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

Form 10-Q

(Mark One)

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

For the Quarterly Period Ended January 31, 2023

Or

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

For the Transition Period From ______to______

Commission file number: 001-33417

OCEAN POWER TECHNOLOGIES, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware	**22-2535818**
(State or Other Jurisdiction of Incorporation or Organization)	*(I.R.S. Employer Identification No.)*

28 ENGELHARD DRIVE, SUITE B, MONROE TOWNSHIP, NJ 08831
(Address of Principal Executive Offices, Including Zip Code)

(609) 730-0400
(Registrant's Telephone Number, Including Area Code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock $0.001 par value	OPTT	NYSE American

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

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

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

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

Emerging growth company ☐

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

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

As of March 10, 2023, the number of outstanding shares of common stock of the registrant was 56,213,728

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

We have made statements in this Quarterly Report on Form 10-Q that are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements convey our current expectations or forecasts of future events. Forward-looking statements include statements regarding our future financial position, business strategy, pending, threatened, and current litigation, liquidity, budgets, projected revenue and costs, plans and objectives of management for future operations. The words "may," "continue," "estimate," "intend," "plan," "will," "believe," "project," "expect," "anticipate", and similar expressions may identify forward-looking statements, but the absence of these words does not necessarily mean that a statement is not forward-looking.

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

- our ability to develop, market and commercialize our products, and achieve and sustain profitability;
- our continued development of our proprietary technologies, and expected continued use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services;
- our ability to obtain additional funding, as and if needed, which will be subject to several factors, including market conditions, and our operating performance;
- the continued impact of COVID-19 and the inflation related to the U.S. dollar on our business, operations, customers, suppliers and manufacturers and personnel;
- our ability to meet product development, manufacturing and customer delivery deadlines may be impacted by disruptions to our supply chain, primarily related to labor shortages and manufacturing and transportation delays both here in the U.S. and abroad;
- our acquisitions and our ability to integrate them into our operations may use significant resources, be unsuccessful or expose us to unforeseen liabilities;
- our estimates regarding future expenses, revenues, and capital requirements;
- our ability to identify and penetrate markets for our products, services, and solutions;
- our ability to effectively respond to competition in our targeted markets
- our ability to establish relationships with our existing and future strategic partners may not be successful;
- our ability to maintain the listing of our common stock on the NYSE American;
- the reliability of our technology, products and solutions;
- our ability to improve the power output and survivability of our products;
- changes in current legislation, regulations and economic conditions that affect the demand for, or restrict the use of our products;
- our ability to hire and retain key personnel, including senior management, to achieve our business objectives;
- our history of operating losses, which we expect to continue for at least the short term and possibly longer; and
- our ability to protect our intellectual property portfolio.

Any or all of our forward-looking statements in this report may turn out to be inaccurate. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. They may be affected by inaccurate assumptions we might make or unknown risks and uncertainties, including the risks, uncertainties and assumptions described in Item 1A "Risk Factors" of our Annual Report on Form 10-K for the year ended April 30, 2022, and in our subsequent reports under the Exchange Act. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this report may not occur as contemplated and actual results could differ materially from those anticipated or implied by the forward-looking statements.

Many of these factors are beyond our ability to control or predict. These factors are not intended to represent a complete list of the general or specific factors that may affect us. You should not unduly rely on these forward-looking statements, which speak only as of the date of this filing. Unless required by law, we undertake no obligation to publicly update or revise any forward-looking statements to reflect new information or future events or otherwise.

PART I — FINANCIAL INFORMATION

Item 1. Financial Statements

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Balance Sheets
(in $000's, except share data)

	January 31, 2023 (Unaudited)	April 30, 2022
ASSETS		
Current assets:		
Cash and cash equivalents	$ 10,920	$ 7,885
Short term investments	30,005	49,384
Restricted cash, short-term	65	258
Accounts receivable	706	482
Contract assets	93	386
Inventory	1,436	442
Other current assets	1,997	467
Total current assets	45,222	59,304
Property and equipment, net	591	445
Intangibles, net	4,017	4,136
Right-of-use asset, net	522	752
Restricted cash, long-term	154	219
Goodwill	8,537	8,537
Total assets	$ 59,043	$ 73,393
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 591	$ 905
Accrued expenses	1,626	877
Contingent liabilities, current portion	875	748
Right-of-use liability, current portion	320	319
Contract liabilities	1,334	129
Total current liabilities	4,746	2,978
Deferred tax liability	203	203
Right-of-use liability, less current portion	282	538
Contingent liabilities, less current portion	870	843
Total liabilities	6,101	4,562
Commitments and contingencies (Note 15)		
Shareholders' Equity:		
Preferred stock, $0.001 par value; authorized 5,000,000 shares, none issued or outstanding	—	—
Common stock, $0.001 par value; authorized 100,000,000 shares, issued 56,254,642 shares and 55,905,213 shares, respectively; outstanding 56,213,728 shares and 55,881,861 shares, respectively	56	56
Treasury stock, at cost; 40,914 shares and 23,352 shares, respectively	(355)	(341)
Additional paid-in capital	323,843	322,932
Accumulated deficit	(270,556)	(253,770)
Accumulated other comprehensive loss	(46)	(46)
Total shareholders' equity	52,942	68,831
Total liabilities and shareholders' equity	$ 59,043	$ 73,393

See accompanying notes to unaudited consolidated financial statements.

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Statements of Operations
(in $000's, except per share data)
Unaudited

	Three months ended January 31, 2023	Three months ended January 31, 2022	Nine months ended January 31, 2023	Nine months ended January 31, 2022
Revenues	$ 734	$ 484	$ 1,752	$ 1,003
Cost of revenues	598	597	1,382	1,320
Gross margin (loss)	$ 136	$ (113)	$ 370	$ (317)
(Gain)/loss from change in fair value of consideration	373	(60)	154	(60)
Operating expenses	6,820	5,439	19,546	15,451
Operating loss	$ (7,057)	$ (5,492)	$ (19,330)	$ (15,708)
Interest income, net	$ 229	$ 16	$ 604	$ 56
Other income, proceeds from insurance claim	458	—	458	—
Other income, employee retention credit	—	—	1,202	—
Gain on extinguishment of PPP loan	—	—	—	890
Foreign exchange gain	2	5	2	—
Loss before income taxes	$ (6,368)	$ (5,471)	$ (17,064)	$ (14,762)
Income tax benefit	278	—	278	1,041
Net loss	$ (6,090)	$ (5,471)	$ (16,786)	$ (13,721)
Basic and diluted net loss per share	$ (0.11)	$ (0.10)	$ (0.30)	$ (0.26)
Weighted average shares used to compute basic and diluted net loss per common share	55,966,672	55,308,799	55,918,284	53,408,998

See accompanying notes to unaudited consolidated financial statements.

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Statements of Comprehensive Loss
(in $000's)
Unaudited

	Three months ended January 31,		Nine months ended January 31,	
	2023	**2022**	**2023**	**2022**
Net loss	$ (6,090)	$ (5,471)	$ (16,786)	$ (13,721)
Foreign currency translation adjustment	—	(1)	—	(14)
Total comprehensive loss	$ (6,090)	$ (5,472)	$ (16,786)	$ (13,735)

See accompanying notes to unaudited consolidated financial statements.

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Statements of Shareholders' Equity
(in $000's, except share data)
Unaudited

	Nine Months Ended January 31, 2023							
	Common Shares		Treasury Shares		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Shareholders' Equity
	Shares	Amount	Shares	Amount				
Balances at May 1, 2022	55,905,213	$ 56	(23,352)	$ (341)	$ 322,932	$ (253,770)	$ (46)	68,831
Net loss	—	—	—	—	—	(16,786)	—	(16,786)
Share-based compensation	—	—	—	—	911	—	—	911
Common stock issued upon vesting of restricted stock	349,429	—	—	—	—	—	—	—
Acquisition of treasury stock	—	—	(17,562)	(14)	—	—	—	(14)
Balances at January 31, 2023	56,254,642	$ 56	(40,914)	$ (355)	$ 323,843	$ (270,556)	$ (46)	$ 52,942

	Nine Months Ended January 31, 2022							
	Common Shares		Treasury Shares		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Shareholders' Equity
	Shares	Amount	Shares	Amount				
Balances at May 1, 2021	52,479,051	$ 52	(21,040)	$ (338)	$ 315,821	$ (234,896)	$ (171)	$ 80,468
Net loss		$ —		—	—	(13,721)	—	(13,721)
Share-based compensation	—	$ —	—	—	864	—	—	864
Proceeds from stock options exercises	85,000	$ 1	—	—	89	—	—	90
Issuance of shares for acquisition	3,330,162	$ 3	—	—	5,852	—	—	5,855
Other comprehensive loss	—	—	—	—	—	—	(14)	(14)
Balances at January 31, 2022	55,894,213	$ 56	(21,040)	$ (338)	$ 322,626	$ (248,617)	$ (185)	$ 73,542

	Three Months Ended January 31, 2023							
	Common Shares		Treasury Shares		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Shareholders' Equity
	Shares	Amount	Shares	Amount				
Balance at November 1, 2022	55,921,880	$ 56	(23,352)	$ (341)	$ 323,564	$ (264,466)	$ (46)	58,767
Net loss	—	—	—	—	—	(6,090)	—	(6,090)
Share-based compensation	—	—	—	—	279	—	—	279
Common stock issued upon vesting of restricted stock	332,762	—	—	—	—	—	—	—
Acquisition of treasury stock	—	—	(17,562)	(14)	—	—	—	(14)
Balance, January 31, 2023	56,254,642	$ 56	(40,914)	$ (355)	$ 323,843	$ (270,556)	$ (46)	$ 52,942

	Three Months Ended January 31, 2022							
	Common Shares		Treasury Shares		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Shareholders' Equity
	Shares	Amount	Shares	Amount				
Balances at November 1, 2021	52,499,051	$ 52	(21,040)	$ (338)	$ 316,389	$ (243,191)	$ (139)	$ 72,773
Net loss	—	—	—	—	—	(5,471)	—	(5,471)
Share-based compensation	—	—	—	—	317	—	—	317
Proceeds from stock options exercises	65,000	1	—	—	68	—	—	69
Issuance of shares for acquisition	3,330,162	3	—	—	5,852	—	—	5,855
Other comprehensive gain/(loss)	—	—	—	—	—	45	(46)	(1)
Balances at Balance, January 31, 2022	55,894,213	$ 56	(21,040)	$ (338)	$ 322,626	$ (248,617)	$ (185)	$ 73,542

See accompanying notes to unaudited consolidated financial statements.

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Statements of Cash Flows
(in $000's)
Unaudited

	Nine months ended January 31, 2023	Nine months ended January 31, 2022
Cash flows from operating activities:		
Net loss	$ (16,786)	$ (13,721)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation of fixed assets	157	104
Amortization of intangible assets	119	18
Amortization of right of use asset	230	211
Amortization of premium on short term investments	198	—
Change in contingent consideration liability	154	(60)
Gain on extinguishment of PPP Loan	—	(890)
Share based compensation	911	864
Changes in operating assets and liabilities:		
Accounts receivable	(224)	237
Contract assets	293	(217)
Inventory	(995)	(193)
Other assets	(1,530)	51
Accounts payable	(314)	(165)
Accrued expenses	747	(589)
Change in lease liability	(254)	(228)
Contract liabilities	1,205	15
Litigation payable	—	(1,224)
Net cash used in operating activities	(16,089)	(15,787)
Cash flows from investing activities:		
Redemptions of short term investments	49,584	—
Purchases of short term investments	(30,402)	—
Payments for MAR acquisition, net of cash acquired	—	(3,544)
Purchase of property, plant and equipment	(302)	(319)
Net cash provided by (used in) investing activities	18,880	(3,863)
Cash flows from financing activities:		
Acquisition of treasury stock for withholding taxes paid on vesting of restricted stock units	(14)	—
Proceeds from issuance of common stock	—	90
Net cash (used in) provided by financing activities	(14)	90
Effect of exchange rate changes on cash, cash equivalents and restricted cash	—	(14)
Net increase / (decrease) in cash, cash equivalents and restricted cash	2,777	(19,574)
Cash, cash equivalents and restricted cash, beginning of period	$ 8,362	$ 83,634
Cash, cash equivalents and restricted cash, end of period	$ 11,139	$ 64,060
Supplemental disclosure of noncash investing and financing activities:		
Issuance of common stock in acquisition of MAR	$ —	$ 5,855
Contingent liability	—	1,591
Advance Payable - MAR	—	456

See accompanying notes to unaudited consolidated financial statements.

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

(1) Background, Basis of Presentation and Liquidity

(a) Background

Ocean Power Technologies, Inc. (“OPTI”) was founded in 1984 in New Jersey, commenced business operations in 1994 and re-incorporated in Delaware in 2007. Ocean Power Technologies, Inc. acquired 3dent Technology, LLC (“3Dent”), in February 2021 and Marine Advanced Robotics, Inc. (“MAR”) in November 2021, both of which are now included as part of OPTI. OPTI, along with its subsidiaries, (the “Company”) is a complete solutions provider, controlling the design, manufacturing, sales, installation, operations and maintenance of its products and services. The Company’s solutions provide distributed offshore power and data which is persistent, reliable, autonomous, renewable, and economical along with power, transportation, and communications for remote surface and subsea applications. Historically, funding from government agencies, such as research and development grants, accounted for a significant portion of the Company’s revenues. The Company’s objective is to generate the majority of its revenues from the sale or lease of its products and solutions, and sales of services to support business operations.

(b) Basis of Presentation

The accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) and for interim financial information in accordance with the Securities and Exchange Commission (“SEC”), instructions to Form 10-Q and Article 8 of Regulation S-X. Accordingly, they do not include all the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. The interim operating results are not necessarily indicative of the results for a full year or for any other interim period. Further information on potential factors that could affect the Company’s financial results can be found in the Company’s Annual Report on Form 10-K for the year ended April 30, 2022, as filed with the SEC and elsewhere in our subsequent Exchange Act filings, including this Form 10-Q. Certain items have been reclassified from prior periods to be consistent with current GAAP presentations.

(c) Liquidity

For the nine months ended January 31, 2023, the Company incurred net losses of approximately $16.8 million, used cash in operations of approximately $16.1 million and had an accumulated deficit of approximately $270.6 million. The Company has continued to make investments in ongoing product development efforts and to build inventory in anticipation of, and to support, future growth. The Company’s future results of operations involve significant risks and uncertainties. Factors that could affect the Company’s future operating results and could cause actual results to vary materially from expectations include, but are not limited to, the risks and uncertainties identified under “Special Note Regarding Forward-Looking Statements” in this quarterly report on Form 10-Q. The Company previously obtained equity financing through its At the Market Offering Agreement (“ATM”) with A.G.P/Alliance Global Partners (“AGP”) and through its equity line financing with Aspire Capital Fund, LLC (“Aspire Capital”), but the Company cannot be certain that additional equity and/or debt financing will be available to the Company as needed on acceptable terms, or at all. Management believes the Company’s current cash balance at January 31, 2023 of $11.0 million and short term investments balance of $30.0 million is sufficient to fund its planned expenditures through at least March 2024.

On November 20, 2020, the Company entered into an At-the-Market Offering Agreement with AGP (the “2020 ATM Facility”) pursuant to which the Company may issue and sell, from time to time, shares of the Company’s common stock having an aggregate offering price of up to $100.0 million. The Company’s common stock will be sold at prevailing market prices at the time of sale, and, as a result, prices will vary. Although the Company initially only had filed to sell up to $50.0 million, a prospectus supplement was filed on January 10, 2022 to allow the Company to sell an additional $25.0 million of common stock up to a total of $75.0 million under the 2020 ATM Facility. As of January 31, 2023, an aggregate of $50.0 million remained available under this facility, subject to the filing of a prospectus supplement for an additional $25.0 million.

On September 18, 2020, the Company entered into a common stock purchase agreement with Aspire Capital which provided that, subject to certain terms, conditions and limitations, Aspire Capital was committed to purchase up to an aggregate of $12.5 million shares of the Company's common stock over a 30-month period subject to a limit of 19.99% of the outstanding common stock on the date of the agreement if the price did not exceed a specified price in the agreement. The number of shares the Company could issue within the 19.99% limit was 3,722,251 shares without shareholder approval. Shareholder approval was received at the Company's annual meeting of shareholders on December 23, 2020 for the sale of 9,864,706 additional shares of common stock which exceeded the 19.99% limit of the outstanding common stock on the date of the agreement. Through January 31, 2023, the Company had sold an aggregate of 3,722,251 shares of common stock with an aggregate market value of $11.8 million at an average price of $3.17 per share pursuant to this common stock purchase agreement with approximately $0.7 million remaining on the facility as of January 31, 2023.

(2) Summary of Significant Accounting Policies

(a) Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries, Ocean Power Technologies Ltd. in the United Kingdom, and Ocean Power Technologies (Australasia) Pty Ltd. in Australia ("OPT-A"). OPT-A is in the process of being liquidated due to inactivity. All documents have been filed with the Australian Tax Organization and the Company expects this to be completed in the current fiscal year. All significant intercompany accounts and transactions have been eliminated in consolidation.

(b) Use of Estimates

The preparation of the consolidated financial statements requires management of the Company to make a number of estimates and assumptions relating to the reported amounts of assets and liabilities 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, among other items, stock-based compensation, valuations, purchase price allocations and contingent consideration related to business combinations, expected future cash flows including growth rates, discount rates, terminal values and other assumptions and estimates used to evaluate the recoverability of long-lived assets, goodwill and other intangible assets and the related amortization methods and periods, and estimated hours and costs to complete customer contracts for purposes of revenue recognition. Actual results could differ from those estimates.

(c) Cash, Cash Equivalents, Restricted Cash and Security Agreements and Short Term Investments

Cash and Cash Equivalents

The Company considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. The Company invests excess cash in a money market account or in short term investments that are held-to-maturity. The Company had cash and cash equivalents of approximately $10.9 million as of January 31, 2023 and $7.9 million as of April 30, 2022.

Restricted Cash and Security Agreements

The Company has a letter of credit agreement with Santander Bank, N.A. ("Santander"). Cash of $154,000 is on deposit at Santander and serves as security for a letter of credit issued by Santander for the lease of warehouse/office space in Monroe Township, New Jersey. This agreement cannot be extended beyond July 31, 2025 and is cancellable at the discretion of the bank.

Santander also issued a letter of credit to subsidiaries of Enel Green Power ("EGP") pursuant to the Company's contracts with EGP. This letter of credit was originally issued in the amount of $645,000, and was reduced to $323,000 in August 2020. The letter of credit was further reduced by an additional $258,000 during the quarter ended January 31, 2023 when the PowerBuoy® ("PB3") and its accompanying systems passed final acceptance testing. The remaining restricted amount of $65,000 will be released in January 2024, which is 12 months after the buoy is fully deployed.

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within the Consolidated Balance Sheets that total to the same amounts shown in the Consolidated Statements of Cash Flows.

	January 31, 2023	April 30, 2022
	(in thousands)	
Cash and cash equivalents	$ 10,920	$ 7,885
Restricted cash- short term	65	258
Restricted cash- long term	154	219
	$ 11,139	$ 8,362

Short term investments

During fiscal 2022, the Company acquired investment securities through Charles Schwab Bank. As of January 31, 2023 and April 30, 2022, their carrying value was approximately $30.0 million and $49.4 million, respectively. All short term investments consist of corporate bonds, government agency bonds, or U.S. Treasury Notes and Bonds, are investment grade rated or better, and mature within 12 months. The Company has the ability and the intention to hold all investments to maturity, and as such are classified as held-to-maturity investments and carried at amortized cost. The total recognized interest expense on the premium we paid for the securities for the nine month period ended January 31, 2023 and 2022 is approximately $0.2 million and zero, respectively. Additionally, there has been no impairment on these investments.

The following table summarizes the Company's short term investments as of January 31, 2023:

Category	**Amortized Cost**	**Unrealized Gains (Losses)**	**Market Value**
Corporate Bonds	$ 18,554	$ 54	$ 18,608
Government Bonds & Notes	8,079	$ (22)	8,057
Government Agency	3,372	$ 419	3,791
Total Short term investments	$ 30,005	$ 451	$ 30,456

(d) Concentration of Credit Risk

Financial instruments that potentially subject the Company to credit risk consist principally of trade accounts receivable, short term investments and cash equivalents. The Company believes that its credit risk is limited because the Company's current contracts are with entities with a reliable payment history. The Company invests its excess cash in a money market fund and short term held-to maturity investments and does not believe that it is exposed to any significant risks related to its cash accounts, money market fund, or held-to maturity investments. Cash is also maintained at foreign financial institutions. Cash in foreign financial institutions as of January 31, 2023 was approximately $14,000.

For the nine months ended January 31, 2023 and 2022, the Company had two and four customers whose revenues accounted for at least 10% of the Company's consolidated revenues, respectively. These revenues accounted for approximately 28% and 58% of the Company's total revenues for the respective periods. For the three months ended January 31, 2023 and 2022, the Company had five and four customers whose revenues accounted for at least 10% of the Company's consolidated revenues, respectively. These revenues accounted for approximately 63% and 71% of the Company's total revenues for the respective periods.

(e) Share-Based Compensation

Costs resulting from all share-based payment transactions are recognized in the consolidated financial statements at their fair values. The aggregate share-based compensation expense recorded in the Consolidated Statements of Operations for the nine months ended January 31, 2023 and 2022 was approximately $0.9 million and $0.9 million, respectively. For the three months ended January 31, 2023 and 2022, share-based compensation expense was $0.3 million in each period.

(f) Revenue Recognition

The Company accounts for revenues in accordance with Accounting Standards Codification 606 (ASC 606) for contracts with customers and Accounting Standards Codification 842 (ASC 842) for leasing arrangements. In relation to ASC 606, which states that a performance obligation is the unit of account for revenue recognition, the Company assesses the goods or services promised in a contract with a customer and identifies as a performance obligation as either: a) a good or service (or a bundle of goods or services) that is distinct; or b) a series of distinct goods or services that are substantially the same and that have the same pattern of transfer to the customer. A contract may contain a single performance obligation or multiple performance obligations. For contracts with multiple performance obligations, the Company allocates the contracted transaction price to each performance obligation based upon the relative standalone selling price, which represents the price the Company would sell a promised good or service separately to a customer. The Company determines the standalone selling price based upon the facts and circumstances of each obligated good or service. When no observable standalone selling price is available, the standalone selling price is generally estimated based upon the Company’s forecast of the total cost to satisfy the performance obligation plus an appropriate profit margin.

The nature of the Company’s contracts may give rise to several types of variable consideration, including unpriced change orders, liquidated damages and penalties. Variable consideration can also arise from modifications to the scope of services. Variable consideration is included in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur once the uncertainty associated with the variable consideration is resolved. Our estimates of variable consideration and determination of whether to include such amounts in the transaction price are based largely on our assessment of legal enforceability, performance, and any other information (historical, current, and forecasted) that is reasonably available to us. There was no variable consideration as of January 31, 2023 or 2022. The Company presents shipping and handling costs, that occur after control of the promised goods or services transfer to the customer, as fulfillment costs in costs of goods sold and regular shipping and handling activities charged to operating expenses.

The Company recognizes revenue when or as it satisfies a performance obligation by transferring a good or service to a customer, either (1) at a point in time or (2) over time. A good or service is transferred when or as the customer obtains control. The evaluation of whether control of each performance obligation is transferred at a point in time or over time is made at contract inception. Input measures such as costs incurred are utilized to assess progress against specific contractual performance obligations for the Company’s services. The selection of the method to measure progress towards completion requires judgment and is based on the nature of the services to be provided. For the Company, the input method using costs incurred or labor hours best represents the measure of progress against the performance obligations incorporated within the contractual agreements. If estimated total costs on any contract project a loss, the Company charges the entire estimated loss to operations in the period the loss becomes known. The cumulative effect of revisions to revenue, estimated costs to complete contracts, including penalties, change orders, claims, anticipated losses, and others are recorded in the accounting period in which the events indicating a loss are known and the loss can be reasonably estimated. These loss projects are re-assessed for each subsequent reporting period until the project is complete. Such revisions could occur at any time and the effects may be material.

The Company’s contracts are either cost-plus contracts, fixed-price contracts, time and material agreements, lease or service agreements. Under cost plus contracts, customers are billed for actual expenses incurred plus an agreed-upon fee.

The Company has two types of fixed-price contracts, firm fixed-price and cost-sharing. Under firm fixed-price contracts, the Company receives an agreed-upon amount for providing products and services specified in the contract, and a profit or loss is recognized depending on whether actual costs are more or less than the agreed upon amount. Under cost-sharing contracts, the fixed amount agreed upon with the customer is only intended to fund a portion of the costs on a specific project. Under cost sharing contracts, an amount corresponding to the revenue is recorded in cost of revenues, resulting in gross profit on these contracts of zero. The Company's share of the costs is recorded as product development expense. The Company reports its disaggregation of revenues by contract type since this method best represents the Company's business. For the nine-month periods ended January 31, 2023 and 2022, all of the Company's contracts were classified as firm fixed-price.

The Company at times enters into agreements with government agencies through Small Business Innovation Research ("SBIR") contract agreements. These are typically fixed-priced agreements where the Company retains ownership of the data and grants the government a license with unlimited rights to use, disclose, reproduce, prepare derivative works and publicly distribute the data.

Time and materials agreements are billed based solely on the cost of time spent working on the contract and the material used.

As of January 31, 2023, the Company's total remaining performance obligations, also referred to as backlog, totaled $2.5 million. The Company expects to recognize approximately 85%, or $2.1 million, for the remaining performance obligations as revenue over the next twelve months.

The Company also enters into lease arrangements for its PowerBuoys and Wave Adaptive Modular Vessels ("WAM-V®") with certain customers. Revenue related to multiple-element arrangements is allocated to lease and non-lease elements based on their relative standalone selling prices or expected cost plus a margin approach. Lease elements generally include a PowerBuoy, WAM-V®, and components, while non-lease elements, which the Company expects to become more prevalent, generally include engineering, monitoring and support services. In the lease arrangement, the customer may be provided an option to extend the lease term or purchase the leased buoy or WAM-V® at some point during and/or at the end of the lease term.

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

The Company recognizes revenue from operating lease arrangements generally on a straight-line basis over the lease term, or as agreed upon in-use days are utilized, which is presented in Revenues in the Consolidated Statement of Operations. The below table represents the total revenue recognized under ASC 606 and ASC 842 for the three and nine months ended January 31, 2023 and 2022.

	Three months ended January 31, 2023			Three months ended January 31, 2022		
	ASC 606	ASC 842	Total	ASC 606	ASC 842	Total
		(in thousands)			(in thousands)	
Revenue	$ 559	$ 175	$ 734	$ 484	$ —	$ 484

	Nine months ended January 31, 2023			Nine months ended January 31, 2022		
	ASC 606	ASC 842	Total	ASC 606	ASC 842	Total
		(in thousands)			(in thousands)	
Revenue	$ 1,562	$ 190	$ 1,752	$ 1,003	$ —	$ 1,003

(g) Other Income – Employee Retention Credit

The Coronavirus Aid, Relief and Economic Security (“CARES”) Act provided an employee retention credit (“ERC”), which was a refundable tax credit against certain employment taxes of up to $5,000 per employee for eligible employers. The tax credit was equal to 50% of qualified wages paid to employees during a quarter, capped at $10,000 of qualified wages per employee through December 31, 2020. Additional relief provisions were passed by the United States government, which extend and slightly expand the qualified wage caps on these credits through December 31, 2021. Based on these additional provisions, the tax credit is now equal to 70% of qualified wages paid to employees during a quarter, and the limit on qualified wages per employee has been increased to $10,000 of qualified wages per quarter.

During the three-month period ended October 31, 2022, the Company determined that it qualified for the tax credit under “CARES” and submitted claims of approximately $612,000 and $590,000 for the fiscal years ended April 30, 2021 and 2022, respectively, and recognized approximately $1,202,000 as other income in the statement of operations for the nine-month period ended January 31, 2023. Claimed ERC’s are expected to be settled during the year ended April 30, 2023 and have been recorded within other current assets in the accompanying balance sheet as of January 31, 2023.

In November 2022 the Company received approximately $205,000 from the IRS related to the receivable.

(h) Net Loss per Common Share

Basic and diluted net loss per common share for all periods presented is computed by dividing net loss by the weighted average number of shares of common stock and common stock equivalents outstanding during the period.

Due to the Company’s net losses, potentially dilutive securities, consisting of options to purchase shares of common stock, potential exercises of warrants on common stock and unvested restricted stock issued to employees and non-employee directors, were excluded from the diluted loss per share calculation due to their anti-dilutive effect.

In computing diluted net loss per common share on the Consolidated Statement of Operations, potential exercises of warrants on common stock, options to purchase shares of common stock and non-vested restricted stock issued to employees and non-employee directors, totaling 8,010,373 and 6,356,123 for the nine months ended January 31, 2023 and 2022, respectively, were excluded from each of the computations as the effect would have been anti-dilutive due to the net loss for the periods.

(i) Recently Issued Accounting Standards

In June 2016, the Financial Accounting Standards Board (“FASB”) issued ASU No. 2016-13, “*Financial Instruments - Credit Losses (Topic 326), Measurement of Credit Losses on Financial Instruments.”* This amendment replaces the incurred loss impairment methodology in current GAAP with a methodology that reflects expected credit losses on instruments within its scope, including trade receivables. This update is intended to provide financial statement users with more decision-useful information about the expected credit losses. In November 2019, the FASB issued No. 2019-10, *Financial Instruments—Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842)*, which deferred the effective date of ASU 2016-13 for Smaller Reporting Companies for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The Company is currently evaluating the impact the adoption of ASU 2016-13 will have on its consolidated financial statements.

(3) Account Receivable, Contract Assets and Contract Liabilities

The following provides further details on the balance sheet accounts of accounts receivable, contract assets and contract liabilities from contracts with customers:

	January 31, 2023	April 30, 2022
	(in thousands)	
Accounts receivable	$ 706	$ 482
Contract assets	93	386
Contract liabilities	1,334	129

Accounts Receivable

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

Contract Assets

Contract assets include unbilled amounts typically resulting from arrangements whereby the right to payment is conditional on completing additional tasks or services for a performance obligation. The decrease in contract assets is primarily a result of services performed relating to MAR projects for which revenue was recognized in prior periods but was billed during the nine months ended January 31, 2023.

Significant changes in the contract assets balances during the period were as follows:

	Nine months ended January 31, 2023
	(in thousands)
Transferred to receivables from contract assets recognized at the beginning of the period	$ (1,646)
Revenue recognized and not billed as of the end of the period	1,353
Net change in contract assets	$ (293)

Contract Liabilities

Contract liabilities consist of amounts invoiced to customers in excess of revenue recognized. The increase in contract liabilities is primarily due to payments received for the following; $1.0 million related to future grant revenue and $0.4 million for future sales revenue during the nine months ended January 31, 2023 for which revenue has not been recognized.

Significant changes in the contract liabilities balances during the period are as follows:

	Nine months ended January 31, 2023
	(in thousands)
Revenue recognized that was included in the contract liabilities balance as of the beginning of the period	$ (447)
Payments collected for which revenue has not been recognized	1,652
Net change in contract liabilities	$ 1,205

(4) Inventory

The Company holds inventory related to the production of its WAM-V® and PowerBuoy® products.

	January 31, 2023	April 30, 2022
	(in thousands)	
Raw Materials	$ 1,191	$ 198
Work in Process	245	244
	$ 1,436	$ 442

(5) Other Current Assets

Other current assets consisted of the following at January 31, 2023 and April 30, 2022:

	January 31, 2023	April 30, 2022
	(in thousands)	
Prepaid insurance	$ 424	$ 182
Prepaid software & licenses	135	127
Prepaid project costs	26	—
Prepaid sales & marketing	161	50
Employee retention credit receivable	997	—
Interest receivable	119	—
Other receivables	72	24
Prepaid expenses- other	63	84
	$ 1,997	$ 467

(6) Property and Equipment, net

The components of property and equipment, net as of January 31, 2023 and April 30, 2022 consisted of the following:

	January 31, 2023	April 30, 2022
	(in thousands)	
Equipment	$ 869	$ 615
Computer equipment & software	623	571
Office furniture & equipment	59	352
Leasehold improvements	538	477
Construction in process	15	15
	2,104	2,030
Less: accumulated depreciation	(1,513)	(1,585)
	$ 591	$ 445

Depreciation expense was approximately $157,000 and $104,000 for the nine-month periods ended January 31, 2023 and 2022, respectively. During the nine months ended January 31, 2023, the Company had approximately $229,000 of fully depreciated fixed assets that were no longer in use that were written off. During the nine months ended January 31, 2023, the Company purchased approximately $302,000 of new equipment.

(7) Intangible Assets

The components of intangible assets, net as of January 31, 2023 and April 30, 2022 consisted of the following:

	January 31, 2023	April 30, 2022
	(in thousands)	
Patents	$ 2,729	$ 2,729
Trademarks	2,769	2,769
Tradename	130	130
Customer Relationships	150	150
	$ 5,778	$ 5,778
Accumulated amortization	(1,761)	(1,642)
	$ 4,017	$ 4,136

Amortization expense was approximately $119,000 and $18,000 for the nine-month periods ended January 31, 2023 and 2022, respectively. Amortization expense was approximately $40,000 and $6,000 for the three-month periods ended January 31, 2023 and 2022, respectively.

(8) Goodwill

Goodwill in the amount of $8.5 million was recognized in November 2021 related to the acquisition of MAR. There have been no additions to or impairment of goodwill during the nine-month period ended January 31, 2023.

(9) Leases

Lessee Information

Right-of-use asset and operating lease liabilities are recognized based on the present value of future minimum lease payments over the lease term at commencement date. When the implicit rate of the lease is not provided or cannot be determined, the Company uses the incremental borrowing rate based on the information available at the effective date to determine the present value of future payments. Lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise those options. The renewal options have not been included in the lease term as they are not reasonably certain of exercise. The Company's operating leases consist of leases for office facilities and warehouse space. Lease expense for minimum lease payments is recognized on a straight- line basis over the lease term and consists of interest on the lease liability and the amortization of the right of use asset.

The Company has a lease for its facility located in Monroe Township, New Jersey that is used as warehouse/production space and the Company's principal offices and corporate headquarters. The lease includes an initial lease term of seven years which is set to expire in November of 2024, and contains an option to extend the lease for another five years. The lease is classified as an operating lease and is included in right-of-use assets, right-of-use liabilities current and lease liabilities-long-term on the Company's Consolidated Balance Sheets.

The Company also signed a new lease located in Houston, Texas for office space for our local employees. The lease term is for 1 year and is set to expire in January of 2024. ASC 842 allows a company an accounting policy election to recognize lease payments within the Consolidated Statement of Operations on a straight-line basis if the lease term is equal to or less than 12 months and not recognize a right-of use asset and lease liability. The accounting policy election is made on the commencement date of the lease. The Company has chosen this election for the Houston lease and classified it as a short-term lease.

The Company also has a lease with the University of California Berkeley in Richmond, California that was assumed as part of the MAR acquisition. The lease is currently a month-to-month lease in accordance with the lease agreement. In accordance with ASC 842, since the remaining lease term at the time of the acquisition of MAR was less than 12 months, the lease was not recognized as a right-of-use asset.

Subsequent to January 31, 2023 (see Note 18) the Company entered into a new lease for facility located in Oakland, California with a commencement date to be determined upon completion of work to be performed by the landlord. The term of the lease is for 62 months from the commencement date with an option of the Company to terminate the lease after 39 months if certain conditions are met. The rent will be approximately $25,000 per month and the facility will be utilized for our MAR business.

The operating lease cash flow payments for the three months ended January 31, 2023 and 2022 were $110,000 and $111,000, respectively. The operating lease cash flow payments for the nine months ended January 31, 2023 and 2022 were $326,000 and $315,000, respectively.

The components of lease expense in the Consolidated Statement of Operations for the three and nine months ended January 31, 2023 and 2022 were as follows:

	Three months ended January 31,		Nine months ended January 31,	
	2023	**2022**	**2023**	**2022**
	(in thousands)		(in thousands)	
Operating lease cost	$ 92	$ 92	$ 276	$ 276
Short-term lease cost	8	12	24	22
Total lease cost	$ 100	$ 104	$ 300	$ 298

Information related to the Company's right-of use assets and lease liabilities as of January 31, 2023 was as follows:

	January 31, 2023
	(in thousands)
Operating lease:	
Operating right-of-use asset, net	$ 522
Right-of-use liability- current	$ 320
Right-of-use liability- long term	282
Total lease liability	$ 602
Weighted average remaining lease term- operating leases	1.69 years
Weighted average discount rate- operating leases	8.5%

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

	January 31, 2023
	(in thousands)
Remainder of fiscal year 2023	$ 106
2024	398
2025	184
Total future minimum lease payments	$ 688
Less imputed interest	(86)
Total	$ 602

(10) Accrued Expenses

Accrued expenses consisted of the following at January 31, 2023 and April 30, 2022:

	January 31, 2023	April 30, 2022
	(in thousands)	
Project costs	$ 363	$ 59
Contract loss reserve	-	328
Employee incentive payments	1,037	266
Accrued salary and benefits	50	60
Professional fees	55	30
Other	121	134
	$ 1,626	$ 877

(11) Warrants

Equity Classified Warrants

On April 8, 2019, the Company issued and sold 1,542,000 shares of common stock, and pre-funded warrants to purchase up to 3,385,680 shares of common stock. The public offering price for the pre-funded warrants was equal to the public offering price of the common stock, less the $0.01 per share exercise price of each warrant. The pre-funded warrants have no expiration date. As of January 31, 2023, all of the pre-funded warrants had been exercised.

The underwritten public offering also included the issuance of common stock warrants to purchase up to 4,927,680 shares of common stock that have an exercise price of $3.85 per share and expire five years from the issuance date. As of January 31, 2023, common warrants to purchase 732,500 shares of the common stock had been exercised.

The pre-funded and common warrants issued in the Company's April 8, 2019 public offering did not meet the criteria to be classified as a liability award and therefore were treated as an equity award and recorded as a component of shareholders' equity in the Consolidated Balance Sheets.

(12) Paycheck Protection Program Loan

On March 27, 2020, the U.S. Government passed into law the CARES Act. On May 3, 2020, the Company signed a Paycheck Protection Program ("PPP") loan with Santander as the lender for $890,000 in support through the Small Business Association ("SBA") under the PPP Loan. The PPP Loan was unsecured and evidenced by a note in favor of Santander and governed by a Loan Agreement with Santander. The Company received the proceeds on May 5, 2020.

The Company filed its loan forgiveness application at the end of February 2021 asking for 100% forgiveness of the loan. In June 2021, the Company was informed that its application was approved, and that the loan was fully forgiven. The Company recognized a gain on forgiveness of PPP loan of approximately $890,000 during the nine months ended January 31, 2022.

(13) Share-Based Compensation

In 2015, upon approval by the Company's shareholders, the Company's 2015 Omnibus Incentive Plan (the "2015 Plan") became effective. A total of 1,332,036 shares were authorized for issuance under the 2015 Omnibus Incentive Plan, including shares available for awards under the 2006 Stock Incentive Plan remaining at the time that plan terminated, or that were subject to awards under the 2006 Stock Incentive Plan that thereafter terminated by reason of expiration, forfeiture, cancellation or otherwise. If any award under the 2006 Stock Incentive Plan or 2015 Plan expires, is cancelled, terminates unexercised or is forfeited, those shares become again available for grant under the 2015 Plan. The 2015 Plan will terminate ten years after its effective date, in October 2025, but is subject to earlier termination as provided in the 2015 Plan.

At subsequent shareholder meetings, including most recently in January 2023, the shareholders approved an aggregate increase to the 2015 Plan of 3,050,000 shares resulting in total shares authorized for issuance of 4,382,036 as of January 2023. As of January 31, 2023, the Company had approximately 38,000 shares available for future issuance under the 2015 Plan.

On January 18, 2018, the Company's Board of Directors adopted the Company's Employment Inducement Incentive Award Plan (the "2018 Inducement Plan") pursuant to which the Company reserved 25,000 shares of common stock for issuance under the Inducement Plan. In accordance with Rule 711(a) of the NYSE American Company Guide, awards under the Inducement Plan may only be made to individuals not previously employees of the Company (or following such individuals' bona fide period of non-employment with the Company), as an inducement material to the individuals' entry into employment with the Company. An award is any right to receive the Company's common stock pursuant to the 2018 Inducement Plan, consisting of a performance share award, restricted stock award, a restricted stock unit award or a stock payment award. On February 9, 2022, the 2018 Inducement Plan was amended to increase the authorized shares by 250,000 to 275,000. As of January 31, 2023, there were approximately 161,000 shares available for grant under the 2018 Inducement Plan. The 2015 Plan and the 2018 Inducement Plan together comprise the "Stock Incentive Plans".

Stock Options

The Company estimates the fair value of each stock option award granted with service-based vesting requirements, using the Black-Scholes option pricing model, assuming no dividends, and using weighted average valuation assumptions. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant commensurate with the expected life of the award. The expected life (estimated period of time outstanding) of the stock options granted was estimated using the "simplified" method as permitted by the SEC's Staff Accounting Bulletin No. 110, *Share-Based Payment.* Expected volatility is based on the Company's historical volatility over the expected life of the stock option granted.

The Company granted options to acquire 601,089 and 793,850 share of common stock during the three and nine months ended January 31, 2023 and 2022, respectively. The weighted average grant date fair value of the options granted in January 2023 was approximately $376,000. The following assumptions were used to value the awards:

	Nine months ended January 31,	
	2023	**2022**
Risk-free interest rate	3.5%	1.5%
Expected dividend yield	0%	0%
Expected life (in years)	5.5	5.6
Expected volatility	109.0%	121.9%

A summary of stock options under our Stock Incentive Plans is detailed in the following table.

	Shares Underlying Options	**Weighted Average Exercise Price**	**Weighted Average Remaining Contractual Term (In Years)**
Outstanding as of April 30, 2022	1,110,356	$ 2.34	9.2
Granted	601,089	$ 0.68	
Exercised	—	$ —	
Cancelled/forfeited	(135,903)	$ 1.88	
Outstanding as of January 31, 2023	1,575,542	$ 1.75	9.0
Exercisable as of January 31, 2023	540,546	$ 3.19	7.9

As of January 31, 2023, the total intrinsic value of outstanding and exercisable options was approximately zero. As of January 31, 2023, approximately 1,035,000 options were unvested, which had an intrinsic value of $10,000 and a weighted average remaining contractual term of 9.5 years. There was approximately $230,000 and $183,000 of total recognized compensation cost related to stock options during each of the nine months ended January 31, 2023 and 2022, respectively. There was approximately $62,000 and $68,000 of total recognized compensation cost related to stock options during each of the three months ended January 31, 2023 and 2022, respectively. As of January 31, 2023, there was approximately $0.8 million 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 2.4 years.

Performance Stock Options

A summary of performance stock options under our Stock Incentive Plans is detailed in the following table.

	Shares Underlying Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (In Years)
Outstanding as of April 30, 2022	210,122	$ 2.20	8.8
Granted	—	$ —	
Exercised	—	$ —	
Cancelled/forfeited	(8,466)	$ 2.93	
Outstanding as of January 31, 2023	201,656	$ 2.17	8.1
Exercisable as of January 31, 2023	—	$ —	

As of January 31, 2023, approximately 202,000 performance stock options were unvested, which had an intrinsic value of zero and a weighted average remaining contractual term of 8.1 years. There was approximately $132,000 and $123,000 of total recognized compensation cost related to performance stock options during the nine months ended January 31, 2023 and 2022, respectively. There was approximately $31,000 and $62,000 of total recognized compensation cost related to performance stock options during the three months ended January 31, 2023 and 2022, respectively. As of January 31, 2023, there was approximately $22,000 of total unrecognized compensation cost related to non-vested performance stock options granted under the plans. This cost is expected to be recognized over a weighted-average period of 0.4 years.

Restricted Stock Units

Compensation expense for non-vested restricted stock units is generally recorded based on its market value on the date of grant and recognized ratably over the associated service and performance period. During the nine months ended January 31, 2023 and 2022, the Company granted 1,608,681 and 777,764 shares, respectively, that were subject to both service-based and market-based vesting requirements.

A summary of non-vested restricted stock units under our Stock Incentive Plans is as follows:

	Number of Shares	Weighted Average Price per Share
Unvested at April 30, 2022	827,764	$ 1.41
Granted	1,608,681	$ 0.77
Vested and issued	(349,429)	$ 1.40
Cancelled/forfeited	(49,021)	
Unvested at January 31, 2023	2,037,995	$ 0.91

There was approximately $549,000 and $43,000 of total recognized compensation cost related to restricted stock units for the nine months ended January 31, 2023 and 2022, respectively. There was approximately $185,000 and $14,000 of total recognized compensation cost related to restricted stock units for the three months ended January 31, 2023 and 2022, respectively. As of January 31, 2023, there was approximately $1,576,000 of unrecognized compensation cost remaining related to unvested restricted stock units granted under our plans. This cost is expected to be recognized over a weighted-average period of 1.6 years.

(14) Fair Value Measurements

ASC Topic 820, "*Fair Value Measurements*" states that fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Assets and liabilities that are measured at fair value are reported using a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy maximizes the use of observable input and minimizes the use of unobservable inputs. The following is a description of the three hierarchy levels.

Level 1 Unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Level 2 Inputs other than quoted prices in active markets that are observable for the asset or liability, either directly or indirectly.

Level 3 Inputs that are unobservable for the asset or liability.

Disclosure of Fair Values

The Company's financial instruments that are not re-measured at fair value include cash, cash equivalents, restricted cash, accounts receivable, contract assets and liabilities, deposits, accounts payable, and accrued expenses. The Company's contingent consideration liability represents the only asset or liability classified financial instrument that is measured at fair value on a recurring basis.

The total carrying value of our short term investments approximates fair value due to the short term nature of these investments. As of January 31, 2023 and April 30, 2022, the carrying values were $30.0 million and $49.4 million, respectively.

Additionally, there is a Level 3 contingent liability related to earnouts as part of the MAR acquisition in the amount of $1.7 million as of January 31, 2023 as the inputs are currently unobservable to determine this fair value. As of January 31, 2023, the fair value of this contingent liability from the time that MAR was acquired has increased by approximately $0.1 million from $1.6 million.

Transfers into or out of any hierarchy level are recognized at the end of the reporting period in which the transfers occurred. There were no transfers between any hierarchy levels during each of the three and nine months ended January 31, 2023 and 2022.

(15) Commitments and Contingencies

Spain Income Tax Audit

The Company underwent an income tax audit in Spain for the period from 2011 to 2014, when its Spanish branch was closed. On July 30, 2018, the Spanish tax inspector concluded that although there was no tax owed in light of losses reported, the Company's Spanish branch owed penalties for failure to properly account for the income associated with the funding grant. During the year ended April 30, 2022, the Company received notice from the Spanish Central Economic and Administrative Tribunal ("Spanish Tax Administration") that it agreed with the inspector and ruled that the Company owes the full amount of the penalty in the amount of €279,870 or approximately $331,000. On January 25, 2021, the Company paid the Spanish Tax Administration €279,870. Notwithstanding that payment, on April 30, 2022, the Company filed its appeal of the decision of the Central Court to the Spanish National Court.

(16) Income Taxes

Uncertain Tax Positions

We account for income taxes in accordance with ASC 740 . The guidance requires the Company to recognize in its consolidated financial statements the impact of a tax position if that position is more likely than not to be sustained upon examination, based on the technical merits of the position. The Company has no current or deferred tax due to current and projected losses for the year.

The Company has appealed the results of the income tax audit in Spain for the period from 2011 to 2014, when the Company's Spanish branch was closed (see Note 15).

At January 31, 2023, the Company had no uncertain tax positions. The Company does not expect any material increase or decrease in its income tax expense or benefit in the next twelve months, related to examinations or uncertain tax positions. Net operating loss and credit carry forwards since inception remain open to examination by taxing authorities and will continue to remain open for a period of time after utilization.

Income Tax Benefit

The Company has sold New Jersey State net operating losses and research development credits under the New Jersey Economic Development Authority Tax Transfer program which has resulted in $278,000 and $1.0 million of income tax benefit related to the three and nine months ended January 31, 2023 and January 31, 2022, respectively.

(17) Operating Segments and Geographic Information

The Company's business consists of one reportable segment as the revenues associated with its different business lines are not material enough to justify segment reporting or to make it meaningful to investors, and our chief operating decision maker does not view the Company's operations on a segment basis. The Company operates worldwide, with its U.S. operations in New Jersey, California and Texas, one operating subsidiary in the UK and one subsidiary which was discontinued during 2022 in Australia. Revenues and expenses are generally attributed to the operating unit that bills the customers. During each of the three and nine months ended January 31, 2023 and 2022, the Company's primary business operations were in North America.

(18) Subsequent Events

The Company entered into a new lease for facility located in Oakland, California with a commencement date to be determined upon completion of work to be performed by the landlord. The term of the lease is for 62 months from the commencement date with an option of the Company to terminate the lease after 39 months if certain conditions are met. The rent will be approximately $25,000 per month and the facility will be utilized for our MAR business.

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

The following discussion and analysis should be read in conjunction with the accompanying unaudited consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q. Some of the information contained in this management's discussion and analysis is set forth elsewhere in this Form 10-Q, including information with respect to our plans and strategy for our business, pending and threatened litigation and our liquidity, includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section of our Annual Report on Form 10-K for the year ended April 30, 2022 for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis. References to a fiscal year in this Form 10-Q refer to the year ended April 30 of that year (e.g., fiscal 2023 refers to the year ended April 30, 2023).

Overview

Our solutions focus on three major service areas: Data as a Service ("DaaS"), which includes data collected by our Wave Adaptive Modular Vessel (WAM-V®) autonomous vehicles or our PowerBuoy® product lines; Power as a Service ("PaaS"), which includes our PowerBuoy® and subsea battery products; and our Strategic Consulting Services.

We provide ocean data collection and reporting, marine power, offshore communications, and Maritime Domain Awareness ("MDA") products, integrated solutions, and consulting services. We offer our products and services to a wide range of customers, including those in government and offshore energy, oil and gas, construction, wind power and other industries. We are involved in the entire life cycle of product development, from product design through manufacturing, testing, deployment, maintenance and upgrades, while working closely with partners across our supply chain. We also work closely with our third party partners that provide us with, among other things, software, controls, sensors, integration services, and marine installation services. Our solutions enable technologies for autonomous, zero or low carbon emitting economical data collection and analysis. Our solutions also offer transportation and communication in ocean and other offshore environments and generate actionable intelligence via a variety of inputs. We then channel the information we collect, and other communications, through control equipment linked to edge computing and cloud hosting environments.

Our mission is to provide intelligent maritime solutions and services that enable more secure and more productive utilization of our oceans and waterways, provide clean energy power services, and offer sophisticated surface and subsea maritime domain awareness solutions. We achieve this through our proprietary, state-of-the-art technologies that are at the core of our clean and renewable energy platforms, and our solutions and services.

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.

Business Update Regarding Macroeconomic Conditions

Adverse macroeconomic conditions, including inflation, slower growth or recession, policy changes, higher interest rates, and currency fluctuations may have a negative impact on our business. Ongoing labor pool shortages are continuing and are impacting some of our delivery deadlines. These adverse conditions could impact the spending budgets of our customers, and therefore could adversely affect the sales of our products and services. In addition, the Company maintains its cash accounts with financial institutions. Although we currently believe that the financial institutions with whom we do business will be able to fulfill their commitments to us, there is no assurance that those institutions will be able to continue to do so.

We will continue to monitor these conditions, and, if necessary, adjust our operations in response to these conditions.

Our Solutions

Data as a Service

Our DaaS solution is at the forefront of our strategic plan to be a leader in offshore data collection, integration, analytics and real time communication for a variety of important applications. For example, our solutions can track surface vessel movement for maritime border enforcement and illegal fishing interdiction, provide security for offshore wind farms and oil and gas fields, or provide harbor or port security as well as logistics support. We have the ability to support aquaculture and gather information on ocean currents, water quality, wind and other weather metrics, and map shorelines or subsurface areas. Additionally, we offer 24/7 monitoring solutions that can provide meaningful real time information, and long term data collection and analytics for sophisticated applications across many industries and scientific applications.

As part of our DaaS offering, in October 2020, the Company entered into an agreement with Adams Communication & Engineering Technology, Inc. ("ACET") to conduct a feasibility study for the evaluation of a PB3 PowerBuoy® ("PB3") power and 5G communications solution in support of the U.S. Navy's Naval Postgraduate School's Sea, Land, Air, Military Research Initiative ("SLAMR"). We have further expanded our Data as a Service offering through field demonstration such as ANTX Coastal Trident 2022, as well as contracts with a US government services provider for an MDAS demonstration off the US West Coast, Naval Task Force 59 for the Digital Horizon field exercise and the International Maritime Exercise (IMX) in Bahrain, Sulmara for survey services, and Phase I funding through NOAA's SBIR program.

Maritime Domain Awareness Solution ("MDAS")

The International Maritime Organization defines Maritime Domain Awareness ("MDA") as the effective understanding of any activity that could impact the security, safety, economy, or environment related to and within our oceans and seas. Since 2002, the United States of America has had an active strategy to secure the maritime domain, primarily through the U.S. Navy. Furthermore, in 2020 the U.S. Coast Guard elevated Illegal, Unreported and Unregulated ("IUU") fisheries, one aspect of MDA security, as the leading global maritime threat.

We have designed our solution to provide detailed, localized maritime domain awareness that can be utilized for a wide range of applications across market segments. Our MDAS base hardware consists of a high-definition radar, a stabilized high-definition optical and thermal imaging camera, and a vessel Automatic Identification System ("AIS") detection module. This hardware can be customized or supplemented by other solutions, depending on our customer's requirements. These devices can be mounted on our products, such as our PB3 or WAM-V®, and then utilizing integrated command and control software, data is sent to us and to our customers via secure communications channels. Multiple sensors can be used on a single unit based on the comprehensiveness of customer needs. Capabilities of our MDAS include 24/7 vessel tracking, automatic radar plotting, and high-definition optical and thermal video surveillance capable of providing actionable intelligence day or night, in real time.

Our MDAS processes data onboard our buoys using edge computing and transmits the results to our cloud-based analytics platform via secure Wi-Fi, and cellular communications. We anticipate integrating WAM-Vs® into our MDAS solution to add mobile assets for patrols or interdiction and utilizing satellite communication to expand the availability of our data service. Surveillance data can be integrated with third party marine monitoring software or with our own MDA software solution developed together with leading partners in the technology industry to provide command and control features of a multi-buoy surveillance network. This network can be coordinated with the use of our WAM-Vs® so that customers can have mobile sensor networks linked to our self-powered buoy data and communication hubs. The data can also be integrated with satellite, weather, bathymetric, and other third party data feeds to form a detailed surface and subsea picture of a monitored area. All vessel video, radar, and track data is securely stored in our cloud, or the customer's cloud, environment and is accessible for as long as required by the customers for further analysis and reference.

In May 2022, the Company launched the first commercially-ready MDAS on a test buoy off the coast of New Jersey. The system includes our proprietary integration of sensors, hardware and software, supported by cloud infrastructure as well as having a web-based user interface that displays camera, radar, AIS and live chart data. We have successfully demonstrated the system multiple times for potential customers and it was showcased in San Diego Bay at the U.S. Navy's Advanced Naval Technology Exercise in August 2022. We continue to develop our MDAS with hardware optimization and feature enhancements.

Autonomous Vehicles ("WAM-V®")

On November 15, 2021, the Company acquired all of the outstanding equity interest of Marine Advanced Robotics, Inc. ("MAR"). Founded in 2004, MAR is the developer of the patented Wave Adaptive Modular Vessel (WAM-V®) technology, which enables roaming capabilities for unmanned maritime systems in waters around the world. MAR launched the first WAM-V® in 2007 as a new vessel class to deliver reliable autonomous surface vehicles to customers that could provide robust, real-time data collection and reporting. MAR also provides RaaS, (Robotics as a Service) allowing customers to lease WAM-V® robotics and access information from our WAM-Vs® while we maintain ownership and maintenance and repair responsibilities. Today, WAM-Vs® operate in 11 countries for commercial, military and scientific uses. Our WAM-Vs® exist in three primary sizes, 8, 16, and 22 feet, however, many of the design components are common across the sizes, allowing for integration of different payloads and adaption of the payload platforms for larger equipment. All sizes can be adapted to suit different propulsion methods.

This acquisition immediately provided the Company with an established product line that highly complements the Company's business strategy and can be used inshore, nearshore, and offshore. Since the acquisition, the business of MAR has continued to grow and is further expanding into its core marine survey and maritime security markets in Europe, Asia, Oceania and the Americas. We continue to find ways to integrate MAR technology with the Company's existing platforms and service offerings, and expect to take advantage of new synergistic opportunities as they arise. During the quarter ended January 31, 2023,the Company participated in the Digital Horizon demonstration for the U.S. Navy in Bahrain which has led to additional opportunities to cross sell our autonomous vehicles. In addition, we plan to integrate the MDAS platform onto the WAM-V® to expand our MDA offering to provide a roaming MDA solution to our customers.

Power as a Service

PaaS solutions deliver value to customers by utilizing our managed power platforms. We continue to develop and commercialize our proprietary power platforms that generate electricity primarily by harnessing the renewable energy of ocean waves for our PB3 and solar power for our hybrid PowerBuoy® (the "hybrid PB"), and have the option of adding small wind turbines to supplement power generation. We also continue to commercialize our subsea battery for subsea power applications and as additional storage when combined with our buoy platforms. Our focus for these solutions is on bringing autonomous clean power to our customers wherever it is required. Moreover, offshore data and communications networks require power to function, and our solution solves for this need without requiring ongoing battery replacement or older technologies such as shore to station power cables. Many of the lessons learned from the deployments of both our PB3, including with Enel Green Power Chile, LTDA ("EGP") for which we received final acceptance during the third quarter of fiscal 2023, and hybrid PB are being used to develop the next generation of PowerBuoy® systems that is based on modularity for Wave Energy Converter ("WEC") and non-WEC applications. The PB3 and hybrid PB will continue to be available and supported.

PB3 PowerBuoy®

The PB3 uses proprietary technologies that convert the hydrokinetic energy of ocean waves into electricity. The PB3 features a unique onboard power take-off (“PTO”) system, which incorporates both energy storage and energy management and control systems. The PB3 generates a nominal nameplate capacity rating of up to 3 kilowatts (“kW”) of peak power. Power generation is deployment-site dependent, as wave activity impacts power generation. Our energy storage system (“ESS”) has a capacity of up to a nominal 150 kW-hours to meet specific application requirements.

The PB3 is designed to generate power for use independent of the power grid in offshore locations. The hull consists of a main spar structure compliantly moored to the seabed and surrounded by a floating annular structure that can freely move up and down in response to the passage of the waves. The PTO system includes a mechanical energy conversion system, an electrical generator, a power electronics system, our control system, and our ESS which is sealed within the hull. As ocean waves pass the PB3, the mechanical stroke action created by the rising and falling of the waves is converted into rotational mechanical energy by the PTO, which in turn, drives the electric generator. The power electronics system then conditions the electrical output which is stored within the ESS.

The operation of the PB3 is controlled by our customized, proprietary control system. The control system uses sensors and an onboard computer to continuously monitor the PB3 subsystems. We believe that this ability to optimize and manage the electric power output of the PB3 is a significant advantage of our technology. In the event of large storm waves, the control system automatically locks the PB3, and electricity generation is suspended. However, the load center (either the on-board payload or one in the vicinity of the PB3) may continue to receive power from the ESS. When wave heights return to normal operating conditions, the control system automatically unlocks the PB3 and electricity generation and ESS replenishment recommences. This safety feature helps to protect the PB3 from being damaged by storms.

Customized solutions are also available for the PB3 including the addition of subsea sensors to monitor for acoustic signatures, tsunami activity, and water quality.

hybrid PowerBuoy®

The hybrid PB is an alternative platform to the PB3, and utilizes solar and wind power to supplement its propane engine, and providing reliable power in remote offshore locations, regardless of ocean wave conditions. We believe this product addresses a broader spectrum of customer deployment needs, including low-wave and nearshore environments, with the potential for greater product integration within each customer project. The hybrid PB is intended to provide a stable energy platform for our MDAS solution, and for agile deployment of subsea power applications, such as a surface communications hub for electric remotely operated vehicles (“eROV”) and autonomous underwater vehicles (“AUV”) used for underwater inspections and short-term maintenance, and subsea equipment monitoring and control. The design has a high payload capacity for surveillance and communications equipment, with the capability of being tethered to subsea payloads such as batteries, or with a conventional anchor mooring system. Energy is stored in onboard lithium ion batteries which can power subsea and topside payloads. The control system uses sensors and an onboard computer to continuously monitor the hybrid PB subsystems. The hybrid PB is designed to be able to operate over a broad range of temperature and ocean wave conditions. It has a 30kW-hour battery system and carries up to 1.2MW-hour energy when combined with the current onboard propane storage system.

Subsea Battery

Our subsea battery is complementary to both the PB3 and hybrid PB products and can be deployed together with our PowerBuoys® or as a standalone unit. It offers customers the option of placing additional modular and expandable energy storage on the seabed near existing, or to be installed, subsea equipment. Our pressure-tested lithium-iron phosphate subsea batteries supply power that can enable subsea equipment, sensors, communications and AUV and eROV recharge. Our PB3 and hybrid PB are complementary to the subsea batteries by providing a means for recharging during longer term deployments, or the batteries can be used independently for shorter term deployments.

The subsea battery provides both long or short-term power supply from its integrated energy storage system, enabling us to supply into a range of industries and applications, from backup power to critical subsea infrastructure to continuous operation of subsea equipment, such as electric valves. The base design of the subsea battery has a nominal 100kW-hours of available energy storage and is designed to operate in water depths of up to 500 meters. It comes installed on a readily deployable subsea skid suitable for installation on the seabed. The subsea battery can be integrated into other subsea equipment on land prior to deployment.

Strategic Consulting Services

The focus of our Strategic Consulting Services is on delivering value to our customers in the areas of ocean engineering, structural and dynamic analysis, Front End Engineering and Design (“FEED”) studies, and motion simulation. These services can be integrated in support of our broader PaaS and/or DaaS solutions, utilizing our products or on an independent basis for third party clients. In the near term, we will focus on increasing our market share in the offshore wind market, the broader floating foundation design market, as well as with our offshore energy customers.

We intend to continue to grow our service sectors and strengthen our solutions through internal developments, partnerships, and potential acquisitions. Our Strategic Consulting Services were materially expanded with the acquisition of 3dent Technology, LLC (“3Dent”), in February 2021. Our team of dedicated consultants/designers has expertise in structural engineering, hydrodynamics and naval architecture. Consulting services include simulation engineering, developing purpose specific software, concept design and motion analysis. We also offer a full range of high-level offshore engineering to offshore wind developers, offshore construction companies, drilling contractors, major oil companies, service companies, shipyards, and engineering firms. For example, we advise offshore drill rig owners, including owners of floaters, jackups, and lift boats. The Company has seen an increase in consulting services activity for conventional offshore energy and for offshore wind projects over the last year.

Strategy and Marketing

Our strategy includes developing integrated solutions and services, including autonomous and cloud-based delivery systems for ocean data and predictive analytics to provide actionable intelligence for our clients. We believe that having demonstrated the capability of our solutions, we can advance our product and services and gain further adoption from our target markets. Our marketing efforts are focused on offshore locations that require a cost-efficient solution for renewable, reliable, and persistent power, data collection, and communications, either by supplying electric power to payloads that are integrated directly with our products or located in its vicinity, such as on the surface, the seabed, or in the water column. Our recent projects have been in the offshore energy, military and government, and science and research industries.

Based on recent market analysis, several emerging themes are shaping the offshore maritime domain awareness sector for commercial and defense applications, as highlighted by the National Plan to achieve MDA released by the Department of Homeland Security (“DHS”) and the Government Accountability Office (“GAO”) in their ‘Uncrewed Maritime Systems’ 2022 report on Maritime Security. Large defense contractors are expanding into the “ocean data collection” space by acquiring small and mid-size unmanned and autonomous surface and subsea vehicle companies. Uncrewed systems are increasingly in demand by defense and security and commercial companies to reduce costs and improve safety in offshore operations. Also, geopolitical developments such as the need for countries to protect their exclusive economic zones from illegal fishing activities and protect natural resources on the seabed are accelerating the adoption of solutions or technologies that collect, transmit, and synthesize data to provide actionable intelligence and decision-advantage to clients. For example, in its ‘Technology Outlook 2030’, Det Norske Veritas, Inc, (“DNV”), a leading operator of quality assurance and risk management in maritime, oil and gas and the energy industries, observed that all-electric systems are gaining popularity in subsea applications due to their cost-efficiency and reduced environmental impact. DNV predicts that all-electric subsea systems will play a critical role in the industry’s transition to a more sustainable future. These trends reinforce the increasing need for products, solutions, and services in the offshore maritime domain awareness sector, particularly for uncrewed and sentinel systems that can improve safety and reduce costs.

We serve a diverse range of leading customers in this sector, including defense and security organizations, offshore wind, science and research, ports and harbors, and oil & gas companies. Our pipeline continues to grow with a healthy mix of defense and security and commercial opportunities, as we witness growing interest from offshore wind companies for autonomous monitoring, surveillance and survey-related services during various stages of the project development cycle. Additionally, we are also attracting interest targeted toward subsea applications, using proprietary sensor payloads for environmental monitoring and subsea intelligence. Our buoys and WAM-Vs® are uniquely able to deliver these services either as a standalone solution or in combination with other systems. Furthermore, we are becoming a reliable player in the hydrography survey market, particularly in the shallow water environment.

Commercial Activities

We continue to seek new strategic relationships and further develop our existing partnerships. We collaborate with companies that have developed or are developing in-ocean applications requiring a persistent source of power that is also capable of real time data collection, processing and communication, to address potential customer needs. For the nine months ended January 31, 2023 and 2022, the Company had two and four customers whose revenues accounted for at least 10% of the Company's consolidated revenues, respectively. These revenues accounted for approximately 28% and 58% of the Company's total revenue for the respective periods. For the three months ended January 31, 2023 and 2022, the Company had five and four customers whose revenues accounted for at least 10% of the Company's consolidated revenues, respectively. These revenues accounted for approximately 63% and 71% of the Company's total revenue for the respective periods.

In order to achieve success in ongoing efforts to commercialize our products, we must expand our customer base and obtain commercial contracts to lease or sell our solutions and services to customers. Our potential customer base for our solutions includes various public and private entities, and agencies that require remote offshore power.

Current and Recent Contracts

- Our November 2021 MAR acquisition has led to contracts to build WAM-Vs® for Brigham Young University, Nippon Kaiyo, Australian Defense, S.T. Hudson, and Applied Research Lab at University of Hawaii, and has resulted in leased WAM-Vs® to Sulmara and other commercial customers and universities as well as government related projects such as Task Force 59 and IMX.

- In October 2022, we entered into a contract with WildAid to further develop capabilities to combat IUU fishing. This is the third consecutive year that MAR has been selected for this work.

- In fiscal year 2022, the Company completed a Phase I study for the Department of Energy (DOE) Small Business Innovation Research (SBIR) program, evaluating the feasibility of the next generation wave energy conversion technology. In Q2 fiscal year 2023, the Company was awarded a Phase II contract, providing funding for the detailed design, construction, and in-water testing of the initial prototype for this next generation wave energy system. The program commenced in Q3 fiscal year 2023 and is planned to extend through Q4 fiscal year 2024.

- For the nine months ended January 31, 2023, our Strategic Consulting Services continued to generate revenues from both existing and new customers of approximately $644,000. Notably, we advanced several large projects in the pipeline with larger oil and gas operators and offshore wind developers.

- In May 2022, the Company entered into a contract with a major oil and gas operator to evaluate the use of wave energy conversion systems to help decarbonize their offshore operations. The feasibility study was completed in the second quarter of fiscal year 2023 and discussions continue to identify opportunities to demonstrate wave conversion technology in support of various applications supporting offshore oil and gas operations.

- In September 2022, the Company entered into a contract with a major US government services contractor to demonstrate our MDAS capabilities. The scope includes supply of a PB3 equipped with MDAS and a deepwater mooring system, as well as technical support for offshore installation of the system. The system will be deployed for a 9-month demonstration, scheduled to begin in Q1 fiscal year 2024.

- In August 2022, we received a NOAA Phase I SBIR Grant for research related to dynamic swarming of USVs for hydrographic survey in post disaster recovery efforts.

- In September 2022, the Company was part of a group awarded funding by the U.S. DOE to develop advanced autonomous robotic technology for environmental monitoring of marine ecosystems, at and below the waterline, at offshore wind power sites on the West Coast of the United States.

- In September 2019, we entered into two contracts with subsidiaries of EGP, which included the sale of a PB3 and the development and supply of a turn-key integrated Open Sea Lab ("OSL") which was the Company's first deployment off the coast of Chile. Due to the COVID-19 pandemic and other factors, force majeure was declared in April 2020 and delayed the deployment. In April 2021, the Company resumed the deployment process and placed the PB3 in the water. During fiscal 2022, deployment of the PB3 was completed. Final Acceptance was achieved in January 2023 upon satisfactory installation. The customer paid their final invoice and released the letter of credit. Our warranty obligations extend through January 2024 and are secured by a letter of Credit.

Business Relationships

We believe that our solutions are best developed, sold, deployed, and maintained together with subject matter experts in their respective fields. This enables the Company to protect, maintain, and evolve our various platforms and integrate them with surface and subsea payloads. The Company has previously entered into business relationships focused on including, but not limited to, deployment and installations, sourcing of surface payloads, and integration with autonomous vehicles. To augment the further development the MDAS, we maintain ongoing strategic software and robotics partnerships with two software companies, Greensea Systems, Inc. and Fathom5. We believe the business relationships with Greensea and Fathom5 will further the development, alongside our internal technology resources, of our next-generation MDAS product for the maritime industrial market and governmental defense and security organizations.

Greensea Systems, Inc. is contributing to the Company's MDAS by providing integration software, control software, autonomy and systems integration for the buoy sensor payload.

Fathom5 designed and is building a customized data platform that supports the Company's MDAS with sensor data feed management, secure communications management, a cloud-based infrastructure, and web-based user interface. The platform was designed with a flexible architecture that allows the Company to integrate new sensor technologies and third-party analytics capabilities and share MDAS data with customers and partners.

We also maintain an active dialogue with several offshore specialist and marine operations partners in the North Sea and North America to support our deployment, maintenance, and recovery operations and projects.

Business Strategy

During fiscal 2023, we continue to advance our marketing programs, products, and solutions. We have made progress in transitioning from an R&D focused organization to more robust commercialization efforts and we are moving further into the ocean DaaS market. We intend to build on these efforts by introducing additional processes and making investments in appropriate human capital to more effectively target potential customers from demand generation to close of contract. In addition, we are focusing on customer care and service efforts to increase repeat business opportunities. This strategy was further enhanced by our acquisition of MAR in November 2021.

The majority of the Company's potential customers are in areas of defense and security, hydrographic survey, offshore and coastal communication networks, and maritime domain awareness, including mitigation of IUU fishing. These are largely for customers in the United States, where the end use may be both domestic or abroad. Further, the Company's acquisition of MAR provides an unmanned surface vehicle platform for use in oil & gas, renewable energy, hydrographic survey, and security and defense markets largely in North America and Europe.

Historically, demonstration projects have been a requisite step towards broad solution deployment and revenues associated with specific applications such as our New Jersey MDAS test array as part of our DaaS solution and to highlight these capabilities. Customers may want their own dedicated demonstration depending on customer needs. During a typical demonstration project's specification, negotiation and evaluation period, we are often subject to the prospective customer's vendor qualification process, which entails substantial due diligence of the Company and its capabilities. Such demonstrations are often a required step prior to leasing and may include negotiation of standard terms and conditions. Many proposals contain provisions which would provide the option to purchase or lease our PowerBuoy® or WAM-V® product upon successful conclusion of the demonstration project. The Company has successfully demonstrated the capabilities of many of its solutions on its own or in customer-sponsored evaluation projects and remains focused on further demonstrations to build customer awareness and confidence and to drive revenue.

The Company is pursuing a long-term growth strategy to expand its market value proposition while growing the Company's revenue base. This strategy includes partnerships with leading companies and organizations in adjacent and complementary markets. We continue to develop our PowerBuoy® and WAM-V® products for use in offshore power, data acquisition, and real-time data communications applications, and in order to achieve this goal, we are pursuing the following business objectives:

- Integrated turn-key solutions, purchases or leases. We believe our DaaS and PaaS solutions, together with our platforms, are well suited to enable unmanned, autonomous (non-grid connected) offshore applications, such as topside and subsea surveillance and communications, subsea equipment monitoring, early warning systems platform, subsea power and buffering, and weather and climate data collection. We have investigated and realized market demand for some of these solutions and we intend to sell and/or lease our products to these markets as part of these broader integrated solutions. Additionally, we intend to provide services associated with our solution offerings such as paid engineering studies, value-added engineering, maintenance, remote monitoring and diagnostics, application engineering, planning, training, project management, and marine and logistics support required for our solution life cycle. We continue to increase our commercial capabilities through new hires in sales, engineering, product development, safety, and application support, and through engagement of expert market consultants in various geographies. As our MDAS development continues, we expect that this will also include data and cloud services.

- Expand customer system solution offerings through new complementary products that enable more cost-efficient deployments that make shorter missions more feasible. We are continuously innovating new solutions to deliver enhanced value to our customers, such as enhancing our MDAS and improving our deployment platforms solutions, such as our PowerBuoys® and WAM-Vs®. We are currently developing our next generation Power Buoy that incorporates wave, wind, and solar power generation capabilities in a robust yet cost effective system that supports shorter term missions as well as the ability to operate in near shore and low wave environments. This effort is partially funded by the DOE SBIR Phase II award. In addition, we have future plans to integrate PB3 and WAM-V® capabilities, including the possibility of adding recharging capabilities to our PowerBuoys, and MDAS capabilities to include our WAM-Vs®, thus extending our reach and providing both fixed and mobile MDAS offerings to our customers.

  The Company has a subsea battery system available to commercial clients that is complementary to the Company's PowerBuoy® products. The subsea battery system offers the ability to create a seafloor energy storage solution for remote offshore operations. These subsea battery systems contain lithium-iron phosphate batteries, which provide high power density to supply power to subsea equipment, sensors, communications, and the recharging of AUVs and eROVs. Ideal for many remote offshore customer applications, these subsea battery systems are designed to be safe, high performance, cost-efficient, and quickly deployable. The Company's PowerBuoy® products can also be used with other providers' battery systems.

Our WAM-Vs® are easily and economically shipped via land, air, or sea, and their modular design enables us to quickly reduce their size for storage or shipment. The ability to disassemble a WAM-V® reduces the footprint by as much as 75%, and as a result, a 20-foot container can hold four 16-foot WAM-Vs®. To integrate our solutions and add roaming as an option or enhancement to our MDAS, we are advancing developments to further integrate MDAS into the WAM-V® platform and develop additional autonomy capabilities.

- Focus sales efforts in key global markets in the U.S., Europe, Canada, Asia and Australia. While we are marketing our products and services globally, we have focused on several key markets and applications, including U.S. and foreign defense and security applications with our MDAS offering; subsea power for oil and gas; and the hydrographic survey market with regard to our WAM-Vs®. We believe that each of these areas has demand for our solutions, sizable end market opportunities, and high levels of industrialization and economic development. We have an office in Houston, Texas that enables us to further support our customers and strengthen our dialogue with our solution partners. During fiscal 2022, we added an office in Richmond, California through our acquisition of MAR. During fiscal 2022, we also further streamlined our global operation by selecting to work with partners in active offshore markets, such as the North Sea. These relationships continue to be evaluated against performance criteria during fiscal 2023. We are in active discussions with potential partners in North and South America, the Caribbean, Southeast Asia and West Africa.

- Expand our relationships in key market areas through strategic partnerships and collaborations. We believe that strategic partners are an important part of expanding visibility to our products. Partnerships and collaborations can be used to improve the development of overall integrated solutions, create new market channels, expand commercial know-how and geographic footprint, and bolster our product delivery capabilities. We have formed such a relationship with several well-known groups, and we continue to seek other opportunities to collaborate with application experts from within our selected markets. These partnerships have helped us source services, such as installation expertise, and products, such as MDA enabling equipment, to meet our development and customer obligations. We have been actively pursuing additional opportunities to bring in-house skills, capabilities, and solutions that are complementary to our strategy and enable us to scale more quickly, including, for example, our acquisition of 3Dent and MAR.

- Partner with fabrication, deployment and service support. In order to minimize our capital requirements as we scale our business, we intend to optimize and utilize state of the art fabrication, anchoring, mooring, cabling supply, and in some cases, deployment of our products and solutions. We believe this domestically distributed manufacturing and assembly approach enables us to focus on our core competencies and ensure a cost-effective product by leveraging a larger more established supply base. We continue to seek strategic partnerships regarding servicing of our products and solutions.

- Survey and security market applications. With the addition of our WAM-V® products, we are able to increase our ability to lease vehicles specifically to support shoreline and offshore survey markets as well as security applications while integrating MDA into these solutions.

Liquidity

During the nine months ending January 31, 2023, the Company incurred a net loss of approximately $16.8 million and used cash in operations of approximately $16.1 million. The Company has continued to make investments in ongoing product development efforts and in building inventory in anticipation of, and in support of, future growth. The Company's future results of operations involve significant risks and uncertainties. Factors that could affect the Company's future operating results and could cause actual results to vary materially from expectations include, but are not limited to, performance of its products, its ability to market and commercialize its products and new products that it may develop, technology development, scalability of technology and production, ability to attract and retain key personnel, concentration of customers and suppliers, and deployment risks and integration of acquisitions.

The Company previously obtained equity financing through its At the Market Offering Agreement ("ATM") with A.G.P/Alliance Global Partners ("AGP") and through its equity line financing with Aspire Capital Fund, LLC ("Aspire Capital"), but the Company cannot be certain that additional equity and/or debt financing will be available to the Company as needed on acceptable terms, or at all.

Management believes the Company's cash balance of $11.0 million and short term investments balance of $30.0 million at January 31, 2023 is sufficient to fund its planned operations through at least March 2024.

Capital Raises

At the Market Offering Agreement: On November 20, 2020, the Company entered into an At-the-Market Offering Agreement with AGP (the "2020 ATM Facility") pursuant to which the Company may issue and sell, from time to time, shares of the Company's common stock having an aggregate offering price of up to $100.0 million. The Company's common stock will be sold at prevailing market prices at the time of sale, and, as a result, prices will vary. Although the Company initially only had filed to sell up to $50.0 million, a prospectus supplement was filed on January 10, 2022 to allow the Company to sell an additional $25.0 million of common stock up to a total of $75.0 million under the 2020 ATM Facility. As of January 31, 2023, an aggregate of $50.0 million remained available under this facility, subject to the filing of a prospectus supplement for an additional $25.0 million.

Equity Line Common Stock Purchase Agreement: On September 18, 2020, the Company entered into a common stock purchase agreement with Aspire Capital which provided that, subject to certain terms, conditions and limitations, Aspire Capital was committed to purchase up to an aggregate of $12.5 million shares of the Company's common stock over a 30-month period subject to a limit of 19.99% of the outstanding common stock on the date of the agreement if the price did not exceed a specified price in the agreement. The number of shares the Company could issue within the 19.99% limit was 3,722,251 shares without shareholder approval. Shareholder approval was received at the Company's annual meeting of shareholders on December 23, 2020 for the sale of 9,864,706 additional shares of common stock which exceeded the 19.99% limit of the outstanding common stock on the date of the agreement. Through January 31, 2023, the Company had sold an aggregate of 3,722,251 shares of common stock with an aggregate market value of $11.8 million at an average price of $3.17 per share pursuant to this common stock purchase agreement with approximately $0.7 million remaining on the facility as of January 31, 2023.

The sale of additional equity or convertible securities could result in dilution to our shareholders. If additional funds are raised through the issuance of debt securities or preferred stock; these securities could have rights senior to those associated with our common stock and could contain covenants that would restrict our operations. The Company has obtained equity financing through its ATM Agreement with AGP and the Aspire Capital financing, but the Company cannot be certain that additional equity and/or debt financing will be available to the Company as needed on acceptable terms, or at all. If we are unable to obtain required financing when needed, we may be required to reduce the scope of our operations, including our planned product development and marketing efforts, which could materially and adversely affect our financial condition and operating results. If we are unable to secure additional financing, we may be forced to cease our operations.

Backlog

As of January 31, 2023, the Company's backlog was $2.5 million. Our backlog includes unfilled firm orders for our products and services from commercial or governmental customers. If any of our contracts were to be terminated, our backlog would be reduced by the expected value of the remaining terms of such contract.

The amount of contract backlog is not necessarily indicative of future revenue because modifications to or terminations of present contracts and production delays can provide additional revenue or reduce anticipated revenue. A portion of our revenue is recognized using the input method used to measure progress towards completion of our customer contracts over time, 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.

Critical Accounting Policies and Estimates

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

For a discussion of our critical accounting estimates, see the section entitled Item 7.- "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the year ended April 30, 2022. There were no material changes to our critical accounting estimates or accounting policies during the nine months ended January 31, 2023.

Recently Issued Accounting Standards

In June 2016, the Financial Accounting Standards Board ("FASB") issued ASU No. 2016-13, "*Financial Instruments - Credit Losses (Topic 326), Measurement of Credit Losses on Financial Instruments."* This amendment replaces the incurred loss impairment methodology in current GAAP with a methodology that reflects expected credit losses on instruments within its scope, including trade receivables. This update is intended to provide financial statement users with more decision-useful information about the expected credit losses. In November 2019, the FASB issued No. 2019-10, *Financial Instruments—Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842)*, which deferred the effective date of ASU 2016-13 for Smaller Reporting Companies for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The Company is currently evaluating the impact the adoption of ASU 2016-13 will have on its consolidated financial statements.

Financial Operations Overview

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

Revenues

A performance obligation is the unit of account for revenue recognition in accordance with Accounting Standards Codification 606 (ASC 606) or Accounting Standards Codification 842 (ASC 842) which identifies how to recognize revenue in leasing arrangement. For revenue recognized under ASC 606, The Company assesses the goods or services promised in a contract with a customer and identifies as a performance obligation as either: a) a good or service (or a bundle of goods or services) that is distinct; or b) a series of distinct goods or services that are substantially the same and that have the same pattern of transfer to the customer. A contract may contain a single or multiple performance obligations. For contracts with multiple performance obligations, the Company allocates the contracted transaction price to each performance obligation based upon the relative standalone selling price, which represents the price the Company would sell a promised good or service separately to a customer. The Company determines the standalone selling price based upon the facts and circumstances of each obligated good or service. When no observable standalone selling price is available, the standalone selling price is generally estimated based upon the Company's forecast of the total cost to satisfy the performance obligation plus an appropriate profit margin.

The nature of the Company’s contracts may give rise to several types of variable considerations, including unpriced change orders and liquidated damages and penalties. Variable considerations can also arise from modifications to the scope of services. Variable consideration is included in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur once the uncertainty associated with the variable consideration is resolved. Our estimates of variable consideration and determination of whether to include such amounts in the transaction price are based largely on our assessment of legal enforceability, performance and any other information (historical, current, and forecasted) that is reasonably available to us. There was no variable consideration related to open contracts as of January 31, 2023 and 2022.

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

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

The Company has two types of fixed price contracts, firm fixed price and cost-sharing. Under firm fixed price contracts, the Company receives an agreed-upon amount for providing products and services specified in the contract, a profit or loss is recognized depending on whether actual costs are more or less than the agreed upon amount. Under cost-sharing contracts, the fixed amount agreed upon with the customer is only intended to fund a portion of the costs on a specific project. Under cost sharing contracts, an amount corresponding to the revenue is recorded in cost of revenues, resulting in gross profit on these contracts of zero. The Company’s share of the costs is recorded as product development expense. The Company reports its disaggregation of revenues by contract type since this method best represents the Company’s business. For the nine-month periods ended January 31, 2023 and 2022, all of the Company’s contracts were classified as firm fixed price.

As of January 31, 2023, the Company’s total remaining performance obligations, also referred to as backlog, totaled $2.5 million. The Company expects to recognize approximately 85%, or $2.1 million, of the remaining performance obligations as revenue over the next twelve months.

The Company also enters into lease arrangements for its PB3 and WAM-V® with certain customers. Revenue related to multiple-element arrangements is allocated to lease and non-lease elements based on their relative standalone selling prices or expected cost plus a margin approach. Lease elements generally include a PB3 or WAM-V® and components, while non-lease elements generally include engineering, monitoring and support services. In the lease arrangement, the customer may be provided an option to extend the lease term or purchase the leased asset at some point during and/or at the end of the lease term.

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

The Company recognizes revenue from operating lease arrangements generally on a straight-line basis over the lease term based on time or usage as presented in Revenues in the Consolidated Statement of Operations. The lease income for the three months ended January 31, 2023 and 2022 was $175,000 and zero, respectively.

For the nine months ended January 31, 2023 and 2022, the Company had two and four customers whose revenues accounted for at least 10% of the Company's consolidated revenues, respectively. These revenues accounted for approximately 28% and 58% of the Company's total revenue for the respective periods.

For the three months ended January 31, 2023 and 2022, the Company had five and four customers whose revenues accounted for at least 10% of the Company's consolidated revenues, respectively. These revenues accounted for approximately 63% and 71% of the Company's total revenue for the respective periods.

We currently focus our sales efforts in key global markets in North America, South America, Europe and Asia. The following table shows the percentage of our revenues by geographical location of our customers for the nine months ended January 31, 2023 and 2022.

	Nine months ended January 31,	
Customer Location*	**2023**	**2022**
North America	82%	83%
South America	4%	16%
Europe	—%	1%
Asia and Australia	14%	—%
	100%	100%

* For US Government contracts, the revenue is classified as North American however, location of operations may differ.

Cost of revenues

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

Operating Expenses

Engineering and product development costs

Our engineering and product development costs consist of salaries and other personnel-related costs and the costs of products, materials and outside services used in our product development and unfunded research activities. Our product development costs relate primarily to our efforts to increase the power output and reliability of our PowerBuoy® system and other products, to enhance and optimize data monitoring and controls systems, and to the development of new products, product applications and complementary technologies. We expense all of our product development costs including engineering product development costs as incurred.

Selling, general and administrative costs

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

Interest income, net

Interest income, net consists of interest received on cash, cash equivalents, and short term investments and interest paid on certain obligations to third parties as well as amortization expense related to the premiums on the purchase of short term investments.

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 U.S. dollars and our functional currency is the U.S. dollar, our main foreign exchange exposure, if any, results from changes in the exchange rate between the U.S. dollar and the British pound sterling, and the Euro.

We maintain cash accounts that are denominated in British pounds sterling in addition to U.S. dollars. These foreign-denominated accounts had an aggregate balance of $14,000 as of January 31, 2023 and $28,000 as of April 30, 2022, compared to our total cash, cash equivalents, short term investments, and restricted cash balances of $41.1 million as of January 31, 2023 and $57.7 million as of April 30, 2022.

In addition, a portion of our operations is conducted through our subsidiaries in countries other than the U.S., and specifically Ocean Power Technologies Ltd. in the United Kingdom, the functional currency of which is the British pound sterling. This subsidiary has foreign exchange exposure that results from changes in the exchange rate between their functional currency and other foreign currencies in which they conduct business. The Company is in the process of winding down its Australian subsidiary, which is expected to be completed during fiscal 2023. The unrealized gains or losses resulting from foreign currency balances translation are included in Accumulated Other Comprehensive Loss within Shareholders' Equity. Foreign currency transaction gains and losses are recognized within our Consolidated Statements of Operations.

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

Results of Operations

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

Three months ended January 31, 2023 compared to the three months ended January 31, 2022

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the three months ended January 31, 2023 and 2022.

	Three months ended October 31,	
	2023	2022
Revenues	$ 734	$ 484
Cost of revenues	598	597
Gross margin (loss)	$ 136	$ (113)
(Gain)/loss from change in fair value of consideration	373	(60)
Operating expenses	6,820	5,439
Operating loss	$ (7,057)	$ (5,492)
Interest income, net	229	16
Other income, proceeds from insurance claim	458	—
Foreign exchange gain	2	5
Loss before income taxes	$ (6,368)	$ (5,471)
Income tax benefit	278	—
Net loss	$ (6,090)	$ (5,471)

Revenues

Revenues for the three months ended January 31, 2023 and 2022 were $0.7 million and $0.5 million, respectively. The year-over-year increase was primarily due to higher levels of revenue stemming from MAR which increased revenue by $0.2 million for the three month ended January 31, 2023.

Cost of revenues

Cost of revenues for the three months ended January 31, 2023 and 2022 were $0.6 million and $0.6 million, respectively. The lack of movement despite the increase in revenue is related to better margins on our strategic consulting services and government related grants with NOAA and DOE in the current year.

Change in fair value of contingent consideration

The change in fair value of contingent consideration for the three months ended January 31, 2023 was $0.4 million relating to an adjustment of the contingent consideration liability based on actual and forecasted revenues relating to the MAR acquisition. The previous year related to an adjustment to a 3Dent earnout liability in relation to their acquisition.

Operating expenses

Operating expenses for the three months ended January 31, 2023 and 2022 were $6.8 million and $5.4 million, respectively. The increase of approximately $1.4 million was the result of an increase in employee related costs of $1.0 million due to increased headcount, an increase in product development costs of $0.3 million, and an increase in office related expenses of $0.1 million from the prior year.

Interest income

Interest income for three months ended January 31, 2023 and 2022 was $0.2 million and $16,000, respectively. The increase was directly related to the short term investments we made during the fourth quarter of fiscal 2022. As such, there were no short term investments held for the three months ended January 31, 2022.

Other income

Other income for the three months ended January 31, 2023 and 2022 was $0.5 million and zero, respectively. The amount in the current year relates to proceeds received for an insurance claim.

Nine months ended January 31, 2023 compared to the nine months ended January 31, 2022

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the nine months ended January 31, 2023 and 2022.

	Nine months ended	
	2023	**2022**
Revenues	$ 1,752	$ 1,003
Cost of revenues	1,382	1,320
Gross margin (loss)	$ 370	$ (317)
(Gain)/loss from change in fair value of consideration	154	(60)
Operating expenses	19,546	15,451
Operating loss	$ (19,330)	$ (15,708)
Interest income, net	604	56
Other income, proceeds from insurance claim	458	—
Other income, employee retention credit	1,202	—
Gain on extinguishment of PPP loan	—	890
Foreign exchange gain	2	—
Loss before income taxes	$ (17,064)	$ (14,762)
Income tax benefit	278	1,041
Net loss	$ (16,786)	$ (13,721)

Revenues

Revenues for the nine months ended January 31, 2023 and 2022 were $1.8 million and $1.0 million, respectively. The year-over-year increase was primarily due to higher levels of revenue stemming from the acquisition of MAR which produced $0.9 million in revenue as of January 31, 2023. The MAR acquisition took place in November 2021 with $0.2 million in revenue as of the nine months ended January 31, 2022.

Cost of revenues

Cost of revenues for the nine months ended January 31, 2023 and 2022 were $1.4 million and $1.3 million, respectively. The increase of approximately $0.1 million over fiscal year 2022 was mostly due to the acquisition of MAR and their related projects for the nine months ended January 31, 2023 which were part of the Company for only three of the nine months ended January 31, 2022.

Change in fair value of contingent consideration

The change in fair value of contingent consideration for the nine months ended January 31, 2023 was $0.2 million relating to an adjustment of the contingent consideration liability based on actual and forecasted revenues relating to the MAR acquisition. The previous year related to an adjustment to a 3Dent earnout liability in relation to their acquisition.

Operating expenses

Operating expenses for the nine months ended January 31, 2023 and 2022 were $19.5 million and $15.5 million, respectively. The increase of approximately $4.0 million was the result of an increase in employee related costs of $1.9 million due to increased headcount and the inclusion of MAR employees for nine months in the current year and only 2 months in the prior year, an increase in product development related costs of $1.6 million, an increase in office related expenses of $0.3 million and an increase in corporate costs of $0.2 million from the prior year.

Interest Income

Interest income for the nine months ended January 31, 2023 and 2022 was $0.6 million and $0.1 million, respectively. The increase was directly related to the short term investments we made during the fourth quarter of fiscal 2022. As such, there were no short term investments held for the nine months ended January 31, 2022.

Extinguishment of Debt

The Company filed its loan forgiveness application for the PPP loan at the end of February 2021 asking for 100% forgiveness of the loan. In June 2021, the Company was informed that its application was approved, the loan was fully forgiven and the Company recognized a gain on extinguishment of PPP loan of $0.9 million in its Consolidated Statement of Operations for the nine months ended January 31, 2022.

Other income

Other income for the nine months ended January 31, 2023 and 2021 was $1.7 million and zero, respectively. The amount in the current year relates to employee retention credits applied for previously filed payroll tax returns with the Internal Revenue Service of $1.2 million and proceeds received for an insurance claim of $0.5 million.

Liquidity and Capital Resources

Our cash requirements relate primarily to working capital needed to operate and grow our business including funding operating expenses. We have experienced and continue to experience negative cash flows from operations and net losses. The Company incurred net losses of $16.8 million and $13.7 million for the nine months ended January 31, 2023 and 2022, respectively. Refer to “Liquidity Outlook” below for additional information.

Net cash used in operating activities

During the nine months ended January 31, 2023, net cash flows used in operating activities was $16.1 million, an increase of $0.3 million compared to net cash used in operating activities during the nine months ended January 31, 2022 of $15.8 million. This reflects an increase in net loss of $3.1 million and an increase in inventory of $ 0.8 million, primarily offset by a gain on extinguishment of the PPP loan of $0.9 million, an increase in contract liabilities of $1.2 million the payment of litigation payable in the prior year of $1.2 million.

Net cash provided by (used in) investing activities

Net cash provided by investing activities during the nine months ended January 31, 2023 was $18.9 million, compared to $3.9 million cash used in investing activities during the nine months ended January 31, 2022. The increase in net cash provided by investing activities was primarily due to the redemption of short term investments of $49.6 million, partially offset by the purchase of short term investments of $30.4 million during the nine months ended January 31, 2023.

Net cash (used in) provided by financing activities

Net cash used in financing activities during the nine months ended January 31, 2023 of $14,000 relates to the acquisition of treasury stock. Net cash provided by financing activities during the nine months ended January 31, 2022 of $90,000 relates to the number of stock option exercises in the prior year while no options were exercised in the current year.

Effect of exchange rates on cash and cash equivalents

There was no effect of exchange rates on cash and cash equivalents during the nine months ended January 31, 2023 and there was a decrease of approximately $14,000 during the nine months ended January 31, 2022. The effect of exchange rates on cash and cash equivalents stems primarily from gains or losses on consolidation of foreign subsidiaries and foreign denominated cash and cash equivalents.

Liquidity Outlook

Since our inception, the cash flows from customer revenues have not been sufficient to fund our operations and provide the capital resources for our business. As of January 31, 2023, our aggregate year to date revenues were $1.8 million, our aggregate year to date net losses were $16.8 million, our year to date net cash used in operating activities was $16.1 million and our accumulated deficit was $270.6 million.

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

- our ability to develop, market and commercialize our products, and achieve and sustain profitability;
- our continued development of our proprietary technologies, and expected continued use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services;
- our ability to obtain additional funding, as and if needed, which will be subject to several factors, including market conditions, and our operating performance;
- the continued impact of COVID-19 and the inflation related to the U.S. dollar on our business, operations, customers, suppliers and manufacturers and personnel;
- our ability to meet product development, manufacturing and customer delivery deadlines may be impacted by disruptions to our supply chain, primarily related to labor shortages and manufacturing and transportation delays both here in the U.S. and abroad;
- our acquisitions and our ability to integrate them into our operations may use significant resources, be unsuccessful or expose us to unforeseen liabilities;
- our estimates regarding future expenses, revenues, and capital requirements;
- our ability to identify and penetrate markets for our products, services, and solutions;
- our ability to effectively respond to competition in our targeted markets
- our ability to establish relationships with our existing and future strategic partners may not be successful;

- our ability to maintain the listing of our common stock on the NYSE American;
- the reliability of our technology, products and solutions;
- our ability to improve the power output and survivability of our products;
- changes in current legislation, regulations and economic conditions that affect the demand for, or restrict the use of our products;
- our ability to hire and retain key personnel, including senior management, to achieve our business objectives;
- our history of operating losses, which we expect to continue for at least the short term and possibly longer; and
- our ability to protect our intellectual property portfolio.

Our business is capital intensive, and through January 31, 2023, we have been funding our business principally through sales of our securities. As of January 31, 2023, our cash and cash equivalents, restricted cash, and short term investments balance was $41.1 million and we expect to fund our business with this amount and, to a lesser extent, with our profits. Management believes the Company's current cash and cash equivalents, and short term investments, are sufficient to fund its planned expenditures through at least March 2024.

Off-Balance Sheet Arrangements

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

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

Item 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Management, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of January 31, 2023 pursuant to Rules 13a-15(b) or 15d-15(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) are controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's ("SEC") rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file under the Exchange Act is accumulated and communicated to our management, as appropriate, to allow timely decisions regarding required disclosure. Based on such evaluation, management concluded that our disclosure controls and procedures were effective as of January 31, 2023 to ensure that non-financial statement and related disclosure information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

Changes in Internal Control over Financial Reporting

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the fiscal quarter ended January 31, 2023 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. *LEGAL PROCEEDINGS*

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

For information on matters in dispute, see Note 15 to the Consolidated Financial Statements under Part I, Item 1 of this report.

Item 1A. *RISK FACTORS*

The discussion of our business and operations should be read together with the risk factors contained in Item 1A of our Annual Report on Form 10-K for the year ended April 30, 2022 and set forth below in this Quarterly Report on Form 10-Q. These risk factors describe various risks and uncertainties to which we are or may become subject. These risks and uncertainties have the potential to affect our business, financial condition, results of operations, cash flows, strategies or prospects in a material and adverse manner. Except as noted below, there have been no material changes in our risk factors from those disclosed in our Annual Report on Form 10-K filed with the SEC on July 13, 2022.

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

We have incurred net losses since we began operations in 1994, including net losses of $16.8 million during the first nine months of fiscal year 2023 and $13.7 million during the same nine month period in fiscal year 2022. As of January 31, 2023, we had an accumulated deficit of $270.6 million. To date, our activities have consisted primarily of activities related to the development and testing of our technologies and our PowerBuoy®. Thus, our losses to date have resulted primarily from costs incurred in our research and development programs and from our selling, general and administrative costs. As we continue to develop our proprietary technologies, we expect to continue to have a net use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services.

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

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

None.

Item 3. *DEFAULTS UPON SENIOR SECURITIES*

None.

Item 4. *MINE SAFETY DISCLOSURES*

Not applicable.

Item 5. *OTHER INFORMATION*

None.

Item 6. ***EXHIBIT INDEX***

10.1		Form of Restricted Stock Unit Agreement for Non-Directors
10.2		Form of Restricted Stock Unit Agreement for Directors
10.3		Form of Non-Qualified Stock Option Agreement
31.1		Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2		Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	*	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	*	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101		The following financial information from Ocean Power Technologies, Inc.'s Quarterly Report on Form 10-Q for the quarter ended January 31, 2023, formatted in eXtensible Business Reporting Language (XBRL): (i) Consolidated Balance Sheets – January 31, 2023 (unaudited) and April 30, 2021, (ii) Consolidated Statements of Operations (unaudited) – three and nine months ended January 31, 2023 and 2022, (iii) Consolidated Statements of Comprehensive Loss (unaudited) – three and nine months ended January 31, 2023 and 2021, (iv) Consolidated Statement of Shareholders' Equity (unaudited) – three and nine months ended January 31, 2023 and 2022 (v) Consolidated Statements of Cash Flows (unaudited) –nine months ended January 31, 2023 and 2022, (vi) Notes to Consolidated Financial Statements.**
101.INS		Inline XBRL Instance Document
101.SCH		Inline XBRL Taxonomy Extension Schema Document
101.CAL		Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF		Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB		Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE		Inline XBRL Taxonomy Extension Presentation Linkbase Document
104		Cover Page Interactive Data File (embedded within the Inline XBRL document)
	*	As provided in Item 601(b)(32)(ii) of Regulation S-K, this exhibit shall not be deemed to be "filed" or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liability under those sections.
	**	As provided in Rule 406T of Regulation S-T, this exhibit shall not be deemed "filed" or a part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liability under those sections.

SIGNATURES

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

	Ocean Power Technologies, Inc. *(Registrant)*
Date: March 13, 2023	*/s/ Philipp Stratmann*
	By: Philipp Stratmann *President and Chief Executive Officer*
Date: March 13, 2023	*/s/ Robert Powers*
	By: Robert Powers *Senior Vice President and Chief Financial Officer*

Exhibit 10.1

OCEAN POWER TECHNOLOGIES, INC.

Restricted Stock Unit Agreement and Recipient's Acceptance Agreement

Name of Recipient: ________________________

Number of Restricted Stock Units awarded: ________________________

Grant Date:

Ocean Power Technologies, Inc. (the "Company") has selected you to receive an Award of restricted stock units in the number described above in this acceptance agreement ("Acceptance Agreement"), which is subject to the terms and conditions contained in the Restricted Stock Unit Agreement (attached) and the Ocean Power Technologies, Inc. 2015 Omnibus Incentive Plan.

Please confirm your acceptance of this restricted stock unit Award and its terms and conditions by signing a copy of this Acceptance Agreement where indicated below and forwarding it to: Ocean Power Technologies, Inc., Attention: CFO, 28 Engelhard Drive, Monroe Township, NJ 08831.

Ocean Power Technologies, Inc.

By: ________________________
Signature

____
Printed Name

____
Title

Accepted and Agreed:

____
Signature of Recipient

____
Printed Name of Recipient

OCEAN POWER TECHNOLOGIES, INC.

Restricted Stock Unit Agreement

The terms and conditions of the Award of restricted stock units (the “Restricted Stock Units” or “RSUs”) under the Ocean Power Technologies, Inc. 2015 Omnibus Incentive Plan (the “Plan”) made to the Recipient, as set forth in the Acceptance Agreement dated _____, are as follows:

1. Issuance of Restricted Stock Units.

The Restricted Stock Units will be accounted for by the Company in book entry form only, in the name of the Recipient. The Recipient shall have no rights with respect to the Restricted Stock Units as a Company shareholder until such Restricted Stock Units are vested and Stock is issued to the Recipient by the Company. The Recipient agrees that the Restricted Stock Units shall be subject to the forfeiture provisions set forth in Section 3 of this Agreement and the restrictions on transfer set forth in Section 4 of this Agreement. The grant of Restricted Stock Units is governed by the Acceptance Agreement, this Restricted Stock Unit Agreement and the Plan, which provide, among other things, definitions of the capitalized terms and the other terms and conditions respecting the Restricted Stock Units granted to Recipient, and the Acceptance Agreement and the Plan are hereby incorporated by reference.

2. Vesting.

The RSUs shall vest (if at all) in three equal tranches over three years on the anniversary date of the award but subject to the following three vesting criteria:

1. 1/3 of the RSUs shall vest (if at all) equally over time on January 18, 2024, on January 18, 2025, and on January 18, 2026;

2. 1/3 of the RSUs shall vest (if at all) equally over time if the total shareholder return (“TSR”) is positive year-over-year, which TSR is calculated by comparing:

(a) the Volume Weighted Average Price for ten (10) consecutive trading days (“VWAP-10”) on January 18, 2023 with the VWAP-10 on January 18, 2024;
(b) the VWAP-10 on January 18, 2024 with the VWAP-10 on January 18, 2025; and
(c) the VWAP-10 on January 18, 2025 with the VWAP-10 on January 18, 2026;

provided, however, that

(i) if the VWAP-10 on January 18, 2024 is less than the VWAP-10 on January 18, 2023, the RSUs will rollover for possible vesting on January 18, 2025, but not beyond; Note that the reference point for the TSR calculation is always the VWAP-10 on January 18, 2023; and
(ii) if the VWAP-10 on January 18, 2025 is less than the VWAP-10 on January 18, 2024 then those RSUs that would have vested but for the negative TSR may rollover for possible vesting on January 18, 2026 with the exception that RSUs that rolled-over from the 2024 vesting date, but did not vest on the 2025 vesting date, shall not roll-over again.

3. 1/3 of the RSUs shall vest (if at all) equally over time if the relative Total Shareholder Return (rTSR) is positive year-over-year, which rTSR is calculated as follows:

(a) Ascertain the Russell 3000 Microcap index (reference index) representing the average for the 10-day period ending January 18, 2023 (indexed to 100), and compare it to the same index for the 10-day period ending January 18, 2024 – and utilize a similar comparison year-over-year on January 18, 2025 and January 18, 2026 – to determine what percentage increase occurred year-over-year;

(b) If the reference index and the Company's TSR are both positive, vesting of the rTSR tranche is calculated as fifty percent (50%) plus one percent (1%) per relative percentage of performance gain until the Company's return is equal to the index (thus vesting at 150% if TSR is equal to the index). If the Company's TSR exceeds the index, vesting shall occur at the rate of 150% plus 2% for every relative 1% the Company's TSR exceeds the index, capped at 200% vesting.

(c) If TSR is negative and the reference index is positive, no rTSR tranche will be vested.

(d) If the reference index and the Company's TSR are both negative, then the rTSR tranche will vest at 100% if the Company's TSR performed the same or better than the reference index. For every 1% for which the Company's relative TSR underperforms the reference index, 1% of vesting will be lost until 0% vesting is reached

(e) If the Company has positive TSR, and the reference index is negative, then the rTSR tranche will vest at 200%.

3. Forfeiture of Unvested Restricted Stock Units upon Employment Termination.

In the event that the Recipient ceases to be employed by or provide services to the Company for any reason or no reason, with or without cause, all of the Restricted Stock Units that are unvested as of the time of such employment termination shall be forfeited immediately and automatically to the Company, without the payment of any consideration to the Recipient, effective as of such termination of employment or service relationship. The Recipient shall have no further rights with respect to any Restricted Stock Units that are so forfeited. If the Recipient is employed by or provides services to a Subsidiary or Affiliate of the Company, any references in this Agreement to employment or service relationship with the Company shall instead be deemed to refer to employment or service relationship with such Subsidiary or Affiliate.

4. Restrictions on Transfer.

The Recipient shall not sell, assign, transfer, pledge, hypothecate or otherwise dispose of, by operation of law or otherwise (collectively, "transfer") any Restricted Stock Units, or any interest therein, until such Restricted Stock Units have vested.

5. Settlement.

Upon becoming vested as provided herein, the Company shall issue or cause to be issued a number of shares of Company Stock equal to the number of Restricted Stock Units granted to Recipient that have become vested on the applicable vesting date as provided herein.

6. No Rights as a Shareholder.

Recipient shall have no rights as a Company shareholder until the Restricted Stock Units have vested and the Stock has been issued to the Recipient, including, without limitation, any voting rights or rights to receive dividends and distributions with respect to the Restricted Stock Units.

7. Tax Matters.

The Recipient acknowledges and agrees that the Restricted Stock Units are subject to all applicable federal, state and local taxes and foreign taxes and withholding requirements, and the Company has the right to deduct from payments of any kind otherwise due to the Recipient any federal, state, local or other taxes of any kind required by law to be withheld with respect to the vesting of the Restricted Stock Units. On the date on which Restricted Stock Units vest, the Company shall deliver written notice to the Recipient of the estimated amount of withholding taxes due with respect to the vesting of the Restricted Stock Units that vest on such date; provided, however, that the total tax withholding cannot exceed the Company's minimum statutory withholding obligations (based on minimum statutory withholding rates for federal and state tax purposes, including payroll taxes, that are applicable to such supplemental taxable income). The Recipient may satisfy such tax withholding obligations by making a cash payment to the Company on the date of vesting of the Restricted Stock Units, in the amount of the Company's withholding obligation in connection with the vesting of such Restricted Stock Units. The Recipient may, at the option of the Recipient and if the Committee so approves in advance of the applicable vesting date, satisfy such tax withholding obligations by transferring to the Company, on each date on which Restricted Stock Units vest under this Agreement, such number of shares of Stock related to the Restricted Stock Units that vest on such date as have a fair market value (calculated using the last reported sale price of the common stock of the Company immediately prior to such vesting date) equal to the amount of the Company's tax withholding obligation in connection with the vesting of such Restricted Stock Units.

8. Effects of Changes in Capitalization.

(a) Changes in Stock. If the number of outstanding shares of Stock is increased or decreased or the shares of Stock are changed into or exchanged for a different number of shares or kind of capital stock or other securities of the Company on account of any recapitalization, reclassification, stock split, reverse stock split, spin-off, combination of stock, exchange of stock, stock dividend or other distribution payable in capital stock, or other increase or decrease in shares of Stock effected without receipt of consideration by the Company occurring after the Grant Date, the number and kinds of shares of stock shall be adjusted proportionately and accordingly by the Committee. In addition, the number and kind of shares of stock for which Awards are outstanding shall be adjusted proportionately and accordingly by the Committee so that the proportionate interest of the Recipient therein immediately following such event shall, to the extent practicable, be the same as immediately before such event.

(b) Reorganization in Which the Company Is the Surviving Entity Which Does not Constitute a Change in Control. If the Company shall be the surviving entity in any reorganization, merger or consolidation of the Company with one or more other entities which does not constitute a Change in Control, any Award theretofore granted shall pertain to and apply to the securities to which a holder of the number of shares of Stock subject to such Award would have been entitled immediately following such reorganization, merger or consolidation, with a corresponding proportionate adjustment of shares so that the aggregate value of the award thereafter shall be the same as the aggregate value immediately prior to such reorganization, merger, or consolidation. Subject to any contrary language in the Agreement or in another agreement with the Recipient, or otherwise set forth in writing, any restrictions applicable to such Award shall apply as well to any replacement shares received by the Recipient as a result of such reorganization, merger or consolidation.

(c) Change in Control in which Awards are not Assumed. Except as otherwise provided in the applicable Award Agreement or in another agreement with the Recipient, or as otherwise set forth in writing, upon the occurrence of a Change in Control in which outstanding Restricted Stock Units are not being assumed or continued, the following provision shall apply to such Award, to the extent not assumed or continued: all outstanding Restricted Stock Units shall be deemed to have vested immediately prior to the occurrence of such Change in Control, the Committee may elect, in its sole discretion, to cancel any outstanding Restricted Stock Units and pay or deliver, or cause to be paid or delivered, to the holder thereof an amount in cash or securities having a value (as determined by the Committee acting in good faith).

(d) Change in Control in which Awards are Assumed. Except as otherwise provided in the applicable Award Agreement or in another agreement with the Recipient, or as otherwise set forth in writing, upon the occurrence of a Change in Control in which outstanding Restricted Stock Units are being assumed or continued, the following provision shall apply to such Award, to the extent assumed or continued: the Restricted Stock Units shall continue in the manner and under the terms so provided in the event of any Change in Control to the extent that provision is made in writing in connection with such Change in Control for the assumption or continuation of such Restricted Stock Units or for the substitution for such Restricted Stock Units of new restricted stock relating to the stock of a successor entity, or a parent or Subsidiary thereof, with appropriate adjustments as to the number of shares (disregarding any consideration that is not common stock). In the event an Award is assumed, continued or substituted upon the consummation of any Change in Control and the employment of such Recipient with the Company or an Affiliate is terminated without Cause within one year following the consummation of such Change in Control, such Award shall be fully vested and may be exercised in full, to the extent applicable, beginning on the date of such termination and for the one-year period immediately following such termination or for such longer period as the Committee shall determine, but only to the extent permitted under Code Section 409A.

(e) Adjustments. Adjustments under this section related to shares of Stock or other securities of the Company shall be made by the Committee, whose determination in that respect shall be final, binding and conclusive. No fractional shares or other securities shall be issued pursuant to any such adjustment, and any fractions resulting from any such adjustment shall be eliminated in each case by rounding downward to the nearest whole share. The Committee may provide in the applicable Award Agreement at the time of grant, in another agreement with the Recipient, or otherwise in writing at any time thereafter with the consent of the Recipient, for different provisions to apply to an Award in place of those provided in section. This section shall not limit the Committee's ability to provide for alternative treatment of Awards outstanding in the event of a change in control event involving the Company that is not a Change in Control.

(f) No Limitations on Company. The making of this Award shall not affect or limit in any way the right or power of the Company to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure or to merge, consolidate, dissolve, or liquidate, or to sell or transfer all or any part of its business or assets (including all or any part of the business or assets of any Subsidiary or other Affiliate) or engage in any other transaction or activity.

9. Miscellaneous.

(a) Authority of Committee. In making any decisions or taking any actions with respect to the matters covered by this Agreement, the Committee of the Company's Board of Directors shall have all authority and discretion. All decisions and actions by the Committee, as approved by the Board of Directors, with respect to this Agreement shall be made in the Committee's discretion and shall be final and binding on the Recipient.

(b) No Right to Continued Employment. The Recipient acknowledges and agrees that, notwithstanding the fact that the vesting of the Restricted Stock Units is contingent upon his or her continued employment by, or service to, the Company or any Subsidiary or Affiliate, this Agreement does not constitute an express or implied promise of continued employment or service or confer upon the Recipient any rights with respect to continued employment by, or service to, the Company or any Subsidiary or Affiliate.

(c) Governing Law. This Agreement shall be construed, interpreted and enforced in accordance with the internal laws of the State of Delaware without regard to any applicable conflicts of law's provisions.

(d) Independent Legal and Tax Advice. The Recipient has been advised, and the Recipient hereby acknowledges, that he has been advised to obtain independent legal and tax advice regarding this Agreement, the grant of the Restricted Stock Units, the Plan and the disposition of such shares, including, without limitation, the impact of Code Section 409A, and none of the Company, its Affiliates, Subsidiaries, their shareholders, directors, officers, employees nor any of their agents guarantee or are otherwise responsible for any tax treatment to Recipient or his or her heirs with respect to the Restricted Stock Units, this Agreement or the Plan, including any excise tax under Code Section 409A.

(e) Code Section 409A. The Committee shall to the extent applicable interpret and construe this Award to comply with Code Section 409A and Section 18.10 of the Plan, and to the extent required a Change in Control shall be limited to a Change in Control that complies with Code Section 409A. The Committee may interpret or amend this Award to comply with Code Section 409A without the Recipient's consent even if such amendment would have an adverse effect on this Award. To the extent required under Code Section 409A, in the case of any Recipient who is specified employee, a distribution on account of a separation from service may not be made before the date which is six months after the date of the Recipient's separation from service (or, if earlier, the date of the Recipient's death). For purposes of the foregoing and to the extent required by Code Section 409A with respect to an Award, the terms "separation from service" and "specified employee" all shall be defined in the same manner as those terms are defined for purposes of Section 409A of the Code, and the limitations set forth herein shall be applied in such manner (and only to the extent) as shall be necessary to comply with any requirements of Section 409A of the Code that are applicable to the Award as determined by the Committee. Furthermore, to the extent required under Code Section 409A, none of the Company, the Committee or Board shall have any discretion otherwise provided in the Plan or herein to the extent such discretion is prohibited under Code Section 409A for compliance with Code Section 409A with respect to deferred compensation including, without limitation, any discretion to accelerate or substitute as permitted under the Plan or determine an event is or is not a Change in Control.

(f) Recipient's Acknowledgments. The Recipient acknowledges that he or she has read this Agreement and understands the terms and conditions of this Agreement, and that a copy of the Plan has been provided to Recipient electronically.

Exhibit 10.2

OCEAN POWER TECHNOLOGIES, INC.

<u>Restricted Stock Unit Agreement and Recipient's Acceptance Agreement</u>

Name of Recipient: ______________________________

Number of Restricted Stock Units awarded: ______________________________

Grant Date:

Ocean Power Technologies, Inc. (the "Company") has selected you to receive an Award of restricted stock units in the number described above in this acceptance agreement ("Acceptance Agreement"), which is subject to the terms and conditions contained in the Restricted Stock Unit Agreement (attached) and the Ocean Power Technologies, Inc. 2015 Omnibus Incentive Plan.

Please confirm your acceptance of this restricted stock unit Award and its terms and conditions by signing a copy of this Acceptance Agreement where indicated below and forwarding it to: Ocean Power Technologies, Inc., Attention: CFO, 28 Engelhard Drive, Monroe Township, NJ 08831.

Ocean Power Technologies, Inc.

By: ______________________________
Signature

____
Printed Name

____
Title

Accepted and Agreed:

____
Signature of Recipient

____
Printed Name of Recipient

OCEAN POWER TECHNOLOGIES, INC.

Restricted Stock Unit Agreement

The terms and conditions of the Award of restricted stock units (the “Restricted Stock Units” or “RSUs”) under the Ocean Power Technologies, Inc. 2015 Omnibus Incentive Plan (the “Plan”) made to the Recipient, as set forth in the Acceptance Agreement dated ____, are as follows:

1. Issuance of Restricted Stock Units.

The Restricted Stock Units will be accounted for by the Company in book entry form only, in the name of the Recipient. The Recipient shall have no rights with respect to the Restricted Stock Units as a Company shareholder until such Restricted Stock Units are vested and Stock is issued to the Recipient by the Company. The Recipient agrees that the Restricted Stock Units shall be subject to the forfeiture provisions set forth in Section 3 of this Agreement and the restrictions on transfer set forth in Section 4 of this Agreement. The grant of Restricted Stock Units is governed by the Acceptance Agreement, this Restricted Stock Unit Agreement and the Plan, which provide, among other things, definitions of the capitalized terms and the other terms and conditions respecting the Restricted Stock Units granted to Recipient, and the Acceptance Agreement and the Plan are hereby incorporated by reference.

2. Vesting.

Unless otherwise provided in this Agreement or the Plan, the Restricted Stock Units will vest as to 100% of the granted shares on the date of the first annual shareholders meeting following the Grant Date or one year after the Grant Date, whichever is earlier.

3. Forfeiture of Unvested Restricted Stock Units upon Employment Termination.

In the event that the Recipient ceases to be employed by or provide services to the Company for any reason or no reason, with or without cause, all of the Restricted Stock Units that are unvested as of the time of such employment termination shall be forfeited immediately and automatically to the Company, without the payment of any consideration to the Recipient, effective as of such termination of employment or service relationship. The Recipient shall have no further rights with respect to any Restricted Stock Units that are so forfeited. If the Recipient is employed by or provides services to a Subsidiary or Affiliate of the Company, any references in this Agreement to employment or service relationship with the Company shall instead be deemed to refer to employment or service relationship with such Subsidiary or Affiliate.

4. Restrictions on Transfer.

The Recipient shall not sell, assign, transfer, pledge, hypothecate or otherwise dispose of, by operation of law or otherwise (collectively, “transfer”) any Restricted Stock Units, or any interest therein, until such Restricted Stock Units have vested.

5. Settlement.

Upon becoming vested as provided herein, the Company shall issue or cause to be issued a number of shares of Company Stock equal to the number of Restricted Stock Units granted to Recipient that have become vested on the applicable vesting date as provided herein.

6. No Rights as a Shareholder.

Recipient shall have no rights as a Company shareholder until the Restricted Stock Units have vested and the Stock has been issued to the Recipient, including, without limitation, any voting rights or rights to receive dividends and distributions with respect to the Restricted Stock Units.

7. Tax Matters.

The Recipient acknowledges and agrees that the Restricted Stock Units are subject to all applicable federal, state and local taxes and foreign taxes and withholding requirements, and the Company has the right to deduct from payments of any kind otherwise due to the Recipient any federal, state, local or other taxes of any kind required by law to be withheld with respect to the vesting of the Restricted Stock Units. On the date on which Restricted Stock Units vest, the Company shall deliver written notice to the Recipient of the estimated amount of withholding taxes due with respect to the vesting of the Restricted Stock Units that vest on such date; provided, however, that the total tax withholding cannot exceed the Company's minimum statutory withholding obligations (based on minimum statutory withholding rates for federal and state tax purposes, including payroll taxes, that are applicable to such supplemental taxable income). The Recipient may satisfy such tax withholding obligations by making a cash payment to the Company on the date of vesting of the Restricted Stock Units, in the amount of the Company's withholding obligation in connection with the vesting of such Restricted Stock Units. The Recipient may, at the option of the Recipient and if the Committee so approves in advance of the applicable vesting date, satisfy such tax withholding obligations by transferring to the Company, on each date on which Restricted Stock Units vest under this Agreement, such number of shares of Stock related to the Restricted Stock Units that vest on such date as have a fair market value (calculated using the last reported sale price of the common stock of the Company immediately prior to such vesting date) equal to the amount of the Company's tax withholding obligation in connection with the vesting of such Restricted Stock Units.

8. Effects of Changes in Capitalization.

(a) Changes in Stock. If the number of outstanding shares of Stock is increased or decreased or the shares of Stock are changed into or exchanged for a different number of shares or kind of capital stock or other securities of the Company on account of any recapitalization, reclassification, stock split, reverse stock split, spin-off, combination of stock, exchange of stock, stock dividend or other distribution payable in capital stock, or other increase or decrease in shares of Stock effected without receipt of consideration by the Company occurring after the Grant Date, the number and kinds of shares of stock shall be adjusted proportionately and accordingly by the Committee. In addition, the number and kind of shares of stock for which Awards are outstanding shall be adjusted proportionately and accordingly by the Committee so that the proportionate interest of the Recipient therein immediately following such event shall, to the extent practicable, be the same as immediately before such event.

(b) Reorganization in Which the Company Is the Surviving Entity Which Does not Constitute a Change in Control. If the Company shall be the surviving entity in any reorganization, merger or consolidation of the Company with one or more other entities which does not constitute a Change in Control, any Award theretofore granted shall pertain to and apply to the securities to which a holder of the number of shares of Stock subject to such Award would have been entitled immediately following such reorganization, merger or consolidation, with a corresponding proportionate adjustment of shares so that the aggregate value of the award thereafter shall be the same as the aggregate value immediately prior to such reorganization, merger, or consolidation. Subject to any contrary language in the Agreement or in another agreement with the Recipient, or otherwise set forth in writing, any restrictions applicable to such Award shall apply as well to any replacement shares received by the Recipient as a result of such reorganization, merger or consolidation.

(c) Change in Control in which Awards are not Assumed. Except as otherwise provided in the applicable Award Agreement or in another agreement with the Recipient, or as otherwise set forth in writing, upon the occurrence of a Change in Control in which outstanding Restricted Stock Units are not being assumed or continued, the following provision shall apply to such Award, to the extent not assumed or continued: all outstanding Restricted Stock Units shall be deemed to have vested immediately prior to the occurrence of such Change in Control, the Committee may elect, in its sole discretion, to cancel any outstanding Restricted Stock Units and pay or deliver, or cause to be paid or delivered, to the holder thereof an amount in cash or securities having a value (as determined by the Committee acting in good faith).

(d) Change in Control in which Awards are Assumed. Except as otherwise provided in the applicable Award Agreement or in another agreement with the Recipient, or as otherwise set forth in writing, upon the occurrence of a Change in Control in which outstanding Restricted Stock Units are being assumed or continued, the following provision shall apply to such Award, to the extent assumed or continued: the Restricted Stock Units shall continue in the manner and under the terms so provided in the event of any Change in Control to the extent that provision is made in writing in connection with such Change in Control for the assumption or continuation of such Restricted Stock Units or for the substitution for such Restricted Stock Units of new restricted stock relating to the stock of a successor entity, or a parent or Subsidiary thereof, with appropriate adjustments as to the number of shares (disregarding any consideration that is not common stock). In the event an Award is assumed, continued or substituted upon the consummation of any Change in Control and the employment of such Recipient with the Company or an Affiliate is terminated without Cause within one year following the consummation of such Change in Control, such Award shall be fully vested and may be exercised in full, to the extent applicable, beginning on the date of such termination and for the one-year period immediately following such termination or for such longer period as the Committee shall determine, but only to the extent permitted under Code Section 409A.

(e) Adjustments. Adjustments under this section related to shares of Stock or other securities of the Company shall be made by the Committee, whose determination in that respect shall be final, binding and conclusive. No fractional shares or other securities shall be issued pursuant to any such adjustment, and any fractions resulting from any such adjustment shall be eliminated in each case by rounding downward to the nearest whole share. The Committee may provide in the applicable Award Agreement at the time of grant, in another agreement with the Recipient, or otherwise in writing at any time thereafter with the consent of the Recipient, for different provisions to apply to an Award in place of those provided in section. This section shall not limit the Committee's ability to provide for alternative treatment of Awards outstanding in the event of a change in control event involving the Company that is not a Change in Control.

(f) No Limitations on Company. The making of this Award shall not affect or limit in any way the right or power of the Company to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure or to merge, consolidate, dissolve, or liquidate, or to sell or transfer all or any part of its business or assets (including all or any part of the business or assets of any Subsidiary or other Affiliate) or engage in any other transaction or activity.

9. Miscellaneous.

(a) Authority of Committee. In making any decisions or taking any actions with respect to the matters covered by this Agreement, the Committee of the Company's Board of Directors shall have all authority and discretion. All decisions and actions by the Committee, as approved by the Board of Directors, with respect to this Agreement shall be made in the Committee's discretion and shall be final and binding on the Recipient.

(b) No Right to Continued Employment. The Recipient acknowledges and agrees that, notwithstanding the fact that the vesting of the Restricted Stock Units is contingent upon his or her continued employment by, or service to, the Company or any Subsidiary or Affiliate, this Agreement does not constitute an express or implied promise of continued employment or service or confer upon the Recipient any rights with respect to continued employment by, or service to, the Company or any Subsidiary or Affiliate.

(c) Governing Law. This Agreement shall be construed, interpreted and enforced in accordance with the internal laws of the State of Delaware without regard to any applicable conflicts of law's provisions.

(d) Independent Legal and Tax Advice. The Recipient has been advised, and the Recipient hereby acknowledges, that he has been advised to obtain independent legal and tax advice regarding this Agreement, the grant of the Restricted Stock Units, the Plan and the disposition of such shares, including, without limitation, the impact of Code Section 409A, and none of the Company, its Affiliates, Subsidiaries, their shareholders, directors, officers, employees nor any of their agents guarantee or are otherwise responsible for any tax treatment to Recipient or his or her heirs with respect to the Restricted Stock Units, this Agreement or the Plan, including any excise tax under Code Section 409A.

(e) Code Section 409A. The Committee shall to the extent applicable interpret and construe this Award to comply with Code Section 409A and Section 18.10 of the Plan, and to the extent required a Change in Control shall be limited to a Change in Control that complies with Code Section 409A. The Committee may interpret or amend this Award to comply with Code Section 409A without the Recipient's consent even if such amendment would have an adverse effect on this Award. To the extent required under Code Section 409A, in the case of any Recipient who is specified employee, a distribution on account of a separation from service may not be made before the date which is six months after the date of the Recipient's separation from service (or, if earlier, the date of the Recipient's death). For purposes of the foregoing and to the extent required by Code Section 409A with respect to an Award, the terms "separation from service" and "specified employee" all shall be defined in the same manner as those terms are defined for purposes of Section 409A of the Code, and the limitations set forth herein shall be applied in such manner (and only to the extent) as shall be necessary to comply with any requirements of Section 409A of the Code that are applicable to the Award as determined by the Committee. Furthermore, to the extent required under Code Section 409A, none of the Company, the Committee or Board shall have any discretion otherwise provided in the Plan or herein to the extent such discretion is prohibited under Code Section 409A for compliance with Code Section 409A with respect to deferred compensation including, without limitation, any discretion to accelerate or substitute as permitted under the Plan or determine an event is or is not a Change in Control.

(f) Recipient's Acknowledgments. The Recipient acknowledges that he or she has read this Agreement and understands the terms and conditions of this Agreement, and that a copy of the Plan has been provided to Recipient electronically.

Exhibit 10.3

OPT
OCEAN POWER TECHNOLOGIES

Non-Qualified Stock Option Agreement

Name of Recipient:

Number of shares of non-qualified stock options awarded:

Grant Date:

Ocean Power Technologies, Inc. (the “Company”) has selected you to receive a non-qualified stock option award (“NQSO”), which is subject to the provisions of the Company’s 2015 Omnibus Incentive Plan (the “Plan”), as amended, and the terms and conditions contained in this NQSO Agreement. Attached for your information is;

- NQSO Agreement, with attached Notice of Exercise of Stock Option form
- Participant’s Acceptance
- 2015 Omnibus Incentive Plan, as amended

Please confirm your acceptance of this NQSO Agreement and its various terms and conditions by signing a copy of this Agreement where indicated below and forwarding it to: Ocean Power Technologies, Inc., Attention: CFO, 28 Engelhard Drive, Suite B, Monroe Township, NJ 08831. The Company must have the signed Participant’s Acceptance, for your stock options to be issued.

Also, you should consult with a tax advisor concerning tax implications, if any, of these options and their prospective exercise by you.

Ocean Power Technologies, Inc.

By: ______________________________
Signature

____
Printed Name

____
Title

OCEAN POWER TECHNOLOGIES, INC.

Non-qualified Stock Option Agreement
Granted Under the 2015 Omnibus Incentive Plan, as amended

1. Grant of Option.

This Agreement evidences the grant by Ocean Power Technologies, Inc., a Delaware corporation (the “Company”), on _______ (the “Grant Date”) to _______, an employee of the Company (the “Participant”), of an option to purchase, in whole or in part, on the terms provided herein and in the Company’s 2015 Omnibus Incentive Plan (the “Plan”), as amended, a total of _______ shares (the “Shares”) of common stock, $0.001 par value per share, of the Company (“Common Stock”) at $___ per Share, which was the 10 day volume weighted average (VWAP) share pricing on the closing of the markets on _______. Unless earlier terminated, this option shall expire at 5:00 p.m., Eastern time, on _______ (the “Final Exercise Date”).

It is intended that the option evidenced by this Agreement shall not be an incentive stock option as defined in Section 422 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder (the “Code”). Except as otherwise indicated by the context, the term “Participant”, as used in this Agreement, shall be deemed to include any person who acquires the right to exercise this option validly under its terms.

2. Vesting Schedule. Unless otherwise provided in this Agreement or the Plan, this option will become exercisable (“vest”) as to one third each on the first, second, and third anniversaries of the Grant Date.

3. Exercise of Option.

(a) Form of Exercise. Each election to exercise this option shall be in writing using the Notice of Stock Option Exercise attached hereto, signed by the Participant, and received by the Company at its principal office, accompanied by this Agreement, and payment in full in the manner provided in the Plan. The Participant may provide a check as payment or provide instructions to the Company to conduct a cashless exercise. The Participant may purchase less than the total number of shares covered hereby, provided that no partial exercise of this option may be for any fractional share.

(b) Continuous Relationship with the Company Required. Except as otherwise provided in this Section 3, this option may not be exercised unless the Participant, at the time he or she exercises this option, is, and has been at all times since the Grant Date, an employee, officer or director of, or consultant or advisor to, the Company or any other entity the employees, officers, directors, consultants, or advisors of which are eligible to receive option grants under the Plan (an “Eligible Participant”).

(c) Termination of Relationship with the Company. If the Participant ceases to be an Eligible Participant for any reason, then, except as provided in paragraphs (d) and (e) below, the right to exercise this option shall terminate three months after such cessation (but in no event after the Final Exercise Date), provided that this option shall be exercisable only to the extent that the Participant was entitled to exercise this option on the date of such cessation. Notwithstanding the foregoing, if the Participant, prior to the Final Exercise Date, violates the non-competition or confidentiality or other provisions of any employment contract, confidentiality and nondisclosure agreement or other agreement between the Participant and the Company, the right to exercise this option shall terminate immediately upon written notice to the Participant from the Company describing such violation.

(d) Exercise Period Upon Death or Disability. If the Participant dies or becomes disabled (within the meaning of Section 22(e)(3) of the Code) prior to the Final Exercise Date while he or she is an Eligible Participant and the Company has not terminated such relationship for “cause” as specified in paragraph (e) below, this option shall be exercisable, within the period of 365 days following the date of death or disability of the Participant, by the Participant (or in the case of death by an authorized transferee), provided that this option shall be exercisable only to the extent that this option was exercisable by the Participant on the date of his or her death or disability, and further provided that this option shall not be exercisable after the Final Exercise Date.

(e) Termination for Cause. If, prior to the Final Exercise Date, the Participant’s employment or other relationship with the Company is terminated by the Company for Cause (as defined below), the right to exercise this option shall terminate immediately upon the effective date of such termination of employment or other relationship. If, prior to the Final Exercise Date, the Participant is given notice by the Company of the termination of his or her employment or other relationship by the Company for Cause, and the effective date of such employment or other termination is subsequent to the date of the delivery of such notice, the right to exercise this option shall be suspended from the time of the delivery of such notice until the earlier of (i) such time as it is determined or otherwise agreed that the Participant’s employment or other relationship shall not be terminated for Cause as provided in such notice or (ii) the effective date of such termination of employment or other relationship (in which case the right to exercise this option shall, pursuant to the preceding sentence, terminate immediately upon the effective date of such termination of employment or other relationship). If the Participant is party to an employment, consulting or service agreement or letter with the Company that contains a definition of “cause” for termination of employment or other relationship, “Cause” shall have the meaning ascribed to such term in such agreement or letter. Otherwise, “Cause” shall mean willful misconduct by the Participant or willful failure by the Participant to perform his or her responsibilities to the Company (including, without limitation, breach by the Participant of any provision of any employment, consulting, advisory, service, nondisclosure, non-competition or other similar agreement or letter between the Participant and the Company), as determined by the Company, which determination shall be conclusive. The Participant shall be considered to have been discharged for “Cause” if the Company determines, within 30 days after the Participant’s resignation, that discharge for cause was warranted.

4. Withholding.

No Shares will be issued pursuant to the exercise of this option unless and until the Participant pays to the Company or makes provision satisfactory to the Company for payment of, any federal, state or local withholding taxes required by law to be withheld in respect of this option to the degree that such federal, state or local withholding taxes are applicable to the Participant.

5. Non-transferability of Option.

This option may not be sold, assigned, transferred, pledged or otherwise encumbered by the Participant, either voluntarily or by operation of law, except by will or the laws of descent and distribution, and, during the lifetime of the Participant, this option shall be exercisable only by the Participant.

6. Provisions of the Plan.

This option is subject to the provisions of the Plan (including the provisions relating to amendments to the Plan), a copy of which is furnished to the Participant with this option.

IN WITNESS WHEREOF, the Company has caused this option to be executed under its corporate seal by its duly authorized officer. This option shall take effect as a sealed instrument.

Ocean Power Technologies, Inc.

By: ____________________________
Name:
Title:

PARTICIPANT'S ACCEPTANCE

The undersigned hereby accepts the foregoing NQSO granted on ______ for _______ shares of the Company's stock and agrees to the terms and conditions of the NSQO Agreement to which this Acceptance is attached and such terms and conditions are incorporated by reference wherein. The undersigned hereby acknowledges receipt of a copy of the Company's 2015 Omnibus Incentive Plan, as amended.

PARTICIPANT:

____
(Signature)

____
(Printed Name)

Address: ______________________________

____

NOTICE OF STOCK OPTION EXERCISE

Date: _____________

To: Ocean Power Technologies, Inc.

Attention: Chief Financial Officer

I am the holder of Non-Qualified Stock Options granted to me under the Ocean Power Technologies, Inc. (the "Company") 2015 Omnibus Incentive Plan, as amended.

I hereby exercise my option to purchase _________ shares of Common Stock from my award granted to me on ________________________ at a purchase price of $_______ per share.

Please select type of transaction from choices below;

______ I hereby exercise a cashless exercise to purchase and sell shares of Common Stock.

Market order_____ or limit order _____, specify limit price $_______

If limit order- day order_______ or good-until-cancelled (30-day) _______

Disbursement method- wire transfer ______ or check ______

<u>Wire transfer information:</u>

Bank Name:

Bank Address:

ABA #:

Account #:

Beneficiary Account Name:

Please attached IRS Form W-9 (only needed the first time an exercise is done).

______ I hereby exercise a sell to cover, whereby enough shares will be sold to cover the purchase price and any withholding taxes and transaction fees. Remaining shares will be sent to optionee's account. Please register my stock certificate per information provide below.

______ I hereby exercise my option to purchase ____________ shares of Common Stock, for which I have wire transferred ______or enclosed a check ______ in the amount of _______________. Please register my stock certificate per information provide below.

Name(s): ______________________

____

Address: ______________________

____

Tax I.D. #: or Social Security # ______________________

Very truly yours,

____

(Signature)

____

(Print Name)

Exhibit 31.1

CERTIFICATION PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT

I, Philipp Stratmann, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or other persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 13, 2023

/s/ Philipp Stratmann

Philipp Stratmann

President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT

I, Robert Powers, certify that:

1 I have reviewed this Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc.;

2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4 The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5 The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or other persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 13, 2023

/s/ Robert Powers

Robert Powers

Senior Vice President and Chief Financial Officer

Exhibit 32.1

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

In connection with the Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc. (the “Company”) for the period ended January 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, Philipp Stratmann III, President and Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 13, 2023

/s/ Philipp Stratmann

Philipp Stratmann
President and Chief Executive Officer

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

Exhibit 32.2

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

In connection with the Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc. (the "Company") for the period ended January 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Robert Powers, Senior Vice President and Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 13, 2023

/s/ Robert Powers

Robert Powers
Senior Vice President and Chief Financial Officer

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