original estimated fair value. The aggregate share-based compensation expense recorded in the consolidated statements of operations for the years ended April 30, 2007 and 2008 under SFAS No. 123R was approximately \$1,082,000 and \$1,789,000, respectively.

Valuation Assumptions for Options Granted During the Years Ended April 30, 2007 and 2008.

The fair value of each stock option granted during the years ended April 30, 2007 and 2008 were estimated at the date of grant using the Black-Scholes option pricing model, assuming no dividends and using the weighted average valuation assumptions noted in the following table. The risk-free rate is based on the 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 Securities and Exchange Commission's

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements — (Continued)

Staff Accounting Bulletin No. 107, *Share-Based Payment*. Expected volatility was based on historical volatility for a peer group of companies for a period equal to the stock option's expected life, calculated on a daily basis.

	Years Ended April 30,	
	2007	2008
Risk-free interest rate	5.01%	4.69%
Expected dividend yield	0.0%	0.0%
Expected life	5.5 years	5.99 years
Expected volatility	72.0%	77.9%

The above assumptions were used to determine the weighted average per share fair value of \$8.80 and \$10.87 for stock options granted during the years ended April 30, 2007 and 2008, respectively.

(m) Accounting for Income Taxes

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

(n) Accumulated Other Comprehensive Loss

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

(o) Recent Accounting Pronouncements

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements*, which establishes a framework for reporting fair value and expands disclosures about fair value measurements. SFAS No. 157 as issued is effective for fiscal years beginning after November 15, 2007. On February 12, 2008, FASB Staff Position No. FAS 157-2, *Effective Date of FASB Statement No. 157*, was issued, which delays the effective date to fiscal years beginning after November 15, 2008 for certain nonfinancial assets and liabilities. The Company is currently evaluating the impact of adopting SFAS No. 157.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*. SFAS No. 159 allows companies to elect to measure certain assets and liabilities at fair value and is effective for fiscal years beginning after November 15, 2007. This standard is not expected to have any impact on the Company's financial condition or results of operations.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), *Business Combination*, (SFAS No. 141R), which establishes the principles and requirements for how an acquirer recognizes the assets acquired, the liabilities assumed, and any noncontrolling interest in the acquirer at the acquisition date, measured at their fair values as of that date, with limited exceptions. This statement applies to business combinations for which the acquisition date is after the beginning of the first annual reporting period beginning after December 15, 2008. Earlier adoption is not permitted. The Company will adopt SFAS No. 141R upon its effective date as appropriate for any future business combinations.

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Notes to Consolidated Financial Statements — (Continued)

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements*. SFAS No. 160 establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. It clarifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be recorded as equity in the consolidated financial statements. This statement also requires that consolidated net income shall be adjusted to include the net income attributed to the noncontrolling interest. Disclosure on the face of the statement of operations of the amounts of consolidated net income attributable to the parent and to the noncontrolling interest is required. SFAS No. 160 is effective for fiscal years beginning after December 15, 2008. Earlier adoption is not permitted. This standard is not expected to have any impact on the Company's financial condition or results of operations.

(3) **Certificates of Deposit**

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

	Nominal Face Amount	Currency	April 30,	
			2007	2008
5.20% due May 17, 2007	2,496,832	GBP	\$ 4,989,420	—
5.22% due June 20, 2007	1,701,810	GBP	3,400,726	—
			<u>\$ 8,390,146</u>	<u>—</u>

(4) **Long-Term Investment**

Long-term investments with maturities in excess of 365 days are summarized as follows:

	Nominal Face Amount	Currency	April 30,	
			2007	2008
3.875% due May 15, 2009	12,233,437	USD	\$—	<u>12,233,437</u>

(5) **Property and Equipment**

The components of property and equipment are as follows:

	April 30,	
	2007	2008
Computers and software	\$ 466,734	614,695
Equipment	403,233	630,116
Office furniture and equipment	198,923	247,491
Leasehold improvements	47,494	70,145
	<u>1,116,384</u>	<u>1,562,447</u>
Less accumulated depreciation	<u>(728,461)</u>	<u>(933,993)</u>
	<u>\$ 387,923</u>	<u>628,454</u>

(6) **Accrued Expenses**

Included in accrued expenses at April 30, 2007 and 2008 were contract reserves of approximately \$1,780,000 and \$2,070,000, respectively, and accrued employee incentive payments of approximately \$1,051,000 and \$572,000, respectively. Accrued expenses at April 30, 2007 also included costs associated with the initial public offering in the US of approximately \$680,000. Accrued expenses at April 30, 2008 also included legal and accounting fees of approximately \$556,000 and accrued employee vacation of approximately \$143,000.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements — (Continued)

(7) Related Party Transactions

The Company is obligated to pay royalties to G.W. Taylor, a founding stockholder of the Company; M.Y. Epstein; and the estate of J.R. Burns (stockholders of the Company) related to U.S. patent 4404490 entitled, "Power Generation from Waves Near the Surface of Bodies of Water." Royalty payments are limited to \$925,000 in the aggregate, based on revenues related to certain piezoelectric-technology, if any, on the basis of 6% of future licenses sold and 4% of future product sales and development contracts. Through April 30, 2008, approximately \$200,000 of royalties had been earned. During the years ended April 30, 2006, 2007 and 2008, no royalties were earned pursuant to these agreements, and no future royalties are expected to be earned. As of April 30, 2007, approximately \$26,000 was included in other current liabilities related to these agreements. The amount was paid during the year ended April 30, 2008.

In August 1999, the Company entered into a consulting agreement with an individual for marketing services at a rate of \$800 per day of services provided. The individual became a member of the board of directors in June 2006. Under this consulting agreement, the Company expensed approximately \$53,000, \$54,000 and \$62,000 during the years ended April 30, 2006, 2007 and 2008, respectively.

(8) Debt

During the year ended April 30, 2000, the Company received an award of \$250,000 from the State of New Jersey Commission on Science and Technology for the development of a wave power system that was deployed off the coast of New Jersey. The award contract was assigned to the New Jersey Economic Development Authority in fiscal 2008. Under the terms of this award, the Company must repay the amount funded, without interest, by January 15, 2012. The amounts to be repaid each year are determined as a percentage of revenues (as defined in the loan agreement) the Company receives that year from its customer contracts that meet criteria specified in the loan agreement, with any remaining amount due on January 15, 2012. Based upon the terms of the award, the Company has repaid approximately \$18,000 and is required to repay an additional approximately \$43,000 as of April 30, 2008. The current payment required was included in accrued expenses in the accompanying consolidated balance sheet as of April 30, 2008.

(9) Deferred Credits

During the year ended April 30, 2001, in connection with the sale of common stock to an investor, the Company received \$600,000 from the investor in exchange for an option to purchase up to 500,000 metric tons of carbon emissions credits generated by the Company during the years 2008 through 2012, at a 30% discount from the then-prevailing market rate. This amount has been recorded as deferred credits in the accompanying consolidated balance sheets as of April 30, 2007 and 2008. If the Company does not become entitled under applicable laws to the full amount of emission credits covered by the option by December 31, 2012, the Company is obligated to return the option fee of \$600,000, less the aggregate discount on any emission credits sold to the investor prior to such date. If the Company receives emission credits under applicable laws and fails to sell to the investor the credits up to the full amount of emission credits covered by the option, the investor is entitled to liquidated damages equal to 30% of the aggregate market value of the shortfall in emission credits (subject to a limit on the market price of emission credits).

(10) Common Stock

On December 7, 2006, the board of directors approved and recommended to shareholders and on January 12, 2007, the shareholders of the Company approved a one-for-ten reverse stock split, which was effective on April 20, 2007. All share data shown in the accompanying consolidated financial statements have been retroactively restated to reflect the reverse stock split.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements — (Continued)

On April 30, 2007, the Company completed an initial public offering in the United States on the NASDAQ Global Market by issuing 5,000,000 shares of its common stock for a purchase price of \$20.00 per share, resulting in net proceeds to the Company of \$89,903,819.

(11) Preferred Stock

In September 2003, and in connection with the AIM offering, the Company's stockholders authorized 5,000,000 shares of undesignated preferred stock with a par value of \$0.001 per share. At April 30, 2007 and 2008, no shares of preferred stock had been issued.

(12) Stock Options

Prior to August 2001, the Company maintained qualified and nonqualified stock option plans. The Company had reserved 484,825 shares of common stock for issuance under these plans. There are no options available for future grant under these plans as of April 30, 2008.

In August 2001, the Company approved the 2001 Stock Plan, which provides for the grant of incentive stock options and nonqualified stock options. A total of 1,000,000 shares were authorized for issuance under the 2001 Stock Plan. As of April 30, 2008, the Company had issued or reserved 661,852 shares for issuance under the 2001 Stock Plan. After the effectiveness of the 2006 Stock Incentive Plan, no further options or other awards have been or will be granted under the 2001 Stock Plan.

On April 24, 2007, the Company's 2006 Stock Incentive Plan became effective. A total of 803,215 shares are authorized for issuance under the 2006 Stock Incentive Plan. As of April 30, 2008, the Company had issued options for 298,625 shares of common stock and had reserved an additional 504,590 shares of common stock for future issuance under the 2006 Stock Incentive Plan. The Company's employees, officers, directors, consultants and advisors are eligible to receive awards under the 2006 Stock Incentive Plan; however, incentive stock options may only be granted to employees. The maximum number of shares of common stock with respect to which awards may be granted to any participant under the 2006 Stock Incentive Plan is 200,000 per calendar year. Members of the board of directors who are not full-time employees receive, as part of their annual compensation, a choice of either (a) an option to purchase 2,000 shares of common stock that is fully vested at the time of grant, or (b) shares of common stock worth \$10,000, which vests 50% at the time of grant and 50% one year later. Vesting provisions of stock options are determined by the board of directors. The contractual term of these stock options is up to ten years. The 2006 Stock Incentive Plan is administered by the Company's board of directors who may delegate authority to one or more committees or subcommittees of the board of directors or to the Company's officers. If the board of directors delegates authority to an officer, the officer has the power to make awards to all of the Company's employees, except to executive officers. The board of directors will fix the terms of the awards to be granted by such officer. No award may be granted under the 2006 Stock Incentive Plan after December 7, 2016, but the vesting and effectiveness of awards granted before that date may extend beyond that date.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements — (Continued)

Transactions under these option plans during the year ended April 30, 2008 are as follows:

	Shares Under Option	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (In Years)
Outstanding May 1, 2007	1,303,574	\$ 14.49	
Forfeited	(75,833)	14.45	
Expired	(78,381)	17.51	
Exercised	(24,100)	11.94	
Granted	320,042	15.59	
Outstanding April 30, 2008	<u>1,445,302</u>	14.61	5.2
Exercisable April 30, 2008	<u>1,024,260</u>	14.72	3.9

The total intrinsic value of options exercised during the years ended April 30, 2006, 2007 and 2008 was approximately \$153,000, \$188,000 and \$101,000, respectively. The total intrinsic value of outstanding and exercisable options as of April 30, 2008 was approximately \$715,000. As of April 30, 2008, approximately 373,000 additional options were expected to vest, which had zero intrinsic value and a weighted average remaining contractual term of 8.3 years. As of April 30, 2008, there was approximately \$3,063,000 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 2.5 years. The Company normally issues new shares to satisfy option exercises under these plans.

Certain stock options granted during the year ended April 30, 2006 were granted to employees with exercise prices less than the fair value of the underlying common stock on the date of grant. Additionally, certain options were granted to consultants during the years ended April 30, 2006, 2007 and 2008. The Company has charged compensation expense of \$129,139, \$70,235 and \$137,982 related to these option grants, which has been included in selling, general and administrative costs in the accompanying consolidated statements of operations for the years ended April 30, 2006, 2007 and 2008, respectively.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements — (Continued)

(13) Income Taxes

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

	April 30,	
	2007	2008
Deferred tax assets:		
Federal net operating loss carryforwards	\$ 8,218,000	10,942,000
Foreign net operating loss carryforwards	1,897,000	3,328,000
New Jersey state operating loss carryforwards	—	756,000
Federal research and development tax credits	761,000	882,000
Foreign research and development tax credits	—	870,000
Stock compensation	1,509,000	1,788,000
Unrealized foreign exchange loss	6,000	148,000
Accrued expenses	829,000	731,000
Deferred rent	—	7,000
Gross deferred tax assets	<u>13,220,000</u>	<u>19,452,000</u>
Deferred tax liabilities:		
Property and equipment	(17,000)	—
Gross deferred tax liabilities	<u>(17,000)</u>	<u>—</u>
Valuation allowance	<u>(13,203,000)</u>	<u>(19,452,000)</u>
Net deferred tax assets	<u>\$ —</u>	<u>—</u>

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

	Years Ended April 30,		
	2006	2007	2008
Computed "expected" tax benefit	(34)%	(34)%	(34)%
Increase (reduction) in income taxes resulting from:			
State income taxes, net of federal benefit	(6)	(6)	(6)
Stock-based compensation expense	—	8	5
Federal research and development tax credits	(2)	(1)	(1)
Foreign research and development tax credits	—	—	(6)
Sale of state loss carryforwards and tax credits	(2)	—	—
Other non-deductible expenses	1	1	—
Increase in valuation allowance	<u>41</u>	<u>32</u>	<u>42</u>
	<u>(2)%</u>	<u>—%</u>	<u>—%</u>

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences and carryforwards become deductible or utilized. As of April 30, 2007 and 2008, based upon the level of historical taxable losses, valuation allowances of \$13,203,000 and \$19,452,000, respectively, were recorded in accordance with the provisions of SFAS No. 109, *Accounting for Income Taxes*. The valuation allowance increased \$2,436,000, \$3,149,000 and \$6,249,000 during the years ended April 30, 2006, 2007 and 2008, respectively.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements — (Continued)

As of April 30, 2008, the Company had net operating loss carryforwards for Federal income tax purposes of approximately \$32,200,000, which begin to expire in 2009. The Company also had Federal research and development tax credit carryforwards of approximately \$882,000 as of April 30, 2008, which begin to expire in 2012. The Tax Reform Act of 1986 contains provisions that limit the utilization of net operating loss and tax credit carryforwards if there has been an ownership change, as defined. Such an ownership change, as described in Section 382 of the Internal Revenue Code, may limit the Company's ability to utilize its net operating loss and tax credit carryforwards on a yearly basis. Foreign loss before income taxes was \$982,934, \$2,289,834, and \$3,370,619 for the years ended April 30, 2006, 2007 and 2008, respectively. As of April 30, 2008, foreign net operating loss carryforwards were approximately \$11,500,000. These losses can be carried forward indefinitely, but the Company's ability to utilize these carryforwards may be limited in the event of an ownership change.

During the year ended April 30, 2006, the Company sold a portion of its New Jersey state net operating losses and research and development credits to a company for net proceeds of \$143,963 resulting in the recognition of an income tax benefit in the accompanying consolidated statements of operations.

On May 1, 2007, the Company adopted FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes — an interpretation of FASB Statement No. 109* (FIN 48). FIN 48 clarifies the criteria for recognizing tax benefits related to uncertain tax positions under SFAS No. 109, and requires additional financial statement disclosure. FIN 48 requires that the Company recognizes 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 implementation of FIN 48 did not have any material impact on the Company's consolidated financial statements. At the adoption date of May 1, 2007 and also at April 30, 2008, the Company had no unrecognized tax benefits. The Company does not expect any material increase or decrease in its income tax expense, in the next twelve months, related to examinations or changes in uncertain tax positions.

The Company does not have any interest or penalties accrued related to uncertain tax positions as it does not have any unrecognized tax benefits. In the event the Company determines that accrual of interest or penalties is necessary in the future, the amount will be presented as a component of income taxes.

(14) Commitments and Contingencies

(a) Operating Lease Commitments

The Company leases office, laboratory and manufacturing space in Pennington, New Jersey and in Warwick, United Kingdom under operating leases that expire on various dates through April 30, 2013. Rent expense under operating leases was \$295,089, \$338,113 and \$438,175 for the years ended April 30, 2006, 2007 and 2008, respectively. Future minimum lease payments under operating leases as of April 30, 2008 are as follows:

Year ending April 30:	
2009	\$ 271,632
2010	238,572
2011	238,572
2012	226,680
2013	206,858
Thereafter	—
	<u>\$ 1,182,314</u>

(b) Litigation

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

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES

Notes to Consolidated Financial Statements — (Continued)

(15) Quarterly Financial Data (Unaudited)

Fiscal Year 2008	Three Months Ended			
	Jul 31	Oct 31	Jan 31	Apr 30
Revenues	\$ 555,704	1,686,212	1,421,856	1,108,245
Gross loss	(249,288)	(236,984)	(570,668)	(2,131,085)
Operating loss	(4,061,624)	(3,550,857)	(4,600,822)	(6,962,422)
Net loss	(2,437,844)	(1,870,816)	(3,992,961)	(6,355,102)
Basic and diluted net loss per share	\$ (0.24)	(0.18)	(0.39)	(0.62)

Fiscal Year 2007	Three Months Ended			
	Jul 31	Oct 31	Jan 31	Apr 30
Revenues	\$ 305,186	555,561	652,884	1,017,684
Gross profit (loss)	79,221	(601,104)	(67,594)	(862,950)
Operating loss	(2,360,950)	(2,976,109)	(2,436,457)	(4,792,384)
Net loss	(1,660,954)	(2,307,200)	(1,540,296)	(4,130,315)
Basic and diluted net loss per share	\$ (0.32)	(0.45)	(0.30)	(0.75)

(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, one subsidiary in the UK and one subsidiary in Australia, which are categorized below as North America, Europe and Australia, respectively. Revenues are generally attributed to the operating unit which bills the customers.

Geographic information is as follows:

	Year Ended April 30, 2006			
	North America	Europe	Australia	Total
Revenues from external customers	\$ 1,747,715	—	—	1,747,715
Operating loss	(6,743,896)	(833,147)	(150,244)	(7,727,287)
Long-lived assets	487,770	56,515	—	544,285
Total assets	33,820,540	156,102	19,496	33,996,138

	Year Ended April 30, 2007			
	North America	Europe	Australia	Total
Revenues from external customers	\$ 1,484,998	1,007,689	38,628	2,531,315
Operating loss	(10,254,579)	(2,191,703)	(119,618)	(12,565,900)
Long-lived assets	293,633	94,290	—	387,923
Total assets	118,074,176	1,607,549	29,821	119,711,546

	Year Ended April 30, 2008			
	North America	Europe	Australia	Total
Revenues from external customers	\$ 2,831,122	1,940,895	—	4,772,017
Operating loss	(15,695,543)	(3,221,882)	(258,300)	(19,175,725)
Long-lived assets	392,980	234,497	977	628,454
Total assets	103,873,654	3,624,686	52,625	107,550,965

O.P.T.

Ocean Power Technologies, Inc.
1590 Reed Road
Pennington, NJ 08534 USA
609-730-0400, Fax: 609 730-0404

December 21, 2007

Mr. Herbert T. Nock

Dear Herb:

Ocean Power Technologies, Inc. ("OPT" or the "Company") hereby offers to you the position of Vice President, Business Development and Marketing of Ocean Power Technologies, Inc., reporting to me. As such, you will be an Executive Officer of the Company, and your duties and responsibilities will be those duties and responsibilities consistent with your position as may from time to time be assigned by me, including your focus on the Company's business development, sales and marketing activities.

OPT may add to or alter your position and responsibilities as deemed appropriate in the future. The following responsibilities are part of your duties: (a) devote attention, labor, skill and energy to the business of OPT and diligently, and to the best of your ability, perform all duties incident to your employment as described in this letter, and (b) use your best efforts to promote the interests, goodwill and welfare of OPT.

Compensation for your services, subject to the terms of this letter, shall be a salary of \$17,500.00 per monthly pay period (the "Base Salary"), which is equivalent to \$210,000.00 on an annual basis, for as long as you are employed or until a change is made by OPT to your Base Salary. In addition to this Base Salary, you will be eligible to receive a bonus of up to 40% of your Base Salary. To be eligible to receive the bonus, you must be employed by the Company as of the day that the Company pays the bonus. You shall be expected to work during OPT's normal operating hours, as well as any additional hours needed in order to complete your assigned tasks. Payments to you shall be less all amounts required to be withheld by Federal, State and all applicable income tax laws, regulations and rulings. You will receive reviews of your job performance in accordance with OPT's policies. Adjustments to your compensation, as well consideration for bonus and stock option awards, if any, will be considered on an annual basis. In addition, subject to approval by the Board of Directors, subsequent to the commencement of your employment with the Company you will be granted options to purchase 25,000 shares of the common stock of OPT (the "Option Grant") under and subject to the terms of the Company's 2006 Stock Incentive Plan (the "2006 Plan") and the Company's standard option agreement. Of the option grant, 10,000 shares will be immediately vested at the time of the grant, and 15,000 shares will be vested over five years, i.e. 3,000 shares vested at each anniversary of the date of grant, assuming you remain employed by the Company on such dates. The term of these options will be for a period of ten (10) years from the date of grant, in accord with the Company's standard form of stock option agreement. If OPT terminates your employment without "Cause" (as defined below) or if you terminate your employment for "Good Reason" (as defined below), all the unvested portions of the 15,000 share grant shall vest immediately upon such termination and shall thereafter expire in accordance with the Option Grant and the terms of the 2006 Plan. Except as otherwise set forth herein, options granted to you shall cease to vest on the actual date of termination for any reason.

Your position with the Company requires you to relocate to New Jersey. In recognition of such relocation, the Company will, during 2008, reimburse you for up to (i) \$45,000 for costs incurred by you in 2008 in purchasing a house in New Jersey, selling your house in Connecticut, and moving from Connecticut to New Jersey; and (ii) \$6,600 for costs incurred by you in 2008 in temporarily residing in New Jersey. All reimbursement requests must be supported by documentation evidencing the costs incurred by you. If you resign without Good Reason or the Company terminates your employment for Cause:

- (a) prior to the one-year anniversary of your start date, you shall repay to the Company any amount received by you pursuant to (i) above;
- (b) after the one-year anniversary of your start date but before the two-year anniversary of your start date, you shall repay to the Company two-thirds (2/3) of any amount received by you pursuant to (i) above;
- (c) after the two-year anniversary of your start date but prior to the three-year anniversary of your start date, you shall repay to the Company one-third (1/3) of any amount received by you pursuant to (i) above;
- (d) following the three-year anniversary of your start date, you shall not be required to repay to the Company any amount received by you pursuant to (i) above.

In addition to the compensation stated in this offer, during your employment you will be entitled to participate in all employee benefit plans and programs now or in the future maintained by OPT and offered to all employees of the Company, as well as those offered to key employees of the Company, so long as you meet any applicable eligibility requirements. You also will receive vacation time to be accrued and administered in accordance with OPT's policies, of four weeks' annual paid vacation. In addition, you will be permitted to use up to five paid sick days. You will also receive a total of ten holidays with pay, each year.

By accepting this offer, you recognize and acknowledge that you may have access to certain ideas, processes, strategies, trade secrets, methods of operation or other non-public information ("Confidential Information") of OPT and that all such information constitutes valuable, special and unique property of OPT. You agree that you will not, without the prior written consent of OPT, disclose or authorize or permit anyone under your direction to disclose to anyone not properly entitled thereto any such Confidential Information relative to the business, technology, operations, financial condition or services of OPT or any subsidiary. Accordingly, as part of your acceptance of this offer, you agree to execute and be bound by the attached Proprietary Information, Restrictive Covenant and Inventions Agreement ("Agreement").

By accepting this offer, you further represent that you are not bound by any employment contract, restrictive covenant or other restriction preventing you from entering into employment with OPT and carrying out your responsibilities to the Company or which in any way otherwise interferes with or is in conflict with such employment.

This letter shall not be construed as an agreement, either express or implied, to employ you for any stated term, and shall in no way alter OPT's policy of employment at-will, under which both you and OPT remain free to terminate the employment relationship at any time, with or without notice and with or without Cause (as defined below). Notwithstanding the above, the Company shall provide you with two (2) weeks' notice prior to terminating your employment; provided, however, that the Company may, in its sole discretion, pay to you in lieu of such notice an amount equal to the Base Salary that would otherwise be payable to you for such two-week

period, in which case the termination of your employment shall occur effective immediately upon the date of such payment

In the event you terminate your employment with the Company for Good Reason or the Company terminates your employment for any reason other than (i) for Cause or (ii) because you cannot perform your services as a result of physical or mental incapacitation, you will receive the following severance: (a) if such termination occurs within the first 12 months of employment, for a period of 3 months following your date of termination the Company will continue to pay to you your Base Salary; (b) if such termination occurs after the first 12 months of employment but before the three-year anniversary of your start date, for a period of 6 months following your date of termination the Company will continue to pay to you your Base Salary; (c) if such termination occurs after the three-year anniversary of your start date, for a period of 12 months following your date of termination the Company will continue to pay to you your Base Salary. Any such severance will be paid by the Company as salary continuation in accordance with its regular payroll practices, and will be conditioned upon the execution and nonrevocation by you of a severance and release agreement provided by the Company and releasing all claims against it and its affiliates (to the extent permitted by applicable law). All payments to you hereunder shall be less taxes and any other deductions required by law.

For purposes of this Agreement:

“Cause” means a termination of your employment by the Company because you have done any of the following: (a) materially breached or materially failed to perform your duties under applicable law, (b) failed to follow lawful and reasonable directives of the Board, or any executive officer to whom you report, (c) failed to follow the Company’s policies and procedures in effect from time to time, (d) committed an act of dishonesty in the performance of your duties or engaged in willful misconduct detrimental to the business of the Company, (e) been indicted on felony charges, (f) been convicted of misdemeanor charges involving any crime of moral turpitude, (g) breached in any material respect or failed to perform in any material respect your obligations and duties or any Agreement between you and the Company, or (h) violated your restrictive covenants with the Company (including, without limit, your noncompete, nonsolicit, nonhire, confidentiality obligations, and intellectual property transfer obligations regarding the ownership of intellectual property created or developed, in whole or in part, by you while an employee of the Company).

“Good Reason” means a material diminution of your duties or responsibilities or a material change in the position to which you report. A termination by you for Good Reason can only occur if (i) within sixty (60) days after the initial occurrence of the condition giving rise to Good Reason, you have given a written notice of such to the Company, (ii) the Company has not cured the condition within thirty (30) days after receipt of such notice, and (iii) you actually cease employment within thirty (30) days after the period set forth in clause (ii).

This letter agreement is intended to comply with the provisions of Section 409A of the U.S. Internal Revenue Code of 1986 and shall, to the extent practicable, be construed in accordance therewith. Terms defined in this letter agreement shall have the meanings given such terms under Section 409A if and to the extent required to comply with Section 409A. If and to the extent any portion of any payment, compensation or other benefit provided to you in connection with your separation from service (as defined in Section 409A) is determined to constitute “nonqualified deferred compensation” within the meaning of Section 409A and you are a specified employee as defined in Section 409A(a)(2)(B)(i), as determined by the Company in accordance with its procedures, by which determination you hereby agree that you are bound, such portion of the payment, compensation or other benefit shall not be paid before the day that is six months plus one day after the date of separation from service (as determined under Section 409A (the “New Payment Date”), except as Section 409A may then permit. The

aggregate of any payments that otherwise would have been paid to you during the period between the date of separation from service and the New Payment Date shall be paid to you in a lump sum on such New Payment Date, and any remaining payments will be paid on their original schedule. Neither the Company nor you shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A. Notwithstanding the foregoing, to the extent that this letter agreement or any payment or benefit hereunder shall be deemed not to comply with Section 409A, then neither the Company, the Board of Directors of the Company, nor its or their designees or agents shall be liable to you or any other person for any actions, decisions or determinations made in good faith.

This letter and the Agreement attached constitute the entire offer to you and, if you accept, they shall constitute the entire agreement and shall be governed by the laws of the state of New Jersey. If you agree to the terms of this offer, please sign and date below, as well as on the attached Agreement, on both the originals provided, returning one of each original to me.

Should you have any questions concerning this offer, or any other question about the Company and this position, please contact me. I look forward to hearing from you.

Sincerely,

/s/ George W. Taylor

Dr. George W. Taylor
Chief Executive Officer

I have read and understand this letter. The foregoing correctly sets forth the terms of my employment with OPT

/s/ Herbert T. Nock

Herbert T. Nock

DATE: December 22, 2007

ADDENDUM TO THE AGREEMENT FOR THE ENGINEERING, PROCUREMENT AND CONSTRUCTION OF A WAVE ENERGY POWER PLANT SIGNED ON JULY 27, 2006 BETWEEN IBERDROLA ENERGIAS MARINAS DE CANTABRIA, S.A. AND OCEAN POWER TECHNOLOGIES LIMITED.

Made and entered into in Madrid on February 18, 2008.

B E T W E E N

Of the one part,

IBERDROLA ENERGIAS MARINAS DE CANTABRIA, S.A., with registered offices in Santander, Cantabria, Calle Amos de Escalante, number 6, 2B, represented by Mr. Javier Garcia Perez, with Spanish Identification Document number 30.604.192-R and Mr. Rafael de Icaza de La Sota, with Spanish Identification Document number 16.035.858-M, in his capacity as attorneys, as accredited by means of the deed of incorporation of the company signed on September 25, 2006 before the Notary of Madrid Mr. Miguel Raiz-Gallardon Garcia de la Rasilla under number 7.567 of his protocol (the "**CLIENT**").

And, of the other part,

OCEAN POWER TECHNOLOGIES LIMITED, a company incorporated in England and Wales Company No. 5225532) with its registered office at Warwick Innovation Centre, Gallows Hill, Warwick CV334 6UW, United Kingdom, represented by Mr. Mark Draper, with UK Passport number 80061626, in his capacity as Director of Company (the "**CONTRACTOR**").

The **CLIENT** and the **CONTRACTOR** shall hereinafter be referred to collectively as the "**Parties**", and individually as "**Party**".

W H E R E A S

- I. Whereas, in July 27, 2006, the Parties have signed an Agreement for the Engineering, Procurement and Construction of a Wave Energy Power Plant (hereinafter, the "**EPC Agreement**").
 - II. Whereas, the Parties have agreed to modify the milestones and the regulation of the PAC and the DAC and other terms of the EPC Agreement, so it suits better with the development of the Works, namely to accommodate a separate completion of the installation, commissioning, PAC and DAC for the PowerBuoy PB40ES and associated mooring system, on the one hand, and the Subsea cable and Underwater Substation 'Pod' on the other.
-

III. In virtue of the aforesaid, the Parties, hereby execute this Addendum to the EPC Agreement (the “**Addendum**”), which will be governed by the following clauses:

CLAUSE 1
CHANGES TO CLAUSE 1 OF THE EPC AGREEMENT; REFERENCES TO DEFINED
TERMS AND CLAUSES.

1. The Parties agree to change Clause 1 of the EPC Agreement that will read as follows:

“1. DEFINITIONS

1.1 For the purposes of this Agreement, the following terms shall have the meaning set forth beside each of them (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

Agreement	<i>Means this agreement together with all of its Annexes.</i>
Agreed Price	<i>Means the compensation due by the CLIENT to the CONTRACTOR for the entire and satisfactory execution of the Works determined pursuant to Clause 1 of this Agreement that shall be paid to the CONTRACTOR according to the Schedule of Milestones.</i>
Business Day	<i>Means any day that is not a Saturday, Sunday or holiday (whether a national, regional or local holiday) in Madrid and Cantabria.</i>
Calendar	<i>Means the timeline for execution of the Works contained in Annex II.</i>
Certificate of Completion of Commissioning of the PB40ES PowerBuoy and mooring system	<i>Means the certificate issued by the Contractor’s Representative which accredits that the Commissioning Period of the PB40ES PowerBuoy and mooring system is finalized and the PB40ES PowerBuoy and mooring system is ready for Provisional Acceptance pursuant to Clause 9 of this Agreement.</i>
Certificate of Completion of Commissioning of the Subsea cable and Underwater Substation ‘pod’	<i>Means the certificate issued by the Contractor’s Representative which accredits that the Commissioning Period of the Subsea cable and Underwater Substation ‘pod’ is finalized and the Subsea cable and Underwater Substation ‘Pod’ is ready for Provisional Acceptance pursuant to Clause 9 of this Agreement.</i>
Certificate of Completion of Installation of the PB40ES	<i>Means the certificate issued by the Contractor’s Representative which accredits that the PB40ES PowerBuoy</i>

PowerBuoy and mooring system	<i>and mooring system is ready for commissioning.</i>
Certificate of Completion of Installation of Subsea cable and Underwater	<i>Means the certificate issued by the Contractor's Representative which accredits that the Subsea cable and Underwater Substation 'Pod' is ready for commissioning.</i>
Substation 'Pod' Client's Representative	<i>Means the representative of the Client as designated in Clause 26 of this Agreement.</i>
Commissioning Period of the PB40ES PowerBuoy and mooring system	<i>Period commencing upon issue of the Certificate of Completion of Installation of the PB40ES PowerBuoy and mooring system and finishes at the signature of the Provisional Acceptance Certificate of the PB40ES PowerBuoy and mooring system.</i>
Commissioning Period of the Subsea cable and Underwater Substation 'Pod'	<i>Period commencing upon issue of the Certificate of Completion of Installation of the Subsea cable and Underwater Substation 'Pod' and finishes at the signature of the Provisional Acceptance Certificate of the Subsea cable and Underwater Substation 'Pod'.</i>
Commissioning Protocol of the PB40ES PowerBuoy and mooring system	<i>The preliminary Commissioning Protocol for the PB40ES PowerBuoy and mooring system is attached to the Agreement as Annex X. The final Commissioning Protocol for the PB40ES PowerBuoy and mooring system shall be delivered by the CONTRACTOR to the CLIENT at least one month prior to the Scheduled date for commencement of the commissioning of the PB40ES PowerBuoy and mooring system.</i>
Commissioning Protocol of the Subsea cable and Underwater Substation 'Pod'	<i>The Preliminary Commissioning Protocol for the Subsea cable and Underwater Substation 'Pod' connected to the PB40ES PowerBuoy is attached to the Agreement as Annex X. The final commissioning Protocol for the Subsea cable and Underwater Substation 'Pod' shall be delivered by the CONTRACTOR to the CLIENT at least one month prior to the scheduled date for commencement of the commissioning of the Subsea cable and Underwater Substation 'Pod'.</i>
Contractor's Representative	<i>Means the person appointed by the CONTRACTOR in this Agreement under Clause 27.1, who acts on behalf of the CONTRACTOR.</i>
Day	<i>Means a calendar day.</i>
Definitive Acceptance Certificate of the PB40ES PowerBuoy and mooring system	<i>Document to be signed by the Client and the Contractor after conclusion of Testing Period of the PB40ES PowerBuoy and mooring system in accordance with Clause 10. A draft of this document is included in Annex VII.</i>

Definitive Acceptance Certificate of the Subsea cable and Underwater Substation 'Pod'

Document to be signed by the Client and the contractor after conclusion of Testing Period of the Subsea cable and Underwater Substation 'Pod' in accordance with Clause 10. A draft of this document is included in Annex VII.

Equipment

Means the equipment and/or materials supplied by the CONTRACTOR and falling within the scope of this Agreement, as defined in Clause 3 and the related Annexes.

EURIBOR

Means the interest rate applicable among the banks published in Brussels for the three months deposits in Euros as it is defined daily in the Telerate screen, page 248, 11:00 morning time (central Europe time), the second banking day previous to the beginning of every period in which the Automatic Paying System is operative in Trans European Real Time TARGET. This rate shall be increased, as the case may be, with any cost, surcharges, taxes, etc, as duly supported by documents, which are referred to in the EURIBOR definition.

Final Commissioning Protocol of the PB40ES PowerBuoy and mooring system

Means the Commissioning Protocol delivered by the CONTRACTOR to the CLIENT at least one month prior to the scheduled date for commencement of the commissioning of the PB40ES PowerBuoy and Mooring system.

Final Commissioning Protocol of the Subsea cable and Underwater Substation 'Pod'

Means the Commissioning Protocol delivered by the CONTRACTOR to the CLIENT at least one month prior to the scheduled date for commencement of the commissioning of the Subsea cable and Underwater Substation 'Pod'.

Force Majeure

Means any event or fact as described in Clause 24 of this Agreement.

IBERENOVA

Means Iberdrola Energias Renovables II S.A., Sociedad Unipersonal, a company incorporated and validly existent under the laws of Spain: registered with the Madrid Commercial Registry, of Section 8, page 285710, Tax Identification Number (C.I.F.) A-83028035, with registered office at Madrid, Calle Tomas Redando, number 1.

IDAE

Means Instituto para la Diversificacion Y Ahorro de la Energia, S.A., public entity ascribed to the Ministry of Industry, Tourism and Commerce through the General Secretary of Energy, with domicile in Madrid, at Calle Madera number 8 and CIF number Q 2820009 E.

Independent Expert

Means the qualified specialist appointed by the School of Industrial Engineers of Madrid or the Institute of Mechanical Engineers or Electrical Engineers in London,

U.K. upon request by either Party.

Insurance Schedule

Means the required policies that the CONTRACTOR must take out and maintain under this Agreement.

Intellectual and Industrial Property

Means all (i) trademarks, trade names, Internet domain names, logos, symbols, all applications and registrations for the foregoing and all goodwill associated therewith and symbolized thereby; (ii) patents, utility models, registrations, invention disclosures and applications therefore, including divisions, continuations, continuations-in-part and including renewals, extensions and reissues and all inventions and discoveries whether patentable or not; (iii) published and unpublished works of authorship, whether copyrightable or not (including databases and other compilations of information), Copyrights therein and thereto, and registrations and applications therefore, and all renewals, extensions, restorations and reversion thereof; and (iv) other industrial and intellectual property or proprietary rights; concerning the Plant and the PowerBuoy™ system.

Know How

Means all the information, trade secrets, documents, technical data, technical knowledge, including processes, schematics, business methods, formulae, drawings, prototypes, models, designs, quality control systems, quality standards and specifications developed or acquired by the CONTRACTOR, presently or in the future, concerning the Plant and the PowerBuoy™ system, or its design, constructions, commissioning, use, exploitation and assembling.

Major Defects

Means such defects that could affect the production and/or transmission of energy by the PB40ES PowerBuoy and mooring system or Subsea cable and Underwater Substation 'Pod' and/or the safety of the PB40ES PowerBuoy and mooring system and/or the Subsea cable and Underwater Substation 'Pod' and/or of the people working therein.

Milestone

Means the relevant stages of progress of the Works as described under the Schedule of Milestones and Calendar.

Minor Defects

Means such material defects that are not Major Defects.

Notice of Approval

Means the document issued by the Client under Clause 19.2 (i) of this Agreement.

Notice of Completion

Means the communication sent by the Contractor to the

Client under clause 19.2 (i) which accredits the completion of a Milestone.

Notice of Pending Works

Means the document issued by the Client under Clause 19.2 (ii) of this Agreement.

OPT

Means Ocean Power Technologies, Inc., a company incorporated and validly existent under the laws of New Jersey, USA; with registered office at 1590 Reed Road, Pennington, NJ, USA.

Order for Change

Means the document signed by both the Client and the Contractor for a given modification of the Works under clauses 11.1 or 11.2 of this Agreement.

Parties

Means the Client and the Contractor jointly.

Party

Means the Client or the Contractor, as the context may require.

PB40ES PowerBuoy and mooring system

Means the PowerBuoy® 1 x 40kW PB40ES, its mooring system, and all other ancillary equipment and services required to provide a complete installation of the PowerBuoy 1 x 40kW PB40ES. As described in Annex 1.

Phase 1

Means Phase 1 of the Santona Wave Energy Project as defined in Recital 1 of this Agreement in which the parties to the Project have studied and decided about the viability of the Project at the Site.

Phase 2A

Means Phase 2A of the Santona Wave Energy Project as defined in Recital IV of this Agreement, consisting of the design, manufacture, factory tests, dispatch and unloading, ex works delivery, assembly and commissioning of the PowerBuoy™ 1 x 40kW PB40ES, its mooring system, the underwater substation and submarine cable both with capacity for energy evacuation of this PowerBuoy™ and other nine (9) 150kW PB150 PowerBuoys™ and all other ancillary equipment and services required to provide a complete installation of the PowerBuoy™ 1 x 40kW PB40ES. All as described in Annex 1.

Phase 2B

Means Phase 2B of the Santona Wave Energy Project consisting of the design, manufacture, factory tests, dispatch and unloading, ex-works delivery, assembly and commissioning of the nine PoweBuoys™ 9 x 150kW PB150, their mooring systems, submarine cables and all other ancillary equipment and services required to provide a complete installation of the PowerBuoys™.

PowerBuoy™	Means the Technology owned by the Contractor.
Preliminary Commissioning Protocol	Means the Commission Protocol attached to the Agreement as Annex X.
Provisional Acceptance Certificate or PAC of the PB40ES PowerBuoy and mooring system	Document to be signed by the Client and the Contractor to put on record the satisfactory completion of the Commissioning Protocol of the PB40ES PowerBuoy and mooring system, including all Minor Defects that the Contractor must remedy prior to the signature of DAC of the PB40ES PowerBuoy and mooring system. A draft of this Document is included in Annex VI.
Provisional Acceptance Certificate or PAC of the Subsea cable and Underwater Substation 'Pod'	Document to be signed by the Client and the Contractor to put on record the satisfactory completion of the Commissioning Protocol of the Subsea cable and Underwater Substation 'Pod', including all Minor Defects that the Contractor must remedy prior to signature of DAC of the Subsea cable and Underwater Substation 'Pod'. A draft of this Document is included in Annex VI.
Santoña Wave Energy Agreement	Means the agreement signed on July 2, 2004 by OPT, IBERENOVA, SODERCAN, and IDAE, and modified on June 17, 2005 to include TOTAL as a party.
Santoña Wave Energy Project or SWEP	Means the pilot project consisting of a power plant harnessing wave energy with an initial installed capacity of 1.39 MW on the north coast of Spain based on the Technology.
Schedule of Milestones	Means the schedule describing the progress of the Works and the timeline for payment of the Agreed Price contained in Annex V.
Site	Means the place where the PB40ES PowerBuoy and mooring system and the Subsea cable and Underwater Substation 'Pod' will be installed located at the coast opposite the "Punta del Pescador" Lighthouse in Santoña; in the Cantabrian region in Spain as specified in Annex XIII.
SODERCAN	Means Sociedad para el Desarrollo Regional de Cantabria, S.A., a company incorporated and validly existent under the laws of Spain by virtue of its incorporation deed granted on December 15, 1984 before the Notary of Santander, Mr. Jose Antonia Olascoega, with number 1271 of his public protocol; registered with the Cantabria Commercial Registry, at Volume 296, Book 101, Sheet 60 and Page S-1751; Tax Identification Number (C.I.F.) A-3904457, with

registered office at Santander, Avenida de Los Infantes 32, "Quinta Labal".

SPV	Means the public limited company created by IBERENOVA, IDAE, OPT, SODERCAN and TOTAL for the construction and operation of the Santana Wave Project as agreed under the Santana Wave Energy Agreement.
Subcontractors	All firms or individuals contracted by the CONTRACTOR to do part of the Works contemplated in this Agreement.
Subsea cable and Underwater Substation 'Pod'	Means the underwater substation and submarine cable, as described in Annex I, with capacity for energy evacuation of the PB40ES PowerBuoy and other nine (9) 150kW PB150 PowerBuoys.
Taxes	Means any taxes, rates, special levies ("contribuciones especiales"), charges ("exacciones parafiscales") or any other encumbrance of tax nature, required by any administrative authority, including surcharges, interests and penalties.
Technical Documentation	Means the documents, workshop plans, calculations and sketches listed in Annex IX of this Agreement.
Technology	Means the technology for electricity generation harnessing the energy produced by the waves called PowerBuoy™ system owned by the CONTRACTOR. In particular, it means all the Know How and Intellectual and Industrial Property related to the PowerBuoy™ system, including the moorings and the underwater substation.
Testing Period of the PB40ES PowerBuoy and mooring system	Means six months including three months between October and March (inclusive); plus any extensions made hereunder. Period commencing upon signature of the Provisional Acceptance of the PB40ES PowerBuoy and mooring system and finishing at the signature of the Definitive Acceptance Certificate of the PB40ES PowerBuoy and mooring system.
Testing Period of the Subsea cable and Underwater Substation 'Pod'	Means six months commencing upon signature of the Provisional Acceptance Certificate of the Subsea cable and Underwater Substation 'Pod' and finishing at the signature of the Definitive Acceptance Certificate of the Subsea cable and Underwater Substation 'Pod'.

Time for Completion	<i>Means the period of time for the Contractors completing the assembly, installation and commissioning of the PB40ES PowerBuoy and mooring system and Subsea cable and Underwater Substation 'Pod' according to this Agreement.</i>
TOTAL	<i>Means Total Eolica S.A., a company incorporated and validly existent under the laws of Spain registered with the La Coruna Commercial Registry, at Section S, Page 25547; Tax Identification Number (C.I.F) A-15745706, with registered office at Avenida Fernando de Casas Novoa, number 37, planta B,3ª.</i>
Works	<i>Means all actions work and services for the supply, construction and commissioning of the PB40ES PowerBuoy and mooring system and the Subsea cable and Underwater Substation 'Pod' described in Clause 3 of this Agreement.</i>
1.2	<i>Other terms may be defined in other clauses of this Agreement."</i>

**CLAUSE 2
CHANGES TO DEFINITION OF PLANT.**

The Parties agree that, unless otherwise agreed under this Addendum, each and every reference to "Plant" throughout the EPC Agreement is replaced by — "PB40ES PowerBuoy and mooring system and/or the Subsea cable and Underwater Substation 'Pod'" — both as defined in Clause 1 of the EPC Agreement as amended by this Addendum.

**CLAUSE 3
CHANGES TO CLAUSE 3.1 OF THE EPC AGREEMENT.**

The Parties agree to change Clause 3.1 of the EPC Agreement that will read as follows:

"3.7 The CONTRACTOR shall perform the Works and shall deliver the Equipment according to the Technical Documentation according to Annex IX."

**CLAUSE 4
CHANGES TO CLAUSE 4 OF THE EPC AGREEMENT**

The Parties agree that Clause 4.2 of the EPC Agreement shall be amended as follows:

"4.2 Upon signing the Provisional Acceptance Certificate of the PB40ES PowerBuoy and mooring

system, the CONTRACTOR shall hand over the "as built" documents of the Equipment included in the PB40ES PowerBuoy and mooring system in accordance with Annex IX, and any other documentation as may be agreed between the Parties, all the documents generated during commissioning of the PB40ES PowerBuoy and mooring system, including any modifications based on reasonable written comments made by the CLIENT and agreed by the CONTRACTOR on the Provisional Acceptance of the PB40ES PowerBuoy and mooring system.

Upon signing the Provisional Acceptance Certificate of the Subsea cable and Underwater Substation 'Pod', the CONTRACTOR shall hand over the "as built" documents of the Subsea cable and Underwater Substation 'Pod' in accordance with Annex IX, and any other documentation as may be agreed between the Parties, all the documents generated during commissioning of the Subsea cable and Underwater Substation 'Pod', including any modifications based on reasonable written comments made by the CLIENT and agreed by the CONTRACTOR on the Provisional of the Subsea cable and Underwater Substation 'Pod'."

CLAUSE 5
CHANGES TO CLAUSE 6.6 OF THE EPC AGREEMENT

The Parties agree to change Clause 6.6 of the EPC Agreement that will read as follows:

"6.6 If any fault or defect is discovered during testing and/or inspection as contemplated in Clause 6.4, the CONTRACTOR shall be responsible for correcting the fault or defect prior to the relevant PAC."

CLAUSE 6
CHANGES TO CLAUSE 7 OF THE EPC AGREEMENT

The Parties agree to change Clauses 7.2, 7.4 and 7.5 of the EPC Agreement that will read as follows:

"(...)

7.2 The PB40ES PowerBuoy and mooring system and the Subsea cable and Underwater Substation 'Pod' shall be installed at the Site once the CLIENT has given its written confirmation that the required permits and consents for installation have been obtained.

(...)

7.4 Inspections by the CLIENT shall not release the CONTRACTOR from any of its obligations and liabilities hereunder nor shall they imply acceptance of the PB40ES PowerBuoy and mooring system, or the Subsea cable and Underwater Substation 'Pod'.

(...)

7.5 As soon as the CONTRACTOR considers the assembly and installation of the PB40ES PowerBuoy and mooring system is complete, according to the terms of this Agreement, it shall issue a Certificate of Completion of Installation of the PB40ES PowerBuoy and mooring system indicating that the PB40ES PowerBuoy and mooring system is ready for Commissioning.

As soon as the CONTRACTOR considers the assembly and installation of the Subsea cable and Underwater Substation 'Pod' connected to the PB40ES PowerBuoy is complete, according to the terms of this Agreement, it shall issue a Certificate of Completion of Installation of the Subsea cable and Underwater Substation 'Pod' indicating that the Subsea cable and Underwater Substation 'Pod' is ready for Commissioning."

CLAUSE 7

CHANGES TO CLAUSE 8 OF THE EPC AGREEMENT

The Parties agree to change Clause 8 of the EPC Agreement that will read as follows:

"8. COMMISSIONING

8.1 Protocol

During the commissioning of each of the PB40ES PowerBuoy and mooring system and the Subsea cable and Underwater Substation 'Pod' connected to the PB40ES PowerBuoy, the CLIENT shall appoint an overseer, who shall check the correct application of the corresponding Commissioning Protocols. The CONTRACTOR shall deliver the Final Commissioning Protocol of the PB40ES PowerBuoy and mooring system and the Final Commissioning Protocol of the Subsea cable and Underwater Substation 'Pod', to the CLIENT, which must contain at least the issues contained in the Annex X as applicable to each of the relevant Final Commissioning Protocols, at least one (1) month prior to the Scheduled date of commencement of commissioning of the PB40ES PowerBuoy and mooring system or commencement of commissioning of Subsea cable and Underwater Substation 'Pod', as applicable.

The CLIENT may request the CONTRACTOR to make such further tests during this period, as may be required by the competent authorities for the grid connections and the initial operation of the PB40ES PowerBuoy and mooring system or the Subsea cable and Underwater Substation 'Pod' connected to the PB40ES PowerBuoy. Any additional tests that the CLIENT asks the CONTRACTOR to make shall be at the CLIENT's cost.

In Annex X is included a Preliminary Commissioning Protocol.

Each of the actions included in the Commissioning Protocols carried out during commissioning shall be recorded in the protocol or corresponding procedure, dated and signed by the person effecting the action and the person responsible for commissioning.

If any fault, failure or Major Defects, as defined in this Agreement are detected in any of the Equipment, the CONTRACTOR shall be obliged to remedy the problem during the corresponding Commissioning Period.

8.2 Commissioning Period

The proper functioning of the PB40ES PowerBuoy and mooring system on one hand, and the Subsea cable and Underwater Substation 'Pod' connected to the PB40ES PowerBuoy on the other, shall be checked during the applicable Commissioning Period according to the corresponding Final Commissioning Protocol.

For finalizing the Commissioning Period of the PB40ES PowerBuoy and mooring system it is required that the PB40ES PowerBuoy and mooring system will be in operation for one (1) month producing energy measured at the electrical output from the PowerBuoy.

Once the Commissioning Period of the PB40ES PowerBuoy and mooring system is finalized the CONTRACTOR shall issue a Certificate of Completion of Commissioning of the PB40ES PowerBuoy and mooring system and shall notify the CLIENT indicating that the PB40ES PowerBuoy and mooring system is ready for Provisional Acceptance.

For finalizing the Commissioning Period of the Subsea cable and Underwater Substation 'Pod' it is required that the Subsea cable and Underwater Substation 'Pod' connected to the PB40ES PowerBuoy is in operation for one (1) month transmitting energy to shore measured at the onshore grid connection point supplied by the CLIENT.

Once the Commissioning Period of the Subsea cable and Underwater Substation 'Pod' is finalized the CONTRACTOR shall issue a Certificate of Completion of Commissioning of the Subsea cable and Underwater Substation 'Pod' and shall notify the CLIENT indicating that the Subsea cable and Underwater Substation 'Pod' is ready for Provisional Acceptance."

CLAUSE 8

CHANGES TO CLAUSE 9 OF THE EPC AGREEMENT

The Parties agree to change Clause 9 that will read as follows:

"9. PROVISIONAL ACCEPTANCE

9.1 Provisional Acceptance of the PB40ES PowerBuoy and mooring system

9.1.1 Upon termination of the Commissioning Period of the PB40ES PowerBuoy and mooring system, the CONTRACTOR shall notify the CLIENT in writing indicating:

- a) A date proposed by the CONTRACTOR for a joint visit with the CLIENT. The proposed date shall be at least seven (7) Business Days after the date of notification. If the proposed date is not convenient for the CLIENT, it may be postponed to a later

date no more than seven (7) Business Days after the latest date indicated in the initial proposal.

- b) The confirmation that the corresponding Commissioning Period has finalized satisfactorily.
- c) The confirmation of delivery of the required Technical Documentation under Clause 4.

9.1.2 The Equipment, temporary installations and materials left over from the Works shall be removed by the CONTRACTOR after completing assembly of the PB40ES PowerBuoy and mooring system leaving the Site totally free and clear, as a prerequisite for signing of the corresponding PAC.

9.1.3 During the joint visit, the parties shall inspect the state of the Equipment and complete a check list, indicating any defects and/or irregularities detected and any pending Works. The CONTRACTOR shall remedy within the following two (2) weeks at least those Major Defects that preclude acceptance, after which the CLIENT and the CONTRACTOR shall proceed to do a new visit and complete a new check list with the Minor Defects so the CLIENT could sign the corresponding PAC and attach to in the list of pending matters.

9.1.4 If the Parties do not reach an agreement as to the existence and/or remedy of Major Defects and consequent obligation of issue of the PAC, any of them may entrust their divergence to an Independent Expert, who will decide and thirty (30) days from its engagement and whose decision shall be final and binding for both Parties.

9.1.5 The Minor Defects of the Equipment shall be listed as pending and remedied within the times agreed upon signing the corresponding PAC. If the pending defects are not remedied within the agreed times the CLIENT may remedy the deficiency itself or commission a third party to do so, for the expense of the CONTRACTOR and without releasing the latter from its responsibilities.

9.2 Provisional Acceptance of the Subsea cable and Underwater Substation 'Pod'

9.2.1 Upon termination of the Commissioning Period of the Subsea cable and Underwater Substation 'Pod', the CONTRACTOR shall notify the CLIENT in writing, indicating:

- a) A date proposed by the CONTRACTOR for a joint visit with the CLIENT. The proposed date shall be at least seven (7) Business Days after the date of notification. If the proposed date is not convenient for the CLIENT, it may be postponed to a later date no more than seven (7) Business Days after the latest date indicated in the initial proposal.
 - b) The confirmation that the corresponding Commissioning Period has finalized satisfactorily.
 - c) The confirmation of delivery of the required Technical Documentation under Clause 4.
-

- 9.2.2 *The Equipment, temporary installations and materials left over from the Works shall be removed by the CONTRACTOR after completing assembly of the Subsea cable and Underwater Substation 'Pod', leaving the Site totally free and clear, as a prerequisite for signing of the corresponding PAC.*
- 9.2.3 *During the joint visit, the Parties shall inspect the state of the Equipment and complete a check list, indicating any defects and/or irregularities detected and any pending Works. The CONTRACTOR shall remedy within the following two (2) weeks at least those Major Defects that preclude acceptance, after which the CLIENT and the CONTRACTOR shall proceed to do it new visit and complete a new check list with the Minor Defects so the CLIENT could sign the corresponding PAC and attach to it the list of pending matters.*
- 9.2.4 *If the Parties do not reach an agreement as to the existence and/or remedy of Major Defects and consequent obligation of issue of the PAC, any of them may entrust their divergence to an Independent Expert, who will decide on thirty (30) days from its engagement and whose decision shall be final and binding for both Parties.*
- 9.2.5 *The Independent Expert will not be required and the corresponding PAC should be issued, if the competent authority from the industry regional department of Cantabria issues the definite start-up certificate to operate the PB40ES PowerBuoy and mooring system and the Subsea cable and Underwater Substation 'Pod' (Acta de Puesta en Marcha Definición).*
- 9.2.6 *The Minor Defects of the Equipment shall be listed as pending and remedied within the times agreed upon signing the corresponding PAC, If the pending defects are not remedied within the agreed times, the CLIENT may remedy the deficiency itself or commission a third party to do so, for the expense of the CONTRACTOR and without releasing the latter from its responsibilities.*
- 9.3 *If, for reason beyond the control of the CONTRACTOR, it is not possible to effect the commissioning of the PB40ES PowerBuoy and mooring system and/or that of the Subsea cable and Underwater Substation 'Pod,' the Parties shall agree on how to proceed to obtain the corresponding PAC without jeopardizing the interest of the CLIENT. In any case, provided it is signed, the relevant PAC would contain the corresponding reservations and the CONTRACTOR would undertake to do whatever has been established for that Commissioning Period as soon as the impeding obstacles have disappeared. This document shall indicate the effective date of beginning of the relevant Testing Period for the purpose of the Definitive Acceptance of the PB40ES PowerBuoy and mooring system.*
- 9.4 *Upon signing the Provisional Acceptance Certificate of each of the PB40ES PowerBuoy and mooring system and that of the Subsea cable and Underwater Substation 'Pod' ownership of the PB40ES PowerBuoy and mooring system and that of the Subsea cable and Underwater Substation 'Pod' as well as the relevant Equipment shall be transferred to the CLIENT. The CONTRACTOR shall bear the risks of loss of or damage to the PB40ES PowerBuoy and mooring system and that of the Subsea cable and Underwater Substation 'Pod' and the relevant Equipment up to its effective transfer of ownership, without prejudice to the other*
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guarantees and liabilities of the CONTRACTOR hereunder. The CONTRACTOR will be responsible for the care and preservation of the PB40ES PowerBuoy and mooring system and that of the Subsea cable and Underwater Substation 'Pod' until their Provisional Acceptance."

CLAUSE 9

CHANGES TO CLAUSE 10 OF THE EPC AGREEMENT

The Parties agree to change Clause 10 that will read as follows:

"10. DEFINITIVE ACCEPTANCE

- 10.1. *Definitive Acceptance of the PB40ES PowerBuoy and mooring system shall be issued after the end of the corresponding Testing Period, provided that the pending Minor Defects indicated in the PAC of the PB40ES PowerBuoy and mooring system and any others detected during the relevant Testing Period have been remedied and provided that the CONTRACTOR delivers the information required under Clause 21.4 and 21.5 to confirm fulfilment of the guaranteed values included therein.*
- 10.2. *Definitive Acceptance of the Subsea cable and Underwater Substation 'Pod' shall be issued after the end of the corresponding Testing Period, provided that the pending Minor Defects indicated in the PAC of the Subsea cable and Underwater Substation 'Pod' and any others detected during the relevant Testing Period have been remedied.*
- 10.3. *If the Parties do not reach an agreement as to the fulfilment of the above criteria and consequent obligation of issue of the corresponding DAC, any of them may entrust their divergence to an Independent Expert, who will decide on thirty (30) days from its engagement and whose decision shall be final and binding for both Parties.*
- 10.4. *The CONTRACTOR shall deliver to the CLIENT an updated version of Annex XIV based on real data collected during the Testing Period of the PB40ES PowerBuoy and mooring system. The CONTRACTOR shall deliver such information within the ninety (90) days following the Definitive Acceptance of the PB40ES PowerBuoy and mooring system*

CLAUSE 10

CHANGES TO CLAUSE 14 OF THE EPC AGREEMENT

The Parties agree to change Clauses 14.5 and 14.7 of the EPC Agreement that will read as follows:

"14.(...)

- 14.5 *Environmental Protection*
-

The CONTRACTOR shall be responsible for continuous cleaning of the Site and the surrounding area of the Site, the [**] or the "path" to reach the Site during the Works and the periodical removal of any debris left over from installation of the Equipment.

The CONTRACTOR shall comply with the Environmental Impact Declaration or equivalent assessment issued by Spanish authorities, if applicable, as well as with the Environmental Supervision plan ("Plan de Vigilancia Ambiental") throughout the duration of the Works. The CONTRACTOR shall be responsible for paying any fines that may be levied by the competent authorities when breaching obligations in this regard. The CONTRACTOR shall be liable towards the CLIENT for all damages caused to the environment by the CONTRACTOR and/or its Subcontractors during the performance of the Works. It shall also be liable for removing from the Site all toxic and hazard substances and waste generated by the CONTRACTOR and its Subcontractors during the Works.

(...)

14.7 Replacement parts and consumables

The Contractor shall provide all parts, consumables equipment and tools which are necessary for the commissioning of the PB40ES PowerBuoy and mooring system during the Commissioning Period of the PB40ES PowerBuoy and mooring system.

The Contractor shall provide all parts, consumables, equipment and tools which are necessary for the commissioning of the Subsea cable and Underwater Substation 'Pod' during the Commissioning Period of the Subsea cable and Underwater Substation 'Pod'.

CLAUSE 11

CHANGES TO CLAUSE 18 OF THE EPC AGREEMENT

The Parties agree to change Clause 18.7 of the EPC Agreement that will read as follows:

"18, (...)

18.7 In order to enable the CLIENT to control the cost and expenses incurred by the CONTRACTOR regarding the different concepts of the table above the CONTRACTOR shall report the actual cost incurred in the Works, to the CLIENT, on a monthly basis by delivery of the relevant documents supporting those costs as well as equipment and services invoices. This monthly report will include also the accumulated costs from the beginning of the Agreement and the costs forecast for finalising the PB40ES PowerBuoy and mooring system and/or Subsea cable and Underwater Substation 'Pod' up to the relevant PAC"

CLAUSE 12

CHANGES TO CLAUSE 20 OF THE EPC AGREEMENT

The Parties agree to change Clause 20.1 of the EPC Agreement that will read as follows:

“20. PERFORMANCE BOND/LETTER OF CREDIT

- 20.1 The CONTRACTOR shall deliver to the CLIENT a letter of credit of first requirement issued by a top ranking bank in Spain for 10% of the Agreed Price against the payment of that same amount by the CLIENT to secure the performance of the Works (the “**Performance Bond**”), as attached in Annex VIII.
- This Performance Bond shall be valid and effective without any obligation by the CLIENT to return it until the earlier of (i) the termination of this Agreement under Clauses 18.5.(ii)(c), 31.1 (ii) or 31.2, or (ii) the date when the Parties agree in writing to proceed with Milestones 12 and 15. Then the CLIENT will return the Performance Bond to the CONTRACTOR against delivery of a new letter of credit of first requirement issued by a top ranking bank in Spain for 3% of the Agreed Price to secure the performance of the outstanding Milestones. This new letter of credit will be valid and effective until the earlier of (i) the date of signature of the PAC of the Subsea cable and Underwater Substation ‘Pod’ or (ii) the termination of this Agreement under Clauses 31.1 (ii) or 31.2.*
- 20.2 The CONTRACTOR shall grant a letter of credit of first requirement issued by a top ranking bank in Spain for 5% of the Agreed Price against payment of the same amount upon performance of Milestone number 3. This letter of credit shall secure the supply of the equipment covered by that Milestone and shall be valid and effective until the earlier of (i) delivery of the respective equipment or (ii) termination of the Agreement under Clauses 18.5.(ii)(c), 31.1 (ii) or 31.2.
- 20.3 The CONTRACTOR shall grant a letter of credit of first requirement issued by a top ranking bank in Spain for 5% of the Agreed Price against payment of the same amount upon performance of Milestone number 4. This letter of credit shall secure the supply of the equipment covered by that Milestone and shall be valid and effective until the earlier of (i) delivery of the respective equipment or (ii) termination of the Agreement under Clauses 18.5.(ii)(c), 31.1 (ii) or 31.2.”

CLAUSE 13

CHANGES TO CLAUSE 21 OF THE EPC AGREEMENT

The Parties agree to change Clause 21 of the EPC Agreement that will read as follows:

“21. WARRANTIES

21.1 PB40ES PowerBuoy and mooring system

The CONTRACTOR offers the following guarantees effective as from the PAC of the PB40ES PowerBuoy and mooring system:

The remedies set forth in this Clause 21.1 and 21.3 are the sole and exclusive remedy of the CLIENT with respect to the breach of the stipulated guarantees.

21.1.1 Ownership Guarantee

The CONTRACTOR represents and warrants that at the date of signature of the PAC of the PB40ES PowerBuoy and mooring system:

- (i) the Equipment comprising the PB40ES PowerBuoy and mooring system is fully and exclusively owned by the CONTRACTOR;
- (ii) the Equipment comprising the PB40ES PowerBuoy and mooring system is transferred to the CLIENT according to this Agreement free from charges, encumbrances, constraints on transfer or third-party rights; and
- (iii) the CONTRACTOR is authorised to transfer their full and exclusive ownership to the CLIENT.

This ownership guarantees shall be valid and enforceable against third party claims throughout the limitation period established in the applicable law.

In the event of default, invalidity or uncertainty of these guarantees, the CONTRACTOR shall defend the validity of the sale of the Equipment and hold the CLIENT harmless from damages of whatsoever nature including costs and expenses.

If there is any lien or encumbrance on any of the Equipment and it is not imputable in the CLIENT, the CONTRACTOR must, as soon as possible, replace or cancel that attachment, lien or encumbrance at its cost.

The CONTRACTOR represents and warrants to the CLIENT that all creations, plans, drawings, specifications, documents, procedures, methods, products or inventions supplied, prepared or made by the CONTRACTOR hereunder and the use of any of them does not infringe any third-party rights. In the event of any claim or action by a third party alleging infringement of any intellectual or industrial property right, the CLIENT must notify the CONTRACTOR promptly and the CONTRACTOR will carry out all the negotiations to settle the claim. At the request of the CONTRACTOR, the CLIENT will provide all reasonable assistance to the CONTRACTOR against the claim of the third party. In such case, the CONTRACTOR shall hold the CLIENT harmless from all damages (including costs and expenses) that may be produced and shall obtain for the CLIENT the right to use, or continue using, the Equipment. Delayed performance of the Works due to this cause shall not release the CONTRACTOR from any liabilities for delays or entitle it to raise the Agreed Price.

21.1.2 Quality Guarantee

The CONTRACTOR guarantees that the components of the Equipment comprising the PB40ES PowerBuoy and mooring system shall comply with the standards required for normal operation of the PB40ES PowerBuoy and mooring system during the term of the O&M Agreement.

If during the O&M Agreement any of the components of the Equipment fail to comply with the referred standards the CONTRACTOR shall have to repair or replace, at its option, any such component on its account, included the cost of retrieval from the Site and redeployment of the defective items, if required.

21.1.3 Repair and Replacement Guarantee

The CONTRACTOR shall, during a period of one year beginning with the signature of the PAC of the PB40ES PowerBuoy and mooring system repair or replace, at its option, all failures or defects in the Equipment comprising the PB40ES PowerBuoy and mooring system elements found to have a faulty design, quality or operations as soon as possible without any cost to the CLIENT. The cost of materials, labour and, in general, all expenses incurred in total repair shall be for the account of the CONTRACTOR, included the cost of retrieval from the Site and redeployment of the defective items if required.

If the CONTRACTOR does not repair or replace in a reasonable period of time, the CLIENT shall notify the CONTRACTOR, indicating a reasonable deadline for making the repair or replacement. If the CONTRACTOR continues not fulfilling its obligation after that time, the CLIENT shall be entitled to carry out the repair for the account of the CONTRACTOR, which will be responsible for the direct damages caused by this delay.

Correct and adequate repair by the CLIENT in the above circumstances shall not release the CONTRACTOR from all its liabilities.

21.1.4 Power Output Guarantee

In respect of the PB40ES PowerBuoy and mooring system, the CONTRACTOR guarantees fulfilment of a Power Output of at least 50% of that predicted (according to the Theoretical Power Table contained in table 1 of Annex XIV) during the Testing Period of the PB40ES PowerBuoy and mooring system given the measured energy levels. Wave energy levels will be collected and recorded for at least 50% of the Testing Period of the PB40ES PowerBuoy and mooring system by the dedicated Acoustic Doppler Current Profiling (ADCP) unit at or near the Site or, if the ADCP fails to collect the required data for the project, by extrapolating data from publicly available sources (e.g. RPE 2914, 2915 or Bilbao Buoy), the latter being subject to approval by the CLIENT. PowerBuoy output levels will be recorded for at least 50% of the Testing Period of the PB40ES PowerBuoy and mooring system by the SCADA system, PowerBuoy output power, as measured with the meter equipment. The proposed meter equipment with its auxiliary transformers would have an accuracy compliant with the IEC 687 Class 0.5 specification and have bi-directional measurement capability with Ethernet communications. A Siemens 9300 series device or equivalent meter shall be installed at the low tension wire at the output from the PowerBuoy, will be compared against the predicted level which is calculated using the collected wave energy levels and the theoretical power table in Annex XIV.

In the event of breach of this guarantee that results in the delay of the DAC of the PB40ES PowerBuoy and mooring system beyond the date included in Clause 31, the remedies set forth in Clause 31 shall apply.

21.1.5 Energy Production Guarantee

In respect of the PB40ES PowerBuoy and mooring system, the CONTRACTOR guarantees fulfilment of an Energy Production of at least 50% of that predicted according to the Theoretical Power Table contained in table 1 of Annex XIV using the real wave data captured during the Testing Period of the PB40ES PowerBuoy and mooring system in the method described in Clause 21.4.

In the event of breach of this guarantee that results in the delay of the DAC of the PB40ES PowerBuoy and mooring system beyond the date included in Clause 31, the remedies set forth in Clause 31 shall apply.

21.1.6 Spare Parts Guarantee

The CONTRACTOR guarantees the existence of spare parts or equivalent replacements (which may require redesign) for any component of the Equipment and undertakes to offer the CLIENT their availability for supply during the term of the Testing Period of the PB40ES PowerBuoy and mooring system, until DAC of the PB40ES PowerBuoy and mooring system is achieved or this Agreement terminated.

21.2 Subsea cable and Underwater Substation 'Pod'

The CONTRACTOR offers the following guarantees effective as from the PAC of the Subsea cable and Underwater Substation 'Pod':

The remedies set forth in the Clause 21.2 and 21.3 are the sole and exclusive remedy of the CLIENT with respect to the breach of the stipulated guarantees;

21.2.1 Ownership Guarantee

The CONTRACTOR represents and warrants that at the date of signature of the PAC of the Subsea cable and Underwater Substation 'Pod':

(i) the Equipment comprising the Subsea cable and Underwater Substation 'Pod' is fully and exclusively owned by the CONTRACTOR;

(ii) the Equipment comprising the Subsea cable and Underwater Substation 'Pod' is transferred to the CLIENT according to this Agreement free from charges, encumbrances, constraints on transfer or third-party rights; and

(iii) the CONTRACTOR is authorised to transfer their full and exclusive ownership to the CLIENT.

This ownership guarantees shall be valid and enforceable against third party claims throughout the limitation period established in the applicable law.

In the event of default, invalidity or uncertainty of these guarantees, the CONTRACTOR shall defend the validity of the sale of the Equipment and hold the CLIENT harmless from the damages of

If there is any lien or encumbrance on any of the Equipment and it is not imputable to the CLIENT, the CONTRACTOR must, as soon as possible, replace or cancel that attachment, lien or encumbrance at its cost.

The CONTRACTOR represents and warrants to the CLIENT that all creations, plans, drawings, specifications, documents, procedures, methods, products or inventions supplied, prepared or made by the CONTRACTOR hereunder and the use of any of them does not infringe any third-party rights. In the event of any claim or action by a third party alleging infringement of any intellectual or industrial property right, the CLIENT must notify the CONTRACTOR promptly and the CONTRACTOR will carry out all the negotiations to settle the claim. At the request of the CONTRACTOR, the CLIENT will provide all reasonable assistance to the CONTRACTOR against the claim of the third party. In such case, the CONTRACTOR shall hold the CLIENT harmless from all damages (including costs and expenses) that may be produced and shall obtain for the CLIENT the right to use, or continue using, the Equipment. Delayed performance of the Works due to this cause shall not release the CONTRACTOR from any liabilities for delays or entitle it to raise the Agreed Price.

21.2.2 Quality Guarantee

The CONTRACTOR guarantees that the components of the Equipment comprising the Subsea cable and Underwater Substation 'Pod' shall comply with the standards required for normal operation of the Subsea cable and Underwater Substation 'Pod', during the term of the O&M Agreement.

If during the O&M Agreement any of the components of the Equipment fail to comply with the referred standards the CONTRACTOR shall have to repair or replace, at its option, any such component on its account, included the cost of retrieval from the Site and redeployment of the defective items, if required.

21.2.3 Repair and Replacement Guarantee

The CONTRACTOR shall, during a period of one year beginning with the signature of the PAC of the Subsea cable and Underwater Substation 'Pod', except for the cable for which the Parties will endeavor to obtain a two-year guarantee in which case the CONTRACTOR shall grant an equivalent guarantee to the CLIENT, repair or replace, at its option, all failures or defects in the Equipment comprising the Subsea cable and Underwater Substation 'Pod' elements found to have a faulty design, quality or operation as soon as possible without any cost to the CLIENT. The cost of materials, labour and, in general, all expenses incurred in total repair shall be for the account of the CONTRACTOR included the cost of retrieval from the Site and redeployment of the defective items, if required.

If the CONTRACTOR does not repair or replace in a reasonable period of time, the CLIENT shall notify the CONTRACTOR, indicating a reasonable deadline for making the repair or replacement. If the CONTRACTOR continues not fulfilling its obligation after that time, the CLIENT shall be entitled to carry out the repair for the account of the CONTRACTOR, which will be responsible for the direct damages caused by this delay.

Correct and adequate repair by the CLIENT in the above circumstances shall not release the CONTRACTOR from all its liabilities.

21.2.4 Spare Parts Guarantee

The CONTRACTOR guarantees the existence of spare parts or equivalent replacements (which may require redesign) for any component of the Equipment and undertakes to offer the CLIENT their availability for supply during the term of the Testing Period of the Subsea cable and Underwater Substation 'Pod', until DAC of the Subsea cable and Underwater Substation 'Pod' is achieved or this Agreement is terminated.

21.3 Limitations on Guarantees

The CONTRACTOR does not guarantee the consequences arising from the CLIENT'S failure to observe the instructions contained in the operating and maintenance manuals, unless it is the CONTRACTOR that is responsible for the operation and maintenance of the PB40ES PowerBuoy and mooring system and of the Subsea cable and Underwater Substation 'Pod', nor does it guarantee the consequences of normal wear and tear or corrosion, from external phenomena, from abnormal or negligent use, nor those arising, from any repairs or modifications made without prior approval of the CONTRACTOR, except when they have been made by virtue or default by the CONTRACTOR or its obligation to repair within the times established in Clause 21.1.3 or 21.2.3."

CLAUSE 14

CHANGES TO ANNEX V OF THE EPC AGREEMENT

The Parties agree that the Schedule of Milestones contained in the Annex V is replaced by this one:

No.	Milestone	Forecast Date	% of contract price	Amount (kC)	OPT Allocation (kC)	Evidence of Completion
1	EPC Contract Signature	Paid	10%	266		Signing of the EPC contract.
2	Placement of PowerBuoy component orders	Paid	4%	107		OPT to provide copies of contracts/Purchase orders placed with subcontractors
5	Delivery of Bathymetry study	Paid	4%	107		Bathymetry report supplied

No.	Milestone	Forecast Date	% of contract price	Amount (KC)	OPT Allocation (KC)	Evidence of Completion
6	Order of Subsea Cable	Paid	5%	133		OPT to provide copies of contracts/Purchase orders placed with subcontractors.
		Subtotal	23%	613.00		
3	Purchase order of Substation POD equipment	Jan. '08	5%	134		OPT to provide copies of contracts/Purchase orders placed with subcontractors.
4	Purchase order of Mooring System	Nov. '07	5%	134	300	OPT to provide copies of contracts/Purchase orders placed with subcontractors.
7	PB40ES steel fabrication complete	Oct. '07	7%	186		Certificate of completion from steel subcontractor approved by OPT. Visual evidence (e.g. digital photograph of steel parts).
8	Delivery of POD main components (Transformer, switchgear) at Santander	Mar. '08	7%	186		Copy of goods received certificated from delivery agent.
9	Assembly of Underwater Substation 'Pod' on land complete (Santander)	May. '08	7%	186		Final 'POD Functional Test' certificate from OPT. Visual evidence of final testing (e.g. digital photo of assembled USP).
10	Assembly of PB40ES PowerBuoy on land complete (Santander)	Mar. '08	7%	186	143	Final 'Buoy Functional Test' certificate from OPT. Visual evidence of final testing (e.g. digital photo of assembled buoy).
11	Delivery of subsea cable 'ex-works' at Santander	Feb. '08	13%	346		Certificate of completion from Cable manufacturer and Visual evidence.
13	Installation of PB40ES mooring system at site and test complete	Mar. '08	4%	106	57	Certificate of completion of mooring from OPT.

No.	Milestone	Forecast Date	% of contract price	Amount (KC)	OPT Allocation (KC)	Evidence of Completion
14	Deployment of PB40ES PowerBuoy at site complete	April. '08	8%	213		Certificate of Completion of PowerBuoy installation from OPT
16	PAC of all PB40ES PowerBuoy and mooring system	April. '08	4%	106		Provisional Acceptance Certificate for the PB40ES PowerBuoy and mooring system
17	DAC of the PB40ES PowerBuoy and mooring system	Dec. '08	2%	54		Definitive Acceptance Certificate for the PB40ES PowerBuoy and mooring system
		Subtotal	69%	1837	500	
12	Subsea cable installation and test complete		To Be Determined			Copy of subcontractor installation certificate for the cable.
15	Installation of Underwater Substation 'Pod' complete		To Be Determined			Certificate of completion of POD installation from OPT
18	PAC of the Subsea cable and Underwater Substation 'Pod'		To Be Determined			Provisional Acceptance Certificate for the Subsea cable and Underwater Substation 'Pod'
19	DAC of the Subsea cable and Underwater Substation 'Pod'		To Be Determined			Definitive Acceptance Certificate for the Subsea cable and Underwater Substation 'Pod'
		Subtotal	8%	213		
		Total	100%	2663	500	

CLAUSE 15

COSTS

The Parties acknowledge and agree that:

- (i) The revised Schedule of Milestones in Clause 14 confirms that the maximum cost overrun allocated by the CONTRACTOR of €500,000 under clause 18.5 (i) of the EPC contract will have been fully utilized.
- (ii) Actual costs of Milestones 12,15,18 and 19 are to be determined.

CLAUSE 16

Models of PAC and DAC

The Parties agree that the Model of Provisional Acceptance in Annex VI and the Model of Definitive Acceptance in Annex VII will be adjusted to reflect the principle of having both a PAC of the PB40ES PowerBuoy and mooring system on the one hand a PAC of the Subsea Cable and Underwater substation 'POD' on the other under Annex VI and a DAC of the PB40ES PowerBuoy and mooring system on the one hand and a DAC of the Subsea Cable and Underwater substation 'POD' on the other under Annex VII with the word Plant in the Annexes referring to PB40ES PowerBuoy and mooring system or the Subsea Cable and Underwater substation, 'POD' as applicable.

CLAUSE 17

REMAINING AGREEMENT

The Parties agree that except as amended in accordance with this Addendum the EPC Agreement remains in full force and effect according to its terms.

IN WITNESS WHEREOF, this Agreement is signed in two originals, both to the same effect, at the place and date first above mentioned.



Rafael de J. L. A.
THE CLIENT



THE CONTRACTOR



Dated 1 February 2008

- (1) KUC PROPERTIES LIMITED
- (2) OCEAN POWER TECHNOLOGIES LIMITED

LEASE

relating to premises known as Unit 54(15) Hurlbutt Road Heathcote Industrial Estate Warwick CV34 6TD

Eversheds LLP
115 Colmore Row
Birmingham
B3 3AL

T +44 (0) 845 497 1000
F +44 (0) 845 497 1900
DX 13004 Birmingham
www.eversheds.com

PARTICULARS

PART 1: LAND REGISTRY PARTICULARS

LR1.	Date of lease	1 February 2008
LR2.	Title number(s)	
LR2.1	Landlord's title number(s)	WK268918.
LR2.2	Other title numbers	None.
LR3.	Parties to this lease	
	Landlord	KUC PROPERTIES LIMITED (registered number SC044073) whose registered office is at 24/25 St Andrew Square Edinburgh EH2 1AF.
	Tenant	OCEAN POWER TECHNOLOGIES LIMITED (registered number 05225532) whose registered office is at Warwick Innovation Centre Warwick Technology Park Gallows Hill Warwick CV34 6UW.
LR4.	Property	<p>In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.</p> <p>The premises (referred to in this Lease as "the Premises") known as Unit 54 No. 15 Hurlbutt Road Heathcote Industrial Estate Leamington Spa shown edged red on the attached plan including all alterations, improvements and additions made to those premises during the Term, landlord's fixtures and conduits exclusively serving those premises at any time during the Term and one half severed vertically of all party walls dividing those premises from any adjoining premises but</p>

excluding the airspace above the upper level of the buildings on those premises at any time during the Term.

LR5.	Prescribed statements etc	
LR5.1	Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003	None.
LR5.2	This lease is made under, or by reference to, provisions of:	None.
LR6.	Term for which the Property is leased	From and including December 2007. To and including 18 December 2011. (This term is referred to in this Lease as "the Contractual Term").
LR7.	Premium	None.
LR8.	Prohibitions or restrictions on disposing of this lease	This Lease contains a provision that prohibits or restricts dispositions.
LR9.	Rights of acquisition etc	
LR9.1	Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land	None.
LR9.2	Tenant's covenant to (or offer to) surrender this lease	None.
LR9.3	Landlord's contractual rights to acquire this lease	None.
LR10.	Restrictive covenants given in this lease by the Landlord in	None.

respect of land other than the Property

LR11.	Easements	
LR11.1	Easements granted by this lease for the benefit of the Property	The rights specified in Schedule 1.
LR11.2	Easements granted or reserved by this lease over the Property for the benefit of other property	The rights specified in Schedule 2.
LR12.	Estate rentcharge burdening the Property	None.
LR13.	Application for standard form of restriction	None.
LR14.	Declaration of trust where there is more than one person comprising the Tenant	Not applicable.

PART 2: OTHER PARTICULARS

Initial Rent Sixteen thousand pounds (£16,000) per annum exclusive of value added tax

Rent Start Date 1 February 2008

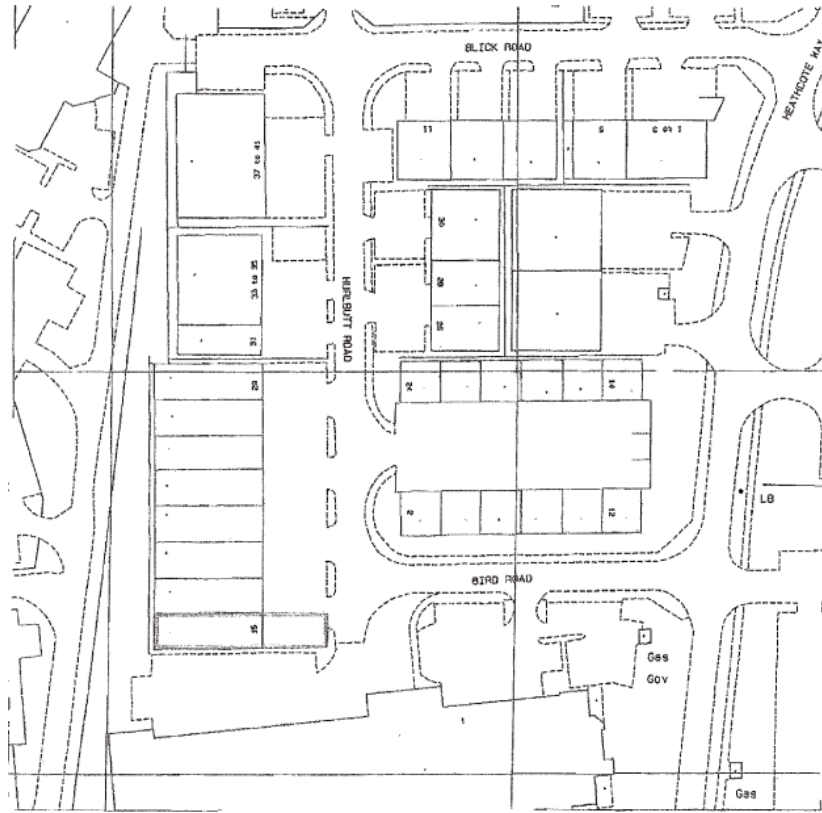
Permitted Use Use of the Premises for storage, administration and manufacture within Class B1 (c) or B8 of the Schedule to the Town & Country Planning (Use Classes) Order 1987

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THIS LEASE made on the date set out in **clause LR1** of the Land Registry Particulars between (1) the Landlord and (2) the Tenant **WITNESSES** as follows:

1. **DEFINITIONS AND INTERPRETATION**

In this lease where the context so admits the words and expressions set out in the Lease Particulars shall have the meanings there set out and the following words and expressions shall mean:

1.1 **“Additional Rents”**

1.1.1 the Insurance Rent (as hereinafter defined)

1.1.2 the Service Charge (as hereinafter defined)

1.1.3 any interest chargeable under this lease

1.1.4 all expenses costs fees and other sums incurred under the provisions of the sub-clauses of this lease headed Landlord’s costs Landlord may repair on Tenant’s default To pay costs and Value added tax

1.1.5 any additional insurance premiums payable by the Tenant under the sub-clause headed Insurance.

1.2 **“Building”**

the land and building known as Heathcote Industrial Estate Leamington Spa and the curtilage thereof and any boundary walls and fences and all additions and alterations thereto,

1.3 **“Conduits”**

pipes drains gutters flues channels wires and other conducting media and ancillary apparatus in or serving the Building.

1.4 **“Insurance Rent”**

a sum representing a fair proportion of the cost to the Landlord of:

1.4.1 complying with the Landlord’s insuring covenant hereinafter contained

1.4.2 public liability insurance of the Landlord in connection with the Building

1.4.3 obtaining at periodic intervals independent valuations of the Building for insurance purposes

together with an amount equivalent to the excess sums (if any) which the insurers are not liable to pay out on any insurance claim in respect of the Premises.

1.5 **“Insured Risks”**

fire lightning explosion aircraft (not being hostile aircraft) and articles dropped therefrom riot civil commotion earthquake storm tempest flood burst water pipes and impact by road vehicles and any other insurable risks against which the Landlord shall from time to time deem it desirable to insure subject in each case to:

1.5.1 insurance for any risk being reasonably obtainable on normal commercial terms

1.5.2 such exclusions and limitations as may be imposed by the insurers.

1.6 **“Interest Rate”**

the base rate of Barclays Bank plc or such other bank as the Landlord may nominate from time to time acting reasonably or if the base rate shall cease to exist such other rate of Interest as is most closely comparable with it as may be specified by the Landlord.

1.7 **“Internal Painting Year”**

2010.

1.8 **“Landlord”**

the Landlord named in the Lease Particulars and where the context so admits the reversioner for the time being expectant upon the termination of the tenancy hereby created.

1.9 **“Main Structure”**

the roof foundations floor structures load-bearing walls or frame stanchions beams columns and all external walls window frames and all common Conduits of the Building.

1.10 **“Plan”**

the plan annexed hereto.

1.11 **“Planning Acts”**

the Town and Country Planning Act 1990 and all other legislation relating to planning.

1.12 **“Premises”**

the premises known as Unit No. 54(15) Heathcote Industrial Estate which are shown for Identification only edged red on the Plan and which shall for the purpose of clarification extend to and include:

1.12.1 the interior finishes of external walls and of internal load bearing walls frames stanchions beams and columns and the floor boards and floor and ceiling finishes

1.12.2 all internal non load bearing walls or partitions wholly within the Premises

1.12.3 one half in thickness of all internal non load bearing walls or partitions separating the Premises from any other part of the Building

1.12.4 all doors door frames and glass in windows and doors

1.12.5 all Conduits which serve exclusively the Premises and

1.12.6 all Landlord’s fixtures and fittings

but shall exclude the Main Structure.

1.13 **“the Regulation”**

the Tenant must not store or leave refuse on the Premises other than in lidded containers with a volume of not more than 1,100 litres.

1.14 **“Rent”**

the Initial Rent but such term does not include the Additional Rents although the word “rents” includes both the Rent and the Additional Rents.

1.15 **“Service Costs”**

the costs incurred by the Landlord in carrying out the works and providing the services set out in **Part 1(A) of Schedule 3** and the service expenses incurred under **Part 1(B) of that Schedule**.

1.16 **“Service Charge”**

the sum payable by the Tenant in accordance with **Part 2 of Schedule 3**.

1.17 **“Service Charge Year”**

the period of twelve months up to the 31st of December in each year or such other period as the Landlord shall from time to time choose.

1.18 **“Superior Lease”**

any lease of the whole or any part of the Building superior to this lease.

1.19 **“Superior Landlord”**

the person entitled to the benefit of the reversion expectant upon the determination of any Superior Lease.

1.20 **“Tenant”**

the Tenant named in the Lease Particulars and where the context so admits its successors in title to the tenancy hereby created.

1.21 **“Term”**

the Contractual Term and any period of holding over or extension of the Contractual Term whether by statute or common law.

and in this lease where the context so admits:

1.22 the singular includes the plural and vice-versa and the masculine the feminine and the neuter shall each include the others;

1.23 reference to any statute (but not any Use Class Order) shall include any legislation amending or replacing the same and any statutory instruments orders rules or regulations having effect thereunder;

1.24 every covenant by the Tenant not to do any act shall include an obligation not to allow that act to be done;

1.25 where the Tenant or the Guarantor is more than one person their covenants and references to them shall be joint and several;

1.26 references to ‘this lease’ are to this lease as varied or supplemented; and

1.27 the clause headings shall not affect the construction.

2. **DEMISE AND RENT RESERVATION**

The Landlord HEREBY DEMISES unto the Tenant the Premises TOGETHER WITH the easements and rights specified in **Schedule 1** EXCEPT AND RESERVED unto the Landlord and others the easements and rights specified in **Schedule 2** TO HOLD the Premises unto the Tenant for the Contractual Term SUBJECT TO the provisions of the deeds and documents referred to in **Schedule 5** YIELDING AND PAYING therefor to the Landlord during the Term yearly and proportionately for any fraction of a year the rents set out hereunder:

- 2.1 The Initial Rent to be paid by equal quarterly payments in advance on the usual quarter days in every year the first payment (apportioned in respect of the period from the Rent Start Date up to and including the day immediately preceding the next following quarter day) to be paid on the date hereof
- 2.2 the Additional Rents — to be payable from the date hereof or the date of occupation if earlier (as determined by the Landlord or its surveyor acting reasonably) and to be paid to the Landlord within seven days of demand (except as otherwise provided).
3. **TENANT'S COVENANTS**
- THE Tenant HEREBY COVENANTS with the Landlord throughout the Term or until released pursuant to the Landlord and Tenant (Covenants) Act 1995 as follows:
- 3.1 **To pay rent**
- 3.1.1 To pay the reserved rents at the times and in manner aforesaid without any deduction or set off
- 3.1.2 If the Landlord reasonably requires to pay by Banker's Standing Order
- 3.2 **Interest**
- If any rents or other sums payable hereunder shall be due but unpaid to pay interest thereon (if demanded by the Landlord) calculated on a daily basis from the due date until receipt by the Landlord at the rate of 3% over the interest rate per annum (except as otherwise provided herein) over the Interest Rate compounded on the usual quarter days (which rate shall apply before as well as after any judgment of the Court) Provided that this sub-clause shall not prejudice any other right or remedy in respect of such rents.
- 3.3 **Rates and taxes**
- 3.3.1 To pay and discharge all existing and future rates taxes (save any taxes payable by the Landlord solely due to Its ownership of the Building or Premises) assessments outgoings duties and impositions whatsoever payable by law in respect of the Premises or any part thereof by the owner or occupier thereof including all charges in respect of water gas electricity and telecommunications used or consumed at the Premises
- 3.3.2 If the Tenant claims rate relief for empty premises and the Landlord accordingly is unable at the end of the Term to claim any such relief to indemnify the Landlord in respect of any such relief lost.

3.3.3 Not to agree or by default allow to be fixed the rateable value of the Premises or any part thereof without the prior written consent (not to be unreasonably withheld or delayed) of the Landlord and to cooperate with the Landlord in any negotiations with the District Valuer at the sole cost of the Landlord and if so requested by the Landlord to take all necessary steps to appeal against any such rateable value fixed.

3.4 **To repair**

3.4.1 In a proper and workmanlike manner to repair maintain and cleanse and keep in good and substantial repair and condition the Premises and all additions and improvements thereto including (but without prejudice to the generality of the foregoing) all sanitary central heating and water apparatus therein serving the Premises (damage caused by any of the Insured Risks excepted save to the extent that payment of any policy moneys is withheld in whole or in part by reason of any act neglect or default of the Tenant or anyone at the Premises expressly or impliedly with the authority of the Tenant or any undertenant)

3.4.2 To renew and replace from time to time all Landlord's fixtures and fittings which may be or become beyond repair

3.4.3 To pay a sum equivalent to the loss of Rent during such period as is reasonably required for the carrying out of works after the end of the tenancy by reason of any breach of this sub-clause without prejudice to any other right of the Landlord.

3.5 **To paint and redecorate**

In the Internal Painting Year in a proper and workmanlike manner and to the reasonable satisfaction of the Landlord to paint all the inside parts of the Premises previously painted with two coats of good quality paint (the last painting to be in colours and materials to be approved by the Landlord Provided That such approval shall not be unreasonably withheld or delayed) and at the same time to oil varnish polish paper or treat all internal parts thereof previously or requiring to be so treated and to wash down all washable surfaces.

3.6 **To yield up**

At the expiration or sooner determination of the Term:

3.6.1 peaceably to yield up to the Landlord the Premises with vacant possession in repair and decorated in accordance with the several covenants herein contained

3.6.2 to give up all keys of the Premises to the Landlord

3.6.3 to remove all Tenant's chattels and all rubbish from the Premises and (if requested by the Landlord) all Tenant's fixtures and fittings and to make good immediately any damage caused by the removal.

3.7 **To comply with statutory requirements**

3.7.1 At all times to observe and comply with the provisions of or imposed under any statute licence consent authorisation or regulation regulating or permitting the use of the Premises and the requirements of any competent authority in that connection and at the expense of the Tenant to do all that is necessary to obtain maintain and renew all licences and registrations required by law for the use of the Premises

3.7.2 At the sole cost of the Tenant to comply with the requirements of every Act of Parliament and all directly applicable European Community law for the time being in force and of all byelaws orders and regulations licences consents permissions and conditions made thereunder affecting the Premises or any use thereof.

3.8 **Planning**

In relation to the Planning Acts:

3.8.1 not to carry out any development (as therein defined) without having first obtained all necessary consents thereunder

3.8.2 not without the prior written consent of the Landlord to apply for permission for any such development

3.8.3 not without the prior written consent of the Landlord to implement any planning permission relating to the Premises

3.8.4 to pay any charge which may be imposed under the Planning Acts in respect of the carrying out of any operations or the institution or continuance of the use of the Premises

3.8.5 unless the Landlord shall otherwise direct in writing to carry out and complete before the expiration or sooner determination of the Term any works stipulated to be carried out to the Premises notwithstanding that such works are to be carried out by a later date as a condition of planning permission for any development begun before such expiration or sooner determination

3.8.6 if the Tenant shall receive any compensation relating to the Tenant's interest hereunder due to any restriction placed upon the user of the

Premises as a result of the Planning Acts then if and when the Tenant's interest hereunder shall determine the Tenant shall forthwith make such provision as is just and equitable for the Landlord to receive its due benefit from such compensation

3.8.7 to produce to the Landlord all such plans documents and other evidence as the Landlord shall reasonably require in order to satisfy itself that the provisions of this covenant have been complied with.

3.9 Notices received

Within seven days of receipt to give full particulars to the Landlord of any notice direction order or proposal for a notice direction or order made given or Issued to the Tenant by any government department or local or public authority and to supply two copies of the same to the Landlord and without delay to take all necessary steps to comply with the same and also at the request of the Landlord and at the joint cost of the Landlord and the Tenant to make or join with the Landlord in making such objections or representations relating to the same as the Landlord shall deem expedient.

3.10 Notice as to defects

Forthwith upon becoming aware of the same to give notice in writing to the Landlord of any defect or any wants of repair of the Premises or the remainder of the Building which would or might give rise to an obligation on the Landlord to do or refrain from doing any act or thing in order to comply with any statutory duty of care imposed on the Landlord and at all times to display and maintain all notices which the Landlord (acting reasonably) may from time to time display or require to be displayed at the Premises.

3.11 To permit entry to examine and do repairs

To permit entry to the Premises or any part thereof at all reasonable hours in the daytime on reasonable prior notice being given (or without prior notice and at any time in emergency):

3.11.1 by the Landlord to view the same to examine the state and condition thereof to take inventories of the fixtures and fittings therein and to make any inspection which may be required for the purposes of the Landlord and Tenant Acts 1927 and 1954 or any other enactments for the time being affecting the Premises the Building or the owner or occupier thereof and for any other purpose connected with the interest of the Landlord in the Building or its disposal charge or demise

3.11.2 by the Landlord and (with the previous authority of the Landlord) the tenants and occupiers of any adjoining premises so as to execute

repairs decorations or alterations to the Premises the adjoining premises or the Building and which cannot otherwise reasonably be executed without such entry and to empty cleanse renew or repair any of the Conduits belonging to the Premises and such adjoining premises or the Building

3.11.3 by the surveyors agents contractors and workmen of the respective parties hereby permitted or so authorised to enter together with appliances

subject in all such cases to the persons so entering making good in a reasonable manner any damage thereby occasioned to the Premises at their sole cost.

3.12 To repair on notice

To repair and make good to the reasonable satisfaction of the Landlord all breaches of covenant defects and wants of repair for which the Tenant may be liable within two calendar months after the giving of notice to the Tenant or sooner if requisite.

3.13 Landlord may repair on Tenant's default

That if the Tenant shall at any time default in the performance of any of the covenants herein contained relating to the repair decoration cleansing or condition of the Premises or any part thereof of which notice has been given as aforesaid it shall be lawful for workmen or others employed by the Landlord (but without prejudice to the right of re-entry hereinafter contained) to enter upon the Premises and repair and restore the same and all expenses incurred thereby (which expression shall include but not be limited to the proper fees of professional advisers) shall be a debt immediately payable by the Tenant to the Landlord on demand.

3.14 Re-letting

To permit the Landlord or its agents during the six months immediately preceding the expiration or sooner determination of the Contractual Term or at any time thereafter to affix and retain without interference upon any suitable part of the Premises a notice for reletting (or at any time for selling) the same but not so as materially to conceal the Tenant's own business signs and name and to permit all persons with written authority from the Landlord or its agents to enter upon and view the Premises at all reasonable times of the day without interruption.

3.15 Landlord's costs

To pay to the Landlord on an indemnity basis all solicitors' counsels' surveyors' and other costs expenses and fees incurred by the Landlord:

- 3.15.1 in or in contemplation of lawful and proper proceedings relating to the Premises whether or not under Sections 146 or 147 of the Law of Property Act 1925 or the preparation and service of a notice thereunder (whether or not any right of re-entry or forfeiture has been waived by the Landlord or a notice served on the Tenant has been complied with or the Tenant has enjoyed relief under the provisions of the Act or forfeiture is avoided otherwise than by relief granted by the Court)
- 3.15.2 incidental to the enforcement of any of the Tenant's covenants in this lease and in particular in the preparation and service of a schedule of dilapidations at any time during or within 6 months of the end of the Term and in the inspection of the works which are the subject of such schedule whether during or after the carrying out thereof
- 3.15.3 in connection with the recovery of any arrears
- 3.15.4 in respect of any application for consent required by this lease whether or not such consent is granted.

3.16 Insurance

- 3.16.1 Not to do or omit any act whatsoever whereby any insurance effected on the Premises or anything therein or on the Building or on any adjoining or neighbouring premises of the Landlord or of any associated company of the Landlord may become void or voidable or the premiums payable for such insurance increased
- 3.16.2 To the extent that any insurance premium payable in respect of any such adjoining or neighbouring premises or the Building is increased by any use act or omission of the Tenant (or anyone at the Premises expressly or impliedly with the authority of the Tenant or any undertenant) to pay to the Landlord on demand the full amount of such increase (and not only the proportion which the Premises bears to any such adjoining or neighbouring premises or the Building)
- 3.16.3 In the event of the Premises or any part thereof being destroyed or damaged by any of the Insured Risks to give immediate notice thereof to the Landlord

- 3.16.4 In the event of such adjoining or neighbouring premises or the Building or any part thereof being destroyed or damaged by any of the Insured Risks and the insurance money being wholly or partly irrecoverable by reason of any act neglect omission or default of the Tenant (or anyone at the Premises expressly or impliedly with the authority of the Tenant or any undertenant) then and in every such case the Tenant will pay to the Landlord forthwith on demand the whole or (as the case may require) a fair proportion of the cost of completely rebuilding and reinstating the same
- 3.16.5 To comply with the requirements and recommendations of the Landlord's insurers and not to store on the Premises any specially inflammable explosive combustible or deleterious or otherwise hazardous substance and not to release any such substance on to the Premises or on to or into any other land air or water
- 3.16.6 Not to effect any insurance in respect of a risk against which the Landlord shall insure under **Clause 4.2** hereof and not to request the insurers to make a note of the interest of the Tenant or the Tenant's mortgagee or any undertenant on any policy effected by the Landlord
- 3.16.7 To insure and keep insured in the joint names of the Landlord and the Tenant and such other names as the Landlord may reasonably require all the plate glass or any substitute or alternative material used in windows (if any) and doors in the Premises against breakage with an insurance company of repute to the full reinstatement cost thereof and public liability relevant to such breakage and pay all premiums necessary for that purpose and whenever required produce to the Landlord the policy of insurance and the receipt for the current year's premium and whenever a claim arises to use the insurance money forthwith in reinstating the same with a like or improved material to the reasonable satisfaction of the Landlord making up any deficiency out of the Tenant's own moneys.

3.17 Electrical alterations

Not without the prior written consent (not to be unreasonably withheld or delayed) of the Landlord to alter or add to the electrical installation of the Premises (and ensure that any permitted alterations or additions are carried out in accordance with the terms and conditions laid down by the Institution of Electrical Engineers and the Regulations of the Electricity Supply Authority).

3.18 Alterations

- 3.18.1 Not to cut injure or alter any part of the Main Structure

3.18.2 Not to make any other erection addition or alteration whatsoever to the Premises without the previous consent in writing of the Landlord not to be unreasonably withheld or delayed (such consent to be without prejudice nevertheless to the provisions of the sub-clauses hereof headed Planning Electrical alterations and To comply with statutory requirements) nor except:

3.18.2.1 in accordance with plans and specifications (with such additional copies thereof as the Landlord may reasonably require) previously submitted to and approved in writing by the Landlord

3.18.2.2 to the satisfaction of the Landlord

PROVIDED always that any alterations or additions shall at the end or sooner determination of the Term be reinstated by the Tenant if so required in writing by the Landlord

3.18.3 Notwithstanding any other provision contained in this lease the Landlord may prohibit the Tenant from making any erection addition alteration improvement or planning application in relation to the Premises or the Building which could (if followed at any time by a disposal or deemed disposal of any part thereof) give rise to a charge for tax upon the Landlord whether immediate deferred or contingent upon the happening of any future event

3.18.4 Where any erection addition or alteration falls within the scope of the Construction (Design and Management) Regulations 1994 the Tenant shall:

3.18.4.1 be the only client for the purposes of the Regulations

3.18.4.2 send a declaration to that effect to the Health and Safety Executive in accordance with Regulation 4(4) before the relevant work is commenced and provide the Landlord with a copy of the acknowledgement from the Health and Safety Executive as soon as it is received by the Tenant

3.18.4.3 comply with its obligations as client in respect of all work

3.18.4.4 at any time upon request provide the Landlord with copies of all health and safety files relating to the Premises in accordance with the Regulations and at the end or sooner determination of the Term deliver such files to the Landlord.

3.19 Permitted Use

Not to use and occupy the Premises other than for the Permitted Use.

3.20 Prohibited uses

Not to use any part of the Premises for any public meeting exhibition or entertainment or for any illegal immoral or noxious purpose or for the purposes of a club or for any sale by auction or for the playing of any sound-producing instrument or apparatus audible outside the Premises or as a sleeping place for any person or for betting or gaming.

3.21 Advertising signs and posters

Not without the previous written consent of the Landlord to place display in or upon the Premises any aerial sign advertisement notice poster display of lights or other object or notification whatsoever other than sign boards displaying the name and business of the Tenant of a reasonable size and appropriate to such business and on the expiration or sooner determination of the Term to remove or efface the same and to make good any damage caused.

3.22 Nuisance

- 3.22.1 Not to do any act matter or thing of a dangerous noxious noisome or offensive nature or which may be or grow to be a danger nuisance annoyance or disturbance to the Landlord or to other occupiers or residents for the time being of the Building or the Landlord's adjoining or neighbouring premises or to the public nor to allow any manufacturing operations or other processes to be carried on otherwise than within the Premises
- 3.22.2 Not to keep any goods parcels refuse or rubbish in or about the staircases lifts corridors landings entrances forecourts passages or other common parts of the Building (except in receptacles provided for that purpose) or otherwise obstruct the same
- 3.22.3 Not to behave in any manner which shall be unreasonable unneighbourly objectionable loud noisy unruly or unsightly and in all matters to act in regard to the Premises and the Building in a responsible manner so as to cause the least possible interference with the use and enjoyment of other occupiers of the Building or the Landlord's adjoining premises and so as to cause no additional expense for the upkeep thereof and (without prejudice to the Tenant's obligation not to do anything which will be a breach of this clause) upon receiving notice from the Landlord of anything done on or brought onto the Premises or the Building which in the opinion of the

Landlord reasonably held shall be inconsistent with this covenant forthwith to discontinue or remove the same and to take to the satisfaction of the Landlord acting reasonably all steps necessary to prevent any recurrence of the matter or matters mentioned in any such notice

3.22.4 To take all necessary and reasonable precautions (whether by the installation and maintenance of devices for consuming or absorbing fumes noise or vibrations or for catching intercepting or precipitating noise or dust or other particles or by some other means) to reduce to a minimum the amount of noise vibrations fumes dust and other matter emanating from the Premises PROVIDED always that nothing in this sub-clause contained shall be deemed to be an authorisation by the Landlord of the commission of a nuisance.

3.23 To clean windows and clear refuse

To clean the windows of the Premises as often as occasion shall require and at least once in every calendar month and at least once a week to remove all refuse rubbish and scrap which may have accumulated on the Premises.

3.24 Easements

To preserve unobstructed and undefeated all rights of light and other easements appertaining to the Premises and not to permit (but give notice to the Landlord of) any act whereby a new easement or encroachment might come to be made into against over or upon the Premises and to do all such things as the Landlord may reasonably require to prevent the same.

3.25 Alienation etc

3.25.1 Not to:

3.25.1.1 assign charge underlet or part with possession of part only of the Premises

3.25.1.2 share the possession or occupation of the whole or any part of the Premises

3.25.1.3 part with possession of the whole of the Premises save by way of an assignment of the whole on the terms hereinafter permitted

3.25.2 Not to assign the Premises without the Landlord's prior written consent such consent not to be unreasonably withheld or delayed and subject to compliance with **Clause 3.25.3**

- 3.25.3 Not to assign the Premises unless the following conditions (which are specified for the purposes of section 19(1A) of the Landlord and Tenant Act 1927) are complied with prior to such assignment namely that:
- 3.25.3.1 the tenant for the time being shall have entered into an authorised guarantee agreement with the Landlord pursuant to section 16 of the Landlord and Tenant (Covenants) Act 1995 guaranteeing the performance by the assignee of the covenants on the part of the Tenant contained in this lease in the terms (mutatis mutandis) set out in **Schedule 4** or in such other form consistent with section 16 as the Landlord shall reasonably require
 - 3.25.3.2 any guarantor of the Tenant's obligations under this lease shall have joined in any such authorised guarantee agreement in order to covenant (as principal debtor) with the Landlord that the Tenant shall comply with the authorised guarantee agreement mentioned in the preceding sub-clause
 - 3.25.3.3 (if reasonably required by the Landlord) the proposed assignee shall have procured a covenant with the Landlord by an acceptable guarantor or guarantors in the terms (mutatis mutandis) set out in **Schedule 4** or in such other form as the Landlord shall reasonably require
 - 3.25.3.4 all rents and other sums due under this lease have been paid.
- 3.25.4 Not to underlet the Premises without the Landlord's prior written consent such consent not to be unreasonably withheld and not to underlet:
- 3.25.4.1 except to an undertenant who shall first have:
 - (a) entered into a covenant with the Landlord to observe and perform the covenants and conditions on the part of the Tenant contained in this lease (other than the covenant to pay rent) and
 - (b) if reasonably so required by the Landlord procured a covenant with the Landlord by an acceptable guarantor or guarantors in the terms (mutatis mutandis) set out in **Schedule 4** or in such other form as the Landlord may reasonably require

- 3.25.4.2 in consideration of any premium
- 3.25.4.3 without reserving a yearly rent payable in advance on the usual quarter days equal to the greater of:
 - (a) the then full current open market rack rental value of the Premises and
 - (b) the Rent then payable under this leasesuch yearly rent to be reviewable on the same dates and on the same terms as the Rent payable under this lease
- 3.25.4.4 except on similar covenants and conditions (which the Tenant shall enforce) to those in this lease and in particular:
 - (a) a proviso for re-entry on breach of any covenant in the underlease and
 - (b) similar terms as to carrying out or paying for repairs paying insurance premiums and paying the service charges under this lease
- 3.25.4.5 without taking from the undertenant unqualified covenants (which the Tenant shall enforce):
 - (a) not to assign the whole of the Premises without the prior written consent of the Landlord (under this lease)
 - (b) not (save by way of a charge of the whole) to deal In any other way whatsoever with the Premises or any part thereof and
 - (c) to obtain from any assignee of the Premises a covenant with the Landlord (under this lease) to observe and perform the covenants and conditions on the part of the Tenant contained in this lease (other than the covenant to pay rent)
- 3.25.5 Not without the Landlord's prior written consent such consent not to be unreasonably withheld:
 - 3.25.5.1 to vary the terms of any underlease or
 - 3.25.5.2 to agree any rent on review under any underlease and if the rent thereunder is to be determined by a third party in

accordance with the conditions therein contained to procure that the Landlord's representations as to the rent payable thereunder are made to that person to the reasonable satisfaction of the Landlord and to provide the Landlord with details of all rent reviews within one month of agreement or determination

3.26

To register any disposition

3.26.1 To give notice in writing of every assignment assent transfer underlease change of name charge or devolution of or other instrument relating to or affecting the Premises and to produce a certified copy of the same within twenty one days after the execution or grant thereof to the solicitors of the Landlord and to pay their reasonable registration fee (and that of any superior landlord) in respect of each such instrument PROVIDED THAT registration of any such document shall not require the Landlord to consider the terms thereof and shall not be evidence that it has done so.

3.26.2 As soon as reasonably practicable after the date of this Lease, the Tenant named in the Particulars is to apply to the Land Registry to note the burden of the rights granted by **clause 2** and to note the benefit of the rights reserved by **clause 2** on the title number set out in **clauses LR2.1** of the Land Registry Particulars.

3.27

Not to overload premises nor obstruct Conduits

3.27.1 Not to overload any part of the Premises or to impose a weight or strain in excess of that which the Premises are constructed to bear with due margin for safety

3.27.2 Not to stop up or obstruct in any way whatsoever or permit oil grease or other harmful or excessive matter or substance to enter the washbasins or lavatory basins or the drains and sewers of the Building and to employ maintain and renew such plant for treating any deleterious effluent before permitting the same to enter such drains and sewers as may be required by the Landlord from time to time in accordance with best modern practice and to make good at the sole cost of the Tenant all damage caused or cost incurred by reason of any such stopping up or obstruction.

- 3.28 **To comply with regulations**
To conform to the Regulation and all other regulations reasonably made by the Landlord for the proper management of the Building and notified to the Tenant in writing from time to time and to conform to all such reasonable regulations and instructions as the Landlord may from time to time make or give for the regulation of vehicular traffic within the curtilage of the Building and not to park any vehicle therein or on any adjoining or neighbouring property of the Landlord without the express written authority of the Landlord to do so.
- 3.29 **Restrictive covenants and Superior Lease**
To observe and perform the obligations contained in:
3.29.1 the deeds and documents referred to in **Schedule 5** so far as the same are for the time being enforceable and capable of taking effect and
3.29.2 the Superior Lease (except the obligation to pay rent) insofar as the same relate to or affect the Premises and are not in this lease specifically the responsibility of the Landlord.
- 3.30 **Indemnity**
To indemnify the Landlord against all damages losses proper costs expenses actions demands proceedings and liabilities arising directly or indirectly out of:
3.30.1 any act omission or negligence of the Tenant or anyone at the Premises expressly or impliedly with the Tenant's authority or
3.30.2 any breach by the Tenant of the provisions of this lease.
- 3.31 **Value added tax**
3.31.1 To pay the Landlord value added tax chargeable in respect of any taxable supplies made by the Landlord to the Tenant in connection with this lease (whether or not at the election of the Landlord)
3.31.2 Where the Tenant has agreed in this lease to reimburse the Landlord for the costs or expenses of any supplies provided to the Landlord by a third party (but in respect of which the Landlord makes no taxable supply to the Tenant) the Tenant shall also at the same time reimburse the Landlord with an amount equivalent to the value added input tax incurred by the Landlord save to the extent that the Landlord is entitled to a credit for such input tax and the Landlord shall use reasonable endeavours to recover the input tax before requesting the Tenant to account for the same.

3.32 **Information as to subtenants**

To give to the Landlord in writing the information set out in section 40(1) Landlord and Tenant Act 1954 and all such other information as the Landlord may reasonably request in relation to any procedure under the said Act (including copies of all notices served by or on the Tenant pursuant to section 25 or 26) or in relation to the implementation of any rent review within twenty one days after service at any time during the Term of a notice requesting such information.

4. **LANDLORD'S COVENANTS**

THE Landlord HEREBY COVENANTS with the Tenant as follows:

4.1 **Quiet enjoyment**

That the Tenant paying the rents hereby reserved and observing and performing the covenants conditions and agreement on the part of the Tenant herein contained shall and may quietly hold and enjoy the Premises during the Term without any interruption by the Landlord or persons lawfully claiming under the Landlord.

4.2 **To insure**

- 4.2.1 To insure in some insurance office of repute (unless such insurance is vitiated by any act neglect or default of the Tenant or anyone at the Premises expressly or impliedly with the authority of the Tenant or any undertenant):
 - 4.2.1.1 the Building and all Landlord's fixtures and fittings and plant therein of an insurable nature against destruction or damage by the Insured Risks in such sum as shall be determined from time to time by the Landlord to represent the reinstatement cost thereof together with all professional and other fees and expenses and the cost of site clearance and other incidental expenses
 - 4.2.1.2 for the loss of two years Rent caused by any of the Insured Risks
 - 4.2.2 To supply a summary of such insurance and evidence of the current premium on request once yearly
 - 4.2.3 In the case of destruction or damage to the Premises by any of the Insured Risks to ensure that all insurance moneys (other than for loss of Rent and public liability) received by the Landlord are with all convenient speed (subject to the necessary labour and materials being
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procurable and to all necessary statutory consents being obtained) laid out in reinstating the Premises provided that the Landlord's liability hereunder shall be deemed to be satisfied if the Landlord provides premises as convenient and commodious as but not necessarily identical with that previously existing.

4.3 To repair and to maintain services

Subject to the Tenant paying the Service Charge when due and unless prevented or restricted by any circumstances beyond its control the Landlord will so far as the same is not the responsibility of any other tenant of the Building:

- 4.3.1 from time to time repair maintain and renew the Main Structure of the Building and any other part of the Building used in common and all common fixtures fittings plant equipment and Conduits therein subject to the proviso that no liability hereunder shall be deemed to arise unless due notice in writing of a need for repair has been given to the Landlord by the Tenant or by another tenant in the Building
- 4.3.2 so far as practicable provide the services set out in Part 1(A) of **Schedule 3** Provided always that the Landlord may from time to time withhold discontinue increase or vary the services or any of them or the times at which they are supplied if the Landlord deems it reasonably necessary for the more efficient management of the Building as a whole.

4.4 Superior Lease

To pay the rent reserved by any Superior Lease and to observe and perform the covenants agreements and provisions thereof but only so far as the Superior Landlord shall require the same to be observed and performed and except so far as they are by this lease expressly assumed by the Tenant.

4.5 To keep the Building in good repair and condition but no better repair and condition than at the date of this Lease.

5. FURTHER PROVISIONS

PROVIDED ALWAYS THAT and it is hereby agreed as follows:

5.1 Forfeiture and re-entry

That this lease is made upon the express condition that if:

- 5.1.1 any reserved rents shall be unpaid for fourteen days after the due dates whether the same shall have been lawfully demanded or not or

- 5.1.2 any Tenant's covenant shall not have been observed or performed or
- 5.1.3 in respect of a Tenant or a guarantor (not being a company):
 - 5.1.3.1 an application is made for an interim order under Part VIII of the Insolvency Act 1986 or
 - 5.1.3.2 a bankruptcy petition is presented or there is made against him a bankruptcy order or
 - 5.1.3.3 there is summoned any meeting of creditors or the Tenant makes any proposal to his creditors for a composition in satisfaction of debts or proposes or enters into any arrangement of whatever nature with his creditors or
- 5.1.4 in respect of a Tenant or a guarantor (being a company):
 - 5.1.4.1 it enters into liquidation whether compulsory or voluntary (other than for the purposes of an amalgamation or reconstruction resulting in a solvent company) or
 - 5.1.4.2 a petition is presented for a winding up order or an administration order (or the company or its directors resolve to present either) or it is wound up or
 - 5.1.4.3 there is summoned any meeting of creditors or the Tenant (or its directors) makes any proposal to the creditors for a composition in satisfaction of its debts or proposes or enters into any arrangement of whatever nature for the benefit of the creditors or its members or
 - 5.1.4.4 there is appointed a receiver or a receiver and manager or an administrator or an administrative receiver (or a person becomes entitled to exercise any such powers) or
- 5.1.5 the Tenant has any distress or execution levied on any goods at the Premises

then it shall be lawful for the Landlord or its authorised agent to re-enter upon the Premises and to re-possess and enjoy the same as if this lease had not been made but without prejudice to any right of action or remedy of any party in respect of any antecedent breach of any of the covenants herein contained.

5.2 **Rent cesser**

If the Premises or any part thereof or all access thereto shall be destroyed or damaged by any of the Insured Risks so as to make the Premises unfit for

occupation or use then (unless the policy moneys for loss of rent shall have been wholly or partly withheld due to any act neglect or default of the Tenant or anyone at the Premises expressly or impliedly with the authority of the Tenant or any undertenant or due to any exclusion or limitation to which the policy of insurance may be subject) the Rent or a fair proportion thereof according to the nature and extent of the damage sustained shall be suspended until the Premises shall again be fit for occupation and use or access shall be restored or until the expiration of the period for which insurance for loss of Rent is effected whichever shall be the earlier and any dispute shall be referred to the award of a single arbitrator to be appointed in default of agreement upon the application of either party by the President for the time being of the Royal Institution of Chartered Surveyors in accordance with the provisions of the Arbitration Act 1996

5.3 Determination

If the Premises is destroyed or damaged such that the Premises are unfit for occupation for the Permitted Use or incapable of any access and if the Premises are not made fit for occupation for the Permitted Use or capable of any access within 3 years after that destruction or damage occurs then either party may by six months' notice to the other determine this Lease and on the expiry of that notice this Lease shall determine.

5.4 Insurance proceeds

Subject to the provisions for reinstatement of the Premises contained in **Clause 4.2.3** the building insurance proceeds shall belong to the Landlord for its own use and benefit absolutely.

5.5 Disputes

Any dispute arising as between the Tenant and the lessee or occupier of any part of the Building or any adjacent or neighbouring premises belonging to the Landlord as to any easement right or privilege enjoyed or used in common shall be decided by the Landlord whose decision shall be binding upon all parties to the dispute.

5.6 Service of notices

5.6.1 Any demand or notice under this lease shall be properly served if left at or sent by fax or post to:

5.6.1.1 the recipient's address herein contained (or such substituted address as shall have been notified in writing) or

5.6.1.2 its registered office where the recipient is a company or

5.6.1.3 the Premises where the recipient is the Tenant

5.6.2 The provisions as to service by post as contained in section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply.

5.7 **Compensation for disturbance**

So far as the Landlord and Tenant Act 1954 shall allow no compensation shall be payable on determination of the tenancy hereby created.

5.8 **Rights and easements**

The operation of section 62 of the Law of Property Act 1925 is excluded from this lease and the only rights granted to the Tenant are those set out in **Schedule 1**.

5.9 **Jurisdiction**

This lease is governed by the laws of England and (save where otherwise provided herein) the parties hereto submit to the exclusive jurisdiction of the English courts in relation to any claim dispute or difference which may arise hereunder.

5.10 **Landlord's liability**

Only the landlord for the time being shall be liable to observe and perform the Landlord's covenants herein.

5.11 **The Superior Landlord and mortgagee**

5.11.1 Where the Landlord's title to the Premises derives from a Superior Lease or is subject to a mortgage:

5.11.1.1 the tenancy hereby created is subject to any exceptions and reservations in the Superior Lease and

5.11.1.2 the rights exercisable by the Landlord shall also be exercisable by the Superior Landlord and the mortgagee

5.11.2 Where the Tenant seeks the Landlord's consent to any matter:

5.11.2.1 the Landlord will use its reasonable endeavours to obtain any requisite consent of the Superior Landlord and of the mortgagee

5.11.2.2 the Landlord shall be entitled to withhold its own consent unless it has obtained such requisite consents and

5.11.2.3 the Tenant shall bear the reasonable cost to the Landlord (including the costs of the Superior Landlord and the mortgagee) of obtaining such requisite consents

5.11.3 Where any matter is to be carried out to the reasonable satisfaction of the Landlord it shall also if required be carried out to the reasonable satisfaction of the Superior Landlord and the mortgagee

6. EXCLUSION OF THE 1954 ACT

6.1 The Landlord and the Tenant agree to exclude the provisions of sections 24 to 28 of the 1954 Act in relation to the tenancy created by this Lease. The Tenant confirms that before the date of this Lease:

6.1.1 the Landlord served on the Tenant a notice ("the Notice") dated 14 December 2007 in relation to the tenancy created by this Lease in a form complying with the requirements of Schedule 1 to the 2003 Order;

6.1.2 the Tenant, or a person duly authorised by the Tenant, in relation to the Notice made a statutory declaration ("the Declaration") dated 19 December 2007 in a form complying with the requirements of Schedule 2 to the 2003 Order;

6.1.3 where the Declaration was made by a person other than the Tenant, the declarant was duly authorised by the Tenant to make the Declaration on the Tenant's behalf; and

6.1.4 it was not contractually bound to enter into the tenancy created by this Lease.

7. NEW TENANCY

The tenancy hereby created is a new tenancy as defined in the Landlord and Tenant (Covenants) Act 1995.

8. RIGHTS OF THIRD PARTIES

It is not intended that a third party should have the right to enforce a provision of this lease pursuant to the Contracts (Rights of Third Parties) Act 1999.

9. NO AGREEMENT FOR LEASE

It is hereby certified that there is no agreement for lease to which this lease gives effect

Delivered as a deed on the date hereof

SCHEDULE 1

Rights Granted

1. Support

The right of support and protection for such parts of the Premises as require the same from other parts of the Building and any adjoining or adjacent premises of the Landlord capable of providing such support and protection.

2. Passage of utilities

The right to passage of water soil gas and electricity and telephone lines (in common with the Landlord and other tenants of the Building and all other persons entitled thereto) through the Conduits and with the Landlord's prior consent and upon reasonable prior notice being given to all persons affected thereby the right to enter upon other parts of the Building to make any necessary connections thereto or to cleanse repair and renew any Conduits serving the Premises causing as little inconvenience as possible and making good any damage thereby caused.

3. Use of common parts

The right for the Tenant its agents employees and licensees in common with the Landlord and all others entitled:

3.1 of access to and egress from the Premises over such parts of the Building and in case of emergency to use such fire escapes as the Landlord shall from time to time designate

3.2 of access with vehicles to and from the service yard and loading bay located within the curtilage of the Building for so long only as shall be required for the purpose of loading and unloading goods and equipment in connection with the Tenant's business provided that no obstruction is thereby caused and that this right is exercised in strict compliance with any regulations made by the Landlord

3.3 of use of the lifts lavatories and cloakrooms in the Building designated by the Landlord for the Tenant's use

4. Right to enter adjacent premises

With the Landlord's prior consent and upon reasonable prior notice (except in emergency) given to the Landlord and all other persons affected thereby of access into and upon the adjacent premises forming part of the Building so far as may be requisite to enable the Tenant to comply with the Tenant's obligations

herein contained subject to causing as little inconvenience as possible and making good any damage caused.

SCHEDULE 2
Rights Reserved by the Landlord

1. Support

The right of support and protection from the Premises for such parts of the Building and any adjoining or adjacent premises of the Landlord as require such support and protection.

2. Passage of utilities

The right to uninterrupted passage of water soil gas electricity and telephone lines through the Conduits for the time being belonging to or running through or under the Premises or any land and premises over which the Tenant enjoys rights hereunder from and to the remainder of the Building or any adjoining or adjacent premises of the Landlord AND the right to enter upon the Premises or other land aforesaid at all reasonable times for the purpose of making connections thereto or to inspect cleanse repair renew or remove the same making good any damage thereby caused to the Premises.

3. Easements

All rights and easements privileges in the nature of easements or quasi-easements now existing in or over the Premises for the benefit of the Building or any adjoining or adjacent premises of the Landlord.

4. Right of entry

The right at reasonable times and on reasonable notice (except in emergency) to enter the Premises for the purposes of:

- 4.1 inspecting the condition and state of repair thereof
- 4.2 carrying out any works for which the Landlord or the Tenant is liable under this lease or by statute
- 4.3 carrying out any works to any property adjoining the Premises or to any party structure Conduits or other thing used by the Tenant in common with others

subject to the persons so entering making good any physical damage to the Premises caused by such entry to the reasonable satisfaction of the Tenant.

5. Right to alter

The right at any time without making any compensation to build on alter or add to the exterior of the Premises or build on alter add to extend erect demolish or redevelop any other part of the Building or any adjoining or neighbouring

premises notwithstanding any interference caused to the Premises or any access of light and air thereto.

SCHEDULE 3

SERVICES

Part 1(A)

Services provided

1. Complying with the Landlord's repairing covenant hereinbefore contained and cleaning down painting and decorating the exterior of the Building (including the window frames) and the common parts as and when required.
2. The provision maintenance repair and replacement (where beyond economic repair) in the Building of:
 - 2.1 a security alarm system
 - 2.2 fire fighting alarm and prevention equipment
 - 2.3 notices and signs deemed necessary by the Landlord for the health and safety of all those in the Building and for the control of the Building
3. Providing for the benefit of the Building or the tenants:
 - 3.1 cleaning of the common parts
 - 3.2 the periodic collection and removal of refuse
 - 3.3 traffic control
 - 3.4 portorage
 - 3.5 security control
 - 3.6 caretaker or other staff
 - 3.7 general management
4. Complying with the Landlord's obligations under the deeds and documents referred to in **Schedule 5** and the Superior Lease (other than payment of rent) if and insofar as they relate to the Building and are not by this lease expressly assumed by the Tenant.
5. Providing any other services or carrying out any other work which the Landlord acting reasonably shall from time to time consider necessary for the benefit of the Building or its environment.

Part 1(B)

Service expenses

The Service Costs for each Service Charge Year shall (without limitation) include:

1. The salaries and all other employment costs of all staff and the cost of providing them with necessary office space residential accommodation motor transport office equipment stationery telephone facilities working clothes and all other equipment required for the proper performance of their duties
2. The fees and expenses payable to any independent professional or other person whom the Landlord may from time to time employ in connection with the provision of the services
3. All rates taxes (except taxes assessed on the Landlord solely due to its ownership of the Building) and outgoings (including electricity gas and telephone charges) payable by the Landlord in respect of whole or part of the Building
4. The expenses of complying with all statutory requirements and the requirements of any competent authority in relation to the Estate.
5. The provision of a sinking fund in each year of a reasonable sum to cover the prospective and contingent costs of carrying out repairs decorations and replacements to the Estate the Landlord's fixtures and fittings thereon or plant machinery equipment and other items upon or serving the Estate
6. The costs of administering the services including keeping the accounts and records thereof (being initially a yearly sum equal to ten per cent (10%) of the other annual Service Costs) whether carried out by the Landlord or its agent
7. Any interest charges incurred on expenditure not covered by the interim advance payments payable under **Part 2 of this Schedule**.

Part 2

Service charge

1. The Service Charge to be paid by the Tenant shall be such fair proportion (which may if appropriate be the whole amount) of the actual or anticipated Service Costs for each Service Charge Year which shall be assessed by the Landlord or its Surveyor according to a reasonable and proper basis for apportionment applicable from time to time to the Premises.
2. The Landlord may make and send to the Tenant notice in writing of the Landlord's reasonable estimate of the anticipated Service Costs and the Service Charge applicable to the Premises for the coming Service Charge Year and the Tenant shall pay such estimate of the Service Charge by equal quarterly instalments in advance on the usual quarter days.
3. The Landlord will (unless prevented by causes beyond its control) prepare and send to the Tenant a statement of the actual Service Costs and Service Charge for each Service Charge Year as soon as practicable after the end of such year and in the event of the Service Charge for the Premises exceeding the aggregate amount paid by the Tenant for such year the Tenant will pay the balance due to the Landlord forthwith and in the event of the aggregate amount being greater the excess will be credited by the Landlord by way of set-off against the next instalment of Service Charge due from the Tenant.
4. The Landlord will not charge the Tenant any part of the Service Costs which shall be attributable from time to time to such parts of the Building as shall be designed and available for letting but which remain unlet or which are occupied by the Landlord (save for the common parts of the Building and any staff accommodation) during the whole or proportionately for any part of the relevant Service Charge Year.
5. In the event of the Building being altered added to or extended the Service Charge may be adjusted by the Landlord in such manner as the Landlord shall deem to be just and equitable.

SCHEDULE 4
Guarantee Covenants

The Guarantor covenants with the Landlord as principal debtor or covenantor that whilst the Tenant is bound by the Tenant's covenants in this lease:

1. The Tenant will pay the rents hereby reserved and observe and perform all its covenants herein and that on default the Guarantor will pay the rents hereby reserved and observe and perform the covenants in respect of which the Tenant is in default and indemnify the Landlord against all claims demands damages proper costs losses and expenses arising directly or indirectly out of such default and the liability of the Guarantor shall not be affected by any:
 - 1.1 time given to the Tenant or any neglect or forbearance by the Landlord in enforcing the payment of the rents or the observance or performance of the Tenant's covenants or any refusal by the Landlord to accept rent at a time when the Landlord is entitled to re-enter the Premises
 - 1.2 variation of the terms of this lease
 - 1.3 surrender of part
 - 1.4 other act or thing by which (but for this provision) the Guarantor would have been released.
2. If the tenancy hereby granted shall be prematurely determined (save where agreed by the Landlord and the Tenant) or if the same shall be disclaimed the Guarantor will (if so required by the Landlord) either (in the event of determination of the lease) accept from the Landlord the grant of a new lease of the Premises from the date of such determination or disclaimer for the residue of the Term then unexpired at the same rents hereinbefore reserved and subject to the like covenants and provisos as are herein contained (and in such event the Guarantor will execute and deliver to the Landlord a counterpart lease) or (if the lease remains extant) accept the vesting of this lease and in either case the Guarantor will pay the Landlord's proper costs disbursements and value added tax.
3. If the Landlord shall not require the Guarantor to take a lease of the Premises pursuant to **paragraph 2** above the Guarantor shall nevertheless upon demand pay to the Landlord a sum equal to the rent and to all other payments that would have been payable under this lease but for the determination or disclaimer in respect of the period from the date of the said determination or disclaimer until the expiration of six months therefrom or until the Premises shall have been relet by the Landlord whichever shall first occur.

SCHEDULE 5

Deeds

Matters contained mentioned or referred to in the Landlord's registered title No. WK268918 so far as the same are subsisting and capable of being enforced and affect the Building or the Premises.

SIGNED AS A DEED by KUC PROPERTIES
LIMITED acting by a director and its attorney
[ILLEGIBLE]

Director
A. Mc Donald, Attorney

SIGNED AS A DEED by OCEAN POWER TECHNOLOGIES LIMITED acting by a director and its secretary

/s/ M. R. DRAPER

Director M. R. DRAPER

/s/ ERIC A. ASH

Director ERIC A. ASH

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Ocean Power Technologies, Inc.:

We consent to the incorporation by reference in the registration statement on Form S-8 (No. 333-142547) of Ocean Power Technologies, Inc. of our reports dated July 14, 2008, with respect to the consolidated balance sheets of Ocean Power Technologies, Inc. and subsidiaries as of April 30, 2008 and 2007, and the related consolidated statements of operations, stockholders' equity and comprehensive loss, and cash flows for each of the years in the three-year period ended April 30, 2008, and the effectiveness of internal control over financial reporting as of April 30, 2008, which reports appear in the April 30, 2008 annual report on Form 10-K of Ocean Power Technologies, Inc.

Our report dated July 14, 2008 on the consolidated financial statements refers to the adoption of the fair value method of accounting for stock-based compensation as required by Statement of Financial Accounting Standards No. 123R, *Share-Based Payment*, effective May 1, 2006.

/s/ KPMG LLP

Philadelphia, Pennsylvania
July 14, 2008

CERTIFICATIONS

I, George W. Taylor, certify that:

1. I have reviewed this Annual Report on Form 10-K 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 officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (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:
 - (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.

/s/ GEORGE W. TAYLOR
George W. Taylor
Chief Executive Officer

Dated: July 14, 2008

CERTIFICATIONS

I, Charles F. Dunleavy, certify that:

1. I have reviewed this Annual Report on Form 10-K 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 officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (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:
 - (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.

/s/ CHARLES F. DUNLEAVY
Charles F. Dunleavy
Chief Financial Officer

Dated: July 14, 2008

**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 Annual Report on Form 10-K of Ocean Power Technologies, Inc. (the "Company") for the year ended April 30, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, George W. Taylor, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that:

- (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.

/s/ GEORGE W. TAYLOR

George W. Taylor
Chief Executive Officer

Date: July 14, 2008

**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 Annual Report on Form 10-K of Ocean Power Technologies, Inc. (the "Company") for the year ended April 30, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Charles F. Dunleavy, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that:

- (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.

/s/ CHARLES F. DUNLEAVY

Charles F. Dunleavy
Chief Financial Officer

Date: July 14, 2008