

**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 October 31, 2020**

**Or**

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

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

**Commission file number: 001-33417**

**OCEAN POWER TECHNOLOGIES, INC.**

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

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

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

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

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

**(609) 730-0400**

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

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

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

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

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

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

As of December 4, 2020, the number of outstanding shares of common stock of the registrant was 30,798,438.

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

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

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

- the impact of the COVID-19 pandemic on our business, operations, customers, suppliers and manufacturers;
- our ability to 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 a number of factors, including market conditions, and our operating performance;
- our ability to continue as a going concern;
- our estimates regarding expenses, future revenues and capital requirements;
- the adequacy of our cash balances and our need for additional financings;
- our ability to develop and manufacture commercially viable products;
- our ability to successfully develop and market new products and solutions, such as the subsea battery and Marine Surveillance Solutions;
- that we will be successful in our efforts to commercialize our products or the timetable upon which commercialization can be achieved, if at all;
- our ability to identify and penetrate markets for our products and solutions;
- our ability to implement our commercialization strategy as planned, or at all;
- our ability to improve the power output, survivability and reliability of our products;
- our relationships with our strategic partners may not be successful and we may not be successful in establishing additional relationships;
- the reliability of our technology, products and solutions;
- our ability to maintain the listing of our common stock on the Nasdaq Capital Market;
- our ability to raise capital through our current equity facilities;
- the impact of pending and threatened litigation on our business, financial condition and liquidity;

- changes in current legislation, regulations and economic conditions that affect the demand for renewable energy;
- our ability to compete effectively in our target markets;
- our limited operating history and history of operating losses;
- our sales and marketing capabilities and strategy in the United States and internationally; and
- our ability to protect our intellectual property portfolio.

Any or all of our forward-looking statements in this report may turn out to be inaccurate. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. They may be affected by inaccurate assumptions we might make or unknown risks and uncertainties, including the risks, uncertainties and assumptions described in Item 1A “Risk Factors” of our Annual Report on Form 10-K for the year ended April 30, 2020, 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)

	October 31, 2020 (Unaudited)	April 30, 2020
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 15,244	\$ 10,002
Restricted cash, short-term	384	707
Accounts receivable	-	105
Contract assets	97	251
Other current assets	1,129	588
Total current assets	16,854	11,653
Property and equipment, net	425	499
Right-of-use asset, net	1,060	1,165
Restricted cash, long-term	222	221
Total assets	\$ 18,561	\$ 13,538
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Loan payable	\$ 350	\$ -
Accounts payable	148	220
Accrued expenses	2,215	1,353
Contract liabilities, current portion	109	100
Right-of-use liability, current portion	244	229
Warrant liabilities	-	-
Paycheck protection program loan- current	396	-
Total current liabilities	3,462	1,902
Paycheck protection program loan, less current portion	495	-
Right-of-use liability, less current portion	954	1,078
Contract liabilities, less current portion	-	65
Total liabilities	4,911	3,045
Commitments and contingencies (Note 16)		
Stockholders' Equity:		
Preferred stock, \$0.001 par value; authorized 5,000,000 shares, none issued or outstanding	-	-
Common stock, \$0.001 par value; authorized 100,000,000 shares, issued 24,153,554 and 12,939,420 shares, respectively	24	13
Treasury stock, at cost; 4,251 shares	(302)	(302)
Additional paid-in capital	240,648	231,101
Accumulated deficit	(226,545)	(220,136)
Accumulated other comprehensive loss	(175)	(183)
Total stockholders' equity	13,650	10,493
Total liabilities and stockholders' equity	\$ 18,561	\$ 13,538

See accompanying notes to unaudited consolidated financial statements.

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

	<u>Three months ended October 31,</u>		<u>Six months ended October 31,</u>	
	<u>2020</u>	<u>2019</u>	<u>2020</u>	<u>2019</u>
Revenues	\$ 118	\$ 204	\$ 287	\$ 406
Cost of revenues	216	288	550	655
Gross loss	<u>(98)</u>	<u>(84)</u>	<u>(263)</u>	<u>(249)</u>
Operating expenses:				
Engineering and product development costs	1,063	1,309	2,315	2,507
Selling, general and administrative costs	1,841	1,838	3,828	3,534
Total operating expenses	<u>2,904</u>	<u>3,147</u>	<u>6,143</u>	<u>6,041</u>
Operating loss	<u>(3,002)</u>	<u>(3,231)</u>	<u>(6,406)</u>	<u>(6,290)</u>
Gain due to the change in fair value of warrant liabilities	-	-	-	6
Interest income, net	8	32	20	74
Other expense, net	(33)	-	(33)	-
Foreign exchange gain/(loss)	3	10	10	(4)
Net loss	<u>\$ (3,024)</u>	<u>\$ (3,189)</u>	<u>\$ (6,409)</u>	<u>\$ (6,214)</u>
Basic and diluted net loss per share	<u>\$ (0.15)</u>	<u>\$ (0.51)</u>	<u>\$ (0.36)</u>	<u>\$ (1.01)</u>
Weighted average shares used to compute basic and diluted net loss per share	<u>20,090,000</u>	<u>6,259,255</u>	<u>17,883,666</u>	<u>6,150,061</u>

See accompanying notes to unaudited consolidated financial statements.

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

	<u>Three months ended October 31,</u>		<u>Six months ended October 31,</u>	
	<u>2020</u>	<u>2019</u>	<u>2020</u>	<u>2019</u>
Net loss	\$ (3,024)	\$ (3,189)	\$ (6,409)	\$ (6,214)
Foreign currency translation adjustment	(7)	(7)	8	(2)
Total comprehensive loss	<u>\$ (3,031)</u>	<u>\$ (3,196)</u>	<u>\$ (6,401)</u>	<u>\$ (6,216)</u>

See accompanying notes to unaudited consolidated financial statements.

**Ocean Power Technologies, Inc. and Subsidiaries**  
**Unaudited Consolidated Statement of Stockholders' Equity**  
(in \$000's, except share data)

**Three Months Ended October 31, 2020**

	<u>Common Shares</u>		<u>Treasury Shares</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Deficit</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Total Stockholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
Balances at August 1, 2020	18,624,816	\$ 19	(4,251)	\$ (302)	\$ 234,089	\$ (223,521)	\$ (168)	10,117
Net loss						(3,024)		(3,024)
Stock based compensation					107			107
Issuance of common stock- Aspire financing, net of issuance costs	500,000	-			606			606
Issuance of common stock- AGP At The Market offering, net of issuance costs	5,028,738	5			5,846			5,851
Other comprehensive gain/(loss)							(7)	(7)
Balance, October 31, 2020	<u>24,153,554</u>	<u>\$ 24</u>	<u>(4,251)</u>	<u>\$ (302)</u>	<u>\$ 240,648</u>	<u>\$ (226,545)</u>	<u>\$ (175)</u>	<u>\$ 13,650</u>

**Six Months Ended October 31, 2020**

	<u>Common Shares</u>		<u>Treasury Shares</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Deficit</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Total Stockholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
Balances at May 1, 2020	12,939,420	\$ 13	(4,251)	\$ (302)	\$ 231,101	\$ (220,136)	\$ (183)	10,493
Net loss						(6,409)		(6,409)
Stock based compensation					223			223
Issuance of common stock- Aspire financing, net of issuance costs	5,525,000	5			3,236			3,241
Issuance of common stock- AGP At The Market offering, net of issuance costs	5,689,134	6			6,088			6,094
Other comprehensive gain/(loss)							8	8
Balance, October 31, 2020	<u>24,153,554</u>	<u>\$ 24</u>	<u>(4,251)</u>	<u>\$ (302)</u>	<u>\$ 240,648</u>	<u>\$ (226,545)</u>	<u>\$ (175)</u>	<u>\$ 13,650</u>

See accompanying notes to unaudited consolidated financial statements.



**Ocean Power Technologies, Inc. and Subsidiaries**  
**Unaudited Consolidated Statement of Stockholders' Equity**  
(in \$000's, except share data)

**Three Months Ended October 31, 2019**

	<u>Common Shares</u>		<u>Treasury Shares</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Deficit</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Total Stockholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
Balances at August 1, 2019	5,775,385	\$ 6	(4,251)	\$ (302)	\$ 226,099	\$ (212,809)	\$ (166)	12,828
Net loss						(3,189)		(3,189)
Stock based compensation					76			76
Common stock issued for commitment fee	194,805	-			294			294
Issuance of common stock- AGP At The Market offering, net of issuance costs	519,478	1			745			746
Other comprehensive loss							(7)	(7)
Balances at October 31, 2019	<u>6,489,668</u>	<u>\$ 7</u>	<u>(4,251)</u>	<u>\$ (302)</u>	<u>\$ 227,214</u>	<u>\$ (215,998)</u>	<u>\$ (173)</u>	<u>\$ 10,748</u>

**Six Months Ended October 31, 2019**

	<u>Common Shares</u>		<u>Treasury Shares</u>		<u>Additional Paid-In Capital</u>	<u>Accumulated Deficit</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Total Stockholders' Equity</u>
	<u>Shares</u>	<u>Amount</u>	<u>Shares</u>	<u>Amount</u>				
Balances at May 1, 2019	5,425,517	\$ 5	(3,770)	\$ (301)	\$ 226,026	\$ (209,784)	\$ (171)	15,775
Net loss						(6,214)		(6,214)
Stock based compensation					168			168
Issuance (forfeiture) of restricted stock, net	(132)	-						-
Exercise of prefunded warrants, net of issuance costs	350,000	1			(19)			(18)
Common stock issued for commitment fee	194,805	-			294			294
Issuance of common stock- AGP At The Market offering, net of issuance costs	519,478	1			745			746
Acquisition of treasury stock			(481)	(1)				(1)
Other comprehensive loss							(2)	(2)
Balances at October 31, 2019	<u>6,489,668</u>	<u>\$ 7</u>	<u>(4,251)</u>	<u>\$ (302)</u>	<u>\$ 227,214</u>	<u>\$ (215,998)</u>	<u>\$ (173)</u>	<u>\$ 10,748</u>

See accompanying notes to unaudited consolidated financial statements.

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

	<b>Six months ended October 31,</b>	
	<b>2020</b>	<b>2019</b>
<b>Cash flows from operating activities:</b>		
Net loss	\$ (6,409)	\$ (6,214)
<b>Adjustments to reconcile net loss to net cash used in operating activities:</b>		
Foreign exchange (gain)/loss	(10)	4
Depreciation of fixed assets	73	77
Amortization of right of use asset	105	96
Compensation expense related to stock option grants and restricted stock	223	168
Gain due to the change in fair value of warrant liabilities	-	(6)
Loss on disposal of property, plant and equipment	2	-
<b>Changes in operating assets and liabilities:</b>		
Accounts receivable	105	(934)
Contract assets	154	(96)
Other assets	(499)	(6)
Accounts payable	(72)	(138)
Accrued expenses	812	(75)
Change in lease liability	(110)	(96)
Contract liabilities	(56)	802
Net cash used in operating activities	<u>(5,682)</u>	<u>(6,418)</u>
<b>Cash flows from investing activities:</b>		
Purchase of property, plant and equipment	-	(41)
Net cash used in investing activities	<u>-</u>	<u>(41)</u>
<b>Cash flows from financing activities:</b>		
Proceeds from Paycheck Protection Program Loan	890	-
Proceeds from loan payable	467	-
Payment of loan payable	(117)	-
Proceeds from issuance of common stock- Aspire financing net of issuance costs	3,241	-
Proceeds from issuance of common stock- AGP At The Market offering, net of issuance costs	6,094	746
Proceeds (costs) associated with exercise of pre-funded warrants	-	(18)
Acquisition of treasury stock	-	(1)
Net cash provided/ (used) by financing activities	<u>10,575</u>	<u>727</u>
Effect of exchange rate changes on cash, cash equivalents and restricted cash	27	(5)
Net increase/(decrease) in cash, cash equivalents and restricted cash	4,920	(5,737)
Cash, cash equivalents and restricted cash, beginning of period	10,930	17,159
Cash, cash equivalents and restricted cash, end of period	<u>\$ 15,850</u>	<u>\$ 11,422</u>
<b>Supplemental disclosure of noncash operating activities:</b>		
Prepaid financing costs reported in accrued expenses	\$ 49	\$ 67
<b>Supplemental disclosure of noncash investing activities:</b>		
Acquisition of property, plant and equipment through accounts payable	\$ -	\$ 3
<b>Supplemental disclosure of noncash financing activities:</b>		
Common stock issued for payment of commitment fee	\$ -	\$ 294

See accompanying notes to unaudited consolidated financial statements.

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

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

***a) Background***

Ocean Power Technologies, Inc. (the “Company”, “we”, “us”, “our”) was founded in 1984 in New Jersey, commenced business operations in 1994 and re-incorporated in Delaware in 2007. We believe that we are a marine power solutions provider. We control the design, manufacture, sales, installation, operations and maintenance of our products and solutions while working closely with partners that provide payloads, integration services, and marine installation capabilities. We believe our solutions provide persistent and reliable distributed offshore power along with communications for remote surface and subsea applications. Our mission and purpose are to utilize our proprietary, state-of-the-art technologies to enhance the environment by reducing the global carbon footprint through clean and renewable solutions for reliable electrical power and, in so doing, drive demand for our products and services. Before 2015, government agencies had accounted for a significant portion of the Company’s revenues. These revenues were largely for the support of product development efforts relating to our technology. Today our goal is to generate the majority of our revenue from the commercialization of products and solutions, and sales of services to support our business operations. As we continue to develop and commercialize our products and services, we expect to have a net decrease in cash due to the use of cash from operating activities until we can achieve positive cash flow from the commercialization of solutions, products and services.

***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 10 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, 2020 filed with the SEC and elsewhere in this Form 10-Q.

***c) Liquidity/Going Concern***

Our consolidated financial statements have been prepared assuming the Company will continue as a going concern. The Company has experienced substantial and recurring losses from operations, which have contributed to an accumulated deficit of \$226.5 million as of October 31, 2020. These factors raise substantial doubt about the Company’s ability to continue as a going concern. As of October 31, 2020, based in part on our equity raises discussed below, the Company had approximately \$15.8 million in cash, cash equivalents, and restricted cash on hand. Based on the Company’s current cash, cash equivalents and restricted cash balances, and its ability to raise additional equity under facilities currently in place, the Company believes that it will be able to finance its capital requirements and operations for at least the next 12 months. Among other things, the Company is currently evaluating a variety of different financing alternatives and we expect to continue to fund our business with sales of our securities and through generating revenue with customers. The Company will require additional equity and/or debt financing to continue its operations into fiscal year 2022. The Company cannot provide assurances that it will be able to secure additional funding when needed or at all, or, if secured, that such funding would be on favorable terms.

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

Management is evaluating different strategies to obtain the required additional funding for future operations. These strategies may include, but are not limited to, continued pursuit of business opportunities, additional funding from current and /or new investors, officers and directors; borrowings of debt; or a public offering of the Company's equity or debt securities. There can be no assurance that any of these future-funding efforts will be successful. The Company currently has committed sources of equity financing through its At the Market Offering Agreement with A.G.P./Alliance Global Partners ("AGP") and its equity line with Aspire Capital (discussed further below), but the Company cannot be sure that additional equity and/or debt financing will be available to the Company as needed on acceptable terms, or at all. Historically, the Company has raised capital through securities sales in the public capital markets. The sale of additional equity or convertible securities could result in dilution to stockholders. If additional funds are raised through the issuance of debt securities, these securities could have rights senior to those associated with the Company's common stock and could contain covenants that would restrict its operations. Financing may not be available in amounts or on terms acceptable to the Company, or at all. If the Company is unable to obtain required financing, the Company may be required to further curtail or limit operations, product development costs, and/or selling, general and administrative activities in order to reduce its cash expenditures, including its planned product development and marketing efforts, which could materially and adversely harm its financial condition and operating results. If the Company is unable to secure additional financing, it may be unable to execute its business plan, take advantage of future opportunities or be forced to cease operations.

In fiscal year 2020 and during the first six months of fiscal year 2021 ended October 31, 2020, the Company has continued to make investments in ongoing product development efforts in anticipation of future growth. The Company's future results of operations involve significant risks and uncertainties. Factors that could affect the Company's future operating results and cause actual results to vary materially from expectations include, but are not limited to, risks from lack of available financing and insufficient capital, performance of products, its inability to market and commercialize its products and new products that it may develop, technology development, scalability of technology and production, dependence on skills of key personnel, concentration of customers and suppliers, deployment risks and laws, regulations and permitting.

On January 7, 2019, the Company entered into an At the Market Offering Agreement ("2019 ATM Facility") with AGP, under which the Company may issue and sell to or through AGP, acting as agent and/or principal, shares of the Company's common stock having an aggregate offering price of up to \$25 million. From inception of the program through October 31, 2020, under the 2019 ATM Facility, the Company sold and issued an aggregate of 10,942,100 shares of its common stock with an aggregate market value of \$11.1 million at an average price of \$1.01 per share and paid AGP a sales commission of approximately \$360,095 related to those shares. On November 20, 2020, the Company entered into a new At the Market Offering Agreement with AGP (the "2020 ATM Facility"). Under the 2020 ATM Facility, the Company may issue and sell to or through AGP, acting as agent and/or principal, shares of the Company's common stock having an aggregate offering price of up to \$50.0 million. In connection with the effectiveness of the 2020 ATM Facility, the 2019 ATM Facility was terminated. For more on the 2020 ATM Facility, see Note 19, Subsequent Events.

On October 24, 2019, the Company entered into a new common stock purchase agreement with Aspire Capital which provided that, subject to certain terms, conditions and limitations, Aspire Capital is committed to purchase up to an aggregate of \$10.0 million of shares of the Company's common stock over a 30-month period. Through September 18, 2020, the Company has sold an aggregate of 6,424,205 shares of common stock with an aggregate market value of \$4.0 million at an average price of \$0.63 per share pursuant to this common stock purchase agreement. The agreement was fully utilized and cancelled on September 18, 2020.

On September 18, 2020, the Company entered into a new common stock purchase agreement with Aspire Capital which provided that, subject to certain terms, conditions and limitations, Aspire Capital is committed to purchase up to an aggregate of \$12.5 million of shares of the Company's common stock over a 30-month period that does not exceed 19.99% of the outstanding common stock on the date of the agreement. The number of shares the Company could issue within the 19.99% limit is 3,722,251 shares. Shareholder approval is needed for sale of common stock over the 19.99% limit of the outstanding common stock on the date of the agreement. Through October 31, 2020, the Company has sold an aggregate of 500,000 shares of common stock with an aggregate market value of \$0.6 million at an average price of \$1.23 per share pursuant to this common stock purchase agreement.

## **(2) Summary of Significant Accounting Policies**

### ***(a) Consolidation***

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

### ***(b) Use of Estimates***

The preparation of the consolidated financial statements requires management of the Company to make a number of estimates and assumptions relating to the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Significant items subject to such estimates and assumptions include estimated costs to complete projects; and the input method used to measure completion over time of customer contracts for purposes of revenue recognition. Actual results could differ from those estimates.

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

*Cash and Cash Equivalents*

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

	<u>October 31, 2020</u>	<u>April 30, 2020</u>
	(in thousands)	
Checking and savings accounts	\$ 2,369	\$ 1,551
Money market account	12,875	8,451
	<u>\$ 15,244</u>	<u>\$ 10,002</u>

*Restricted Cash and Security Agreements*

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

Restricted cash includes the following:

	<u>October 31, 2020</u>	<u>April 30, 2020</u>
	(in thousands)	
Santander Bank	606	928
	<u>\$ 606</u>	<u>\$ 928</u>

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

	<u>October 31, 2020</u>	<u>April 30, 2020</u>
	(in thousands)	
Cash and cash equivalents	\$ 15,244	\$ 10,002
Restricted cash- short term	384	707
Restricted cash- long term	222	221
	<u>\$ 15,850</u>	<u>\$ 10,930</u>

**(d) Concentration of Credit Risk**

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

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

	Three months ended October 31,		Six months ended October 31,	
	2020	2019	2020	2019
Eni S.p.A.	61%	23%	34%	19%
Premier Oil UK Limited	0%	13%	9%	30%
EGP	36%	47%	55%	24%
U.S. Navy	0%	10%	0%	17%
Other	3%	7%	2%	10%
	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>

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

**(e) Share-Based Compensation**

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

	Three months ended October 31,		Six months ended October 31,	
	2020	2019	2020	2019
	(in thousands)			
Engineering and product development	\$ 22	\$ 20	\$ 59	\$ 40
Selling, general and administrative	85	56	164	128
Total share-based compensation expense	<u>\$ 107</u>	<u>\$ 76</u>	<u>\$ 223</u>	<u>\$ 168</u>

**(f) Revenue Recognition**

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

The nature of the Company's contracts may give rise to several types of variable consideration, including unpriced change orders and liquidated damages and penalties. Variable consideration can also arise from modifications to the scope of services. Variable consideration is included in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur once the uncertainty associated with the variable consideration is resolved. Our estimates of variable consideration and determination of whether to include such amounts in the transaction price are based largely on our assessment of legal enforceability, performance and any other information (historical, current, and forecasted) that is reasonably available to us. Accounting Standards Update ("ASU") 2016-10 provides a practical expedient that permits presentation of shipping and handling costs, that occur after control of the promised goods or services transfer to the customer, as fulfillment costs rather than evaluating whether the shipping and handling activities are promised services to the customer. The Company adopted this practical expedient, but it did not have a material effect on its Consolidated Financial Statements.

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

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

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

As of October 31, 2020, the Company's total remaining performance obligations, also referred to as backlog, totaled \$0.8 million. The Company expects to recognize approximately 93%, or \$0.7 million, of the remaining performance obligations as revenue over the next twelve months.

#### *Products and Solutions Leasing*

The Company enters into lease arrangements with certain customers for their products and solutions. As of October 31, 2020, the Company has one lease arrangement with a remaining operating lease term of less than 13 months. Revenue related to multiple-element arrangements is allocated to lease and non-lease elements based on their relative standalone selling prices or expected cost plus a margin approach. Lease elements generally include a PB3 and components, while non-lease elements generally include engineering, monitoring and support services. In the lease arrangement, the customer is provided an option to extend the lease term or purchase the leased PB3 at some point during and/or at the end of the lease term.

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

The Company recognizes revenue from operating lease arrangements generally on a straight-line basis over the lease term and is presented in Revenues in the Consolidated Statement of Operations. The lease income for the three and six months ended October 31, 2020 and 2019 was immaterial.

#### ***(g) Net Loss per Common Share***

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

In computing diluted net loss per share on the Consolidated Statement of Operations, warrants on common stock, options to purchase shares of common stock and non-vested restricted stock issued to employees and non-employee directors, totaling 5,540,469 and 5,007,907 for the three and six months ended October 31, 2020 and 2019, respectively, were excluded from each of the computations as the effect would be anti-dilutive due to the Company's losses.

### (h) 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.*” The amendment in this update replaces the incurred loss impairment methodology in current GAAP with a methodology that reflects expected credit losses on instruments within its scope, including trade receivables. This update is intended to provide financial statement users with more decision-useful information about the expected credit losses. 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.

In August 2018, the FASB issued ASU No. 2018-13, “*Fair Value Measurement (Topic 820).*” The ASU modifies, removes, and adds several disclosure requirements on fair value measurements in Topic 820, Fair Value Measurement. The amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and the narrative description of measurement uncertainty should be applied prospectively for only the most recent interim or annual period presented in the initial fiscal year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective date. The Company adopted this guidance effective May 1, 2020. The adoption of the guidance did not have a material effect on its Consolidated Financial Statements.

In August 2018, the FASB issued ASU No. 2018-15, “*Intangibles — Goodwill and Other — Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That is a Service Contract.*” The ASU requires a customer in a cloud computing arrangement that is a service contract to follow the internal-use software guidance in Accounting Standards Codification 350-40 to determine which implementation costs to defer and recognize as an asset. The ASU permits two methods of adoption: prospectively to all implementation costs incurred after the date of adoption, or retrospectively to each prior reporting period presented. The Company adopted this guidance on a prospective basis effective May 1, 2020. The adoption of the guidance did not have a material effect 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:

	<u>October 31, 2020</u>		<u>April 30, 2020</u>
	(in thousands)		
Accounts receivables	\$	-	\$ 105
Contract assets		97	251
Contract liabilities		109	165

#### *Accounts Receivable*

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



### Contract Assets

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

	<b>Six months ended October 31, 2020</b>	
	(in thousands)	
Transferred to receivables from contract assets recognized at the beginning of the period	\$	(251)
Revenue recognized and not billed as of the end of the period		97
Net change in contract assets	\$	<u>(154)</u>

Contract assets include unbilled amounts typically resulting from arrangements whereby the right to payment is conditioned on completing additional tasks or services for a performance obligation. The decrease in contract assets is primarily a result of services performed relating to our project with Enel Green Power that was billed during the six months ended October 31, 2020.

### Contract Liabilities

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

	<b>Six months ended October 31, 2020</b>	
	(in thousands)	
Revenue recognized that was included in the contract liabilities balance as of the beginning of the period	\$	49
Transferred to contract assets from contract liabilities recognized at the beginning of the period		7
Net change in contract liabilities	\$	<u>56</u>

Contract liabilities consist of amounts invoiced to customers in excess of revenue recognized. The decrease in contract liabilities is primarily due to recognition of revenue relating to our Eni project during the six months ended October 31, 2020.

### (4) Other Current Assets

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

	<b>October 31, 2020</b>		<b>April 30, 2020</b>	
	(in thousands)			
Deposits	\$	154	\$	60
Other receivables		5		2
Prepaid insurance		666		124
Prepaid offering costs		102		275
Prepaid expenses- other		202		127
	\$	<u>1,129</u>	\$	<u>588</u>

## (5) Property and Equipment, net

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

	<u>October 31, 2020</u>	<u>April 30, 2020</u>
	(in thousands)	
Equipment	\$ 342	342
Computer equipment & software	476	486
Office furniture & equipment	339	339
Leasehold improvements	474	474
Construction in process	15	15
	<u>\$ 1,646</u>	<u>\$ 1,656</u>
Less: accumulated depreciation	<u>(1,221)</u>	<u>(1,157)</u>
	<u>\$ 425</u>	<u>\$ 499</u>

Depreciation expense was approximately \$36,000 and \$39,000 for the three-month periods ended October 31, 2020 and 2019, and approximately \$73,000 and \$77,000 for the six-month periods ended October 31, 2020 and 2019, respectively.

## (6) Leases

### *Lessor Information*

As of October 31, 2020, the Company has one lease which has been classified as an operating lease per accounting guidance contained within ASC Topic 842, "Leases". The Company's remaining term on this operating lease is less than 13 months. The maturity of lease payments remaining on this lease is immaterial.

### *Lessee Information*

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 initial lease term is for 7 years with an option to extend the lease for another 5 years. The lease is classified as an operating lease. The operating lease is included in right-of-use assets, lease liabilities- current and lease liabilities- long-term on the Company's Consolidated Balance Sheets.

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. Lease expense for minimum lease payments is recognized on a straight-line basis over the lease term and consists of interest on the lease liability and the amortization of the right of use asset. Variable lease expenses, if any, are recorded as incurred.

On June 10, 2020 the Company signed a 12-month lease for office space in Houston, Texas. The lease can be extended by the Company by providing the lessor on or before the notice date of the Company's intent to renew or terminate the lease. ASC Topic 842, "Leases" allows a company an accounting policy election to recognize lease payments to the Consolidated Statement of Operations on a straight-line basis if the lease term is equal to or less 12 months and not recognize a right-of use asset and lease liability. The accounting policy is made on the commencement date of the lease.

The operating lease cash flow payments for the six months ended October 31, 2020 and 2019 was \$168,000 and \$159,000, respectively.

The components of lease expense in the Consolidated Statement of Operations for both the three and six months ended October 31, 2020 and 2019 was as follows:

	<b>Three months ended October 31,</b>		<b>Six months ended October 31,</b>	
	<b>2020</b>	<b>2019</b>	<b>2020</b>	<b>2019</b>
	(in thousands)			
Operating lease cost	\$ 80	\$ 79	\$ 159	\$ 159
Short-term lease cost	3	-	5	-
<b>Total lease cost</b>	<b>\$ 83</b>	<b>\$ 79</b>	<b>\$ 164</b>	<b>\$ 159</b>

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

	<b>October 31, 2020</b>
	(in thousands)
<b>Operating lease:</b>	
Operating right-of-use asset, net	\$ 1,060
Right-of-use liability- current	244
Right-of-use liability- long term	954
<b>Total lease liability</b>	<b>\$ 1,198</b>
Weighted average remaining lease term- operating leases	3.98 years
Weighted average discount rate- operating leases	8.5%

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

	<b>October 31, 2020</b>
	(in thousands)
Remainder of fiscal year 2021	\$ 168
2022	341
2023	352
2024	362
2025	184
<b>Total future minimum lease payments</b>	<b>\$ 1,407</b>
Less imputed interest	(209)
<b>Total</b>	<b>\$ 1,198</b>

## (7) Accrued Expenses

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

	<b>October 31, 2020</b>	<b>April 30, 2020</b>
	(in thousands)	
Project costs	\$ 142	\$ 48
Contract loss reserve	280	216
Employee incentive payments	526	-
Accrued salary and benefits	499	483
Legal and accounting fees	324	283
Accrued taxes payable	326	177
Other	118	146
	<u>\$ 2,215</u>	<u>\$ 1,353</u>

## (8) Warrants

### *Liability Classified Warrants*

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

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

### *Equity Classified Warrants*

On April 8, 2019, the Company issued and sold 1,542,000 shares of common stock and pre-funded warrants to purchase up to 3,385,680 shares of common stock and common warrants to purchase up to 4,927,680 shares of our common stock in an underwritten public offering. The public offering price for the pre-funded warrants was equal to the public offering price of the common stock, less the \$0.01 per share exercise price of each warrant. As of October 31, 2020, all of the pre-funded warrants have been exercised. The common stock warrants have an exercise price of \$3.85 per share and expire five years from the issuance date. As of October 31, 2020, none of the common stock warrants have been exercised.

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

## (9) Paycheck Protection Program Loan

As a result of the COVID-19 pandemic, on March 27, 2020, the U.S. Government passed into law the Coronavirus Aid, Relief and Economic Security Act, or the (“CARES Act”) which included the ability to secure loans under the Paycheck Protection Program (“PPP”). On May 3, 2020, after its application was submitted and approved, the Company signed a PPP loan with Santander Bank, N.A. (“Santander”) as the lender for \$890,347 pursuant to the PPP under the CARES Act, as implemented by the U.S. Small Business Association (“SBA”). The PPP loan is an unsecured note with Santander as the lender and governed by a loan agreement with Santander. The interest rate is 1% and the loan is repayable over two years. The loan contains customary events of defaults relating to, among other things, payment defaults or breaches of the terms of the loan. Upon the occurrence of an event of default, the lender may require immediate repayment of all outstanding under the loan. Interest and principal payments are deferred for the first 6 months from the date of the loan. Principal and interest of approximately \$49,000 are payable monthly commencing 6 months after the disbursement date and may be repaid by the Company at any time prior to maturity with no prepayment penalties. The Company received the proceeds on May 5, 2020.

The SBA allows loan forgiveness for eligible costs incurred and paid which include (a) payroll costs, (b) interest on any real or personal property mortgage prior to February 15, 2020, (c) rent on any lease in force prior to February 15, 2020, and (d) utility payments for which service began before February 15, 2020. As of October 31, 2020, the Company has utilized all of the loan proceeds. While the Company currently believes that the use of the loan proceeds will meet the conditions for forgiveness of the loan and is in the process of preparing the SBA's forgiveness application, no assurance can be provided that the Company will obtain forgiveness of the loan, in whole or in part.

On June 5, 2020, the Paycheck Protection Program Flexibility Act ("PPPFA") was signed into law. Among other changes, the PPPFA (a) reduced the amount of the loan required to be spent on payroll costs from 75% to 60%, (b) extended the covered period to 24 weeks from 8 weeks, (c) extended the repayment term of the PPP loan from 2 years to 5 years, and (d) increased the deferred payment date from 6 months to 10 months. For the loans disbursed before June 5, 2020, the PPPFA provides the option to opt for 24 weeks for spending the loan instead of 8 weeks. The Company opted for 24 weeks to spend the loan.

The Company is accruing interest expense until the loan is forgiven or repaid. If the loan were not forgiven by the SBA and the Company decided to repay the loan over 2 years, the interest expense for this loan period would be immaterial.

#### **(10) Loan Payable**

In August 2020 the Company signed a commercial premium finance agreement in the amount of \$466,622 with First Insurance Funding whereas First Insurance Funding prepaid a portion of the Company insurance premiums including principally the Directors and Officers insurance. The Company will make eight monthly payments of \$58,957.25, inclusive of interest charges, to repay First Insurance Funding the amount. Interest expense for the loan period is immaterial.

#### **(11) Preferred Stock**

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

#### **(12) Common Stock**

On January 7, 2019, the Company entered into the 2019 ATM Facility with AGP, under which the Company may issue and sell to or through A.G.P./Alliance Global Partners, acting as agent and/or principal, shares of the Company's common stock having an aggregate offering price of up to \$25 million. Since inception of the program through October 31, 2020, under the 2019 ATM Facility the Company had sold and issued an aggregate of 10,942,100 shares of its common stock with an aggregate market value of \$11.1 million at an average price of \$1.01 per share, including 5,689,134 shares in fiscal year 2021 with an aggregate market value of \$6.4 million at an average price of \$1.12 per share and paid AGP a sales commission of approximately \$360,095 related to those shares. On November 20, 2020, the Company entered into a new At the Market Offering Agreement with AGP (the "2020 ATM Facility"). Under the 2020 ATM Facility, the Company may issue and sell to or through AGP, acting as agent and/or principal, shares of the Company's common stock having an aggregate offering price of up to \$50.0 million. In connection with the effectiveness of the 2020 ATM Facility, the 2019 ATM Facility was terminated. For more on the 2020 ATM Facility, see Note 19, Subsequent Events.

On October 24, 2019, the Company entered into a new common stock purchase agreement with Aspire Capital which provided that, subject to certain terms, conditions and limitations, Aspire Capital is committed to purchase up to an aggregate of \$10.0 million of shares of the Company's common stock over a 30-month period. Through September 18, 2020, the Company has sold an aggregate of 6,424,205 shares of common stock with an aggregate market value of \$4.0 million at an average price of \$0.63 per share pursuant to this common stock purchase agreement, including 5,025,000 shares in fiscal year 2021 with an aggregate market value of \$2.9 million at an average price of \$0.57 per share. The agreement was fully utilized and cancelled on September 18, 2020.

On September 18, 2020, the Company entered into a new common stock purchase agreement with Aspire Capital which provided that, subject to certain terms, conditions and limitations, Aspire Capital is committed to purchase up to an aggregate of \$12.5 million of shares of the Company's common stock over a 30-month period that does not exceed 19.99% of the outstanding common stock on the date of the agreement. The number of shares the Company could issue within the 19.99% limit is 3,722,251 shares. Shareholder approval is needed for sale of common stock over the 19.99% limit of the outstanding common stock on the date of the agreement. Through October 31, 2020, the Company has sold an aggregate of 500,000 shares of common stock with an aggregate market value of \$0.6 million at an average price of \$1.23 per share pursuant to this common stock purchase agreement.

### **(13) Treasury Shares**

During each of the six months ended October 31, 2020 and 2019, no shares and 481 shares of common stock were purchased by the Company from employees to pay taxes related to the vesting of restricted stock.

### **(14) Stock-Based Compensation**

In 2015, upon approval by the Company's stockholders, the Company's 2015 Omnibus Incentive Plan (the "2015 Plan") became effective. A total of 732,036 shares are 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. As of October 31, 2020, the Company has 192,777 shares available for future issuance under the 2015 Plan.

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

#### *Stock Options*

The Company estimates the fair value of each stock option award granted with service-based vesting requirements, using the Black-Scholes option pricing model, assuming no dividends, and using the weighted average valuation assumptions noted in the following table. The risk-free rate is based on the US Treasury yield curve in effect at the time of grant. The expected life (estimated period of time outstanding) of the stock options granted is 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. There were no options granted during the six months ended October 31, 2020 or 2019.

#### *Performance Stock Options*

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

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, 2020	555,475	\$ 3.19	9.5
Granted	-	\$ -	
Exercised	-	\$ -	
Cancelled/forfeited	(23,969)	\$ 7.11	
Outstanding as of October 31, 2020	<u>531,506</u>	\$ 3.02	9.0
Exercisable as of October 31, 2020	<u>60,506</u>	\$ 18.32	7.6

As of October 31, 2020, the total intrinsic value of both outstanding and exercisable options was approximately \$301,000 and zero, respectively. As of October 31, 2020, approximately 471,000 additional options were unvested, which had an intrinsic value of \$301,000 and a weighted average remaining contractual term of 9.2 years. There was approximately \$187,000 and \$163,000 of total recognized compensation cost related to stock options during each of the six months ended October 31, 2020 and 2019, respectively. As of October 31, 2020, there was approximately \$123,000 of total unrecognized compensation cost related to non-vested stock options granted under the plans. This cost is expected to be recognized over a weighted-average period of 0.7 years. The Company typically issues newly authorized but unissued shares to satisfy option exercises under these plans.

#### *Restricted Stock*

Compensation expense for non-vested restricted stock is generally recorded based on its market value on the date of grant and recognized ratably over the associated service and performance period. During the six months ended October 31, 2020, the Company granted no shares subject to service-based vesting requirements.

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

	Number of Shares	Weighted Average Price per Share
Issued and unvested at April 30, 2020	13,513	\$ 1.48
Granted	-	\$ -
Vested	-	\$ -
Cancelled/forfeited	-	\$ -
Issued and unvested at October 31, 2020	<u>13,513</u>	\$ 1.48

There was approximately \$10,000 and \$5,000 of total recognized compensation cost related to restricted stock for the six months ended October 31, 2020 and 2019, respectively. As of October 31, 2020, there is \$200 unrecognized compensation cost remaining related to unvested restricted stock granted under our plans. This cost is expected to be recognized over a weighted-average period of 0.1 years.

In December 2019, the Company granted 51,547 shares, subject to service-based vesting requirements, to an employee that were outside the Company stock incentive plans. There was approximately \$25,000 and zero of total recognized compensation cost related to this award for the six months ended October 31, 2020 and 2019, respectively. As of October 31, 2020, there is \$5,000 unrecognized compensation cost remaining related to this award. This cost is expected to be recognized over a weighted-average period of 0.1 years.

## (15) 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 carrying values of these financial instruments approximate their fair values and are viewed as Level 1 items. The Company's warrant liabilities represent the only asset or liability classified financial instrument that is measured at fair value on a recurring basis.

The fair value of the Company's warrant liabilities (refer to Note 8) is based on the Black-Scholes option pricing model which is based on Level 3 unobservable inputs for which there is little or no market data, requiring the Company to develop its own assumptions. The assumptions used by the Company are the quoted price of the Company's common stock in an active market, risk-free interest rate, volatility and expected life, and assumes no dividends. Volatility is based on the actual market activity of the Company's stock. The expected life is based on the remaining contractual term of the warrants and the risk-free interest rate is based on the implied yield available on U.S. Treasury Securities with a maturity equivalent to the warrants' expected life. The fair value on a recurring basis as of October 31, 2020 and April 30, 2020 was near zero.

Unrealized gains of approximately zero for the three months ended October 31, 2020 and 2019, respectively, and zero and \$6,000 for the six months ended October 31, 2020 and 2019, respectively, were included within "Gain due to change in fair value of warrant liabilities" in the Consolidated Statements of Operations. The Company determined the fair value using the Black-Scholes option pricing model with the following assumptions:

	<u>October 31, 2020</u>	<u>October 31, 2019</u>
Dividend rate	0.0%	0.0%
Risk-free rate	0.12% - 0.13%	1.5%
Expected life (years)	0.8 - 1.1	1.7 - 2.1
Expected volatility	139.1%	105.9%

Besides the unrealized gain in fair value, there was no other activity to the balances in warrant liabilities during the six months ended October 31, 2020 and 2019, respectively.

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 six months ended October 31, 2020 and 2019.

## (16) Commitments and Contingencies

### Employment Litigation

On June 10, 2014, the Company announced that it had terminated Charles Dunleavy as its Chief Executive Officer and as an employee of the Company for cause, effective June 9, 2014, and that Mr. Dunleavy had also been removed from his position as Chairman of the Board of Directors. On June 17, 2014, Mr. Dunleavy wrote to the Company stating that he had retained counsel to represent him in connection with an alleged wrongful termination of his employment. On July 28, 2014, Mr. Dunleavy resigned from the Board and the boards of directors of the Company's subsidiaries.



On August 28, 2018, counsel for Mr. Dunleavy filed a demand for arbitration, captioned *Charles F. Dunleavy v. Ocean Power Technologies, Inc.*, Case No. 01-18-0003-2374, before the American Arbitration Association in New Jersey. The demand names Ocean Power Technologies, Inc. as the respondent and alleges various claims and seeks declaratory relief and permanent injunction. The demand seeks damages in the amount of \$5 million for compensatory and punitive damages, plus interest and attorneys' fees as well as certain equitable relief. On November 8, 2018, the Company through counsel responded to the demand for arbitration, denied all allegations, and asserted various affirmative defenses. The final day of hearing occurred in Princeton, New Jersey on July 15, 2020. Post-hearing briefs were filed on September 22, 2020. As of October 31, 2020, the Company has not accrued any provision related to this matter as we believe a loss is not probable and any possible loss cannot be reasonably estimated.

#### *Nasdaq Delisting Notification*

On March 3, 2020, the Company received a notification from the Nasdaq indicating that the minimum bid price of the Company's common stock has been below \$1.00 per share for 30 consecutive business days and as a result, the Company is not in compliance with the minimum bid price requirement for continued listing. The Nasdaq notice has no immediate effect on the listing or trading of the Company's common stock. Under the Nasdaq Listing Rules, the Company has a grace period of 180 calendar days, or until August 31, 2020, in which to regain compliance with the minimum bid price rule. To regain compliance, the closing bid price of the Company's common stock must meet or exceed \$1.00 per share for a minimum of ten consecutive business days during this grace period. On August 21, 2020, the Company received notification from Nasdaq that, as a result of the closing bid price of the Company's common stock being over \$1.00 for 10 consecutive trading days, the Company has regained compliance with Listing Rule 5550(a)(2) to maintain the listing of its common stock on Nasdaq and Nasdaq considers the matter closed.

#### *Spain Income Tax Audit*

The Company underwent an income tax audit in Spain for the period from 2011 to 2014, when our Spanish branch was closed. In connection with the tax audit, the Spanish tax inspector challenged the Company's recognition of grant funds received in 2011 to 2014 from the European Commission in connection with the Company's Waveport project. On July 30, 2018, the 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. On August 30, 2018, the Company filed an administrative appeal of the penalty and its underlying conclusions. During the three months ended July 31, 2020, the Company received notice from the Spanish Central Economic and Administrative Tribunal that it agreed with the inspector and ruled that the Company owes the full amount of the penalty in the amount of €279,869.81 or approximately \$331,000. The Company is appealing the decision of the Tribunal tax assessment to the Spanish National Court. Per the Company's accounting policy, the Company recorded the additional penalty of €117,145.81 to Selling, general and administrative costs in the Statement of Operations. As of October 31, 2020 and April 30, 2020, the Company has reserved €279,869.81 (or approximately \$326,000) and €162,724 (or approximately \$177,000), respectively, for the penalty in Accrued expenses in the Consolidated Balance Sheets.

### **(17) Income Taxes**

#### *Uncertain Tax Positions*

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

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

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

### **(19) Subsequent Events**

On November 20, 2020, the Company filed a shelf registration statement on Form S-3 with the U.S. Securities and Exchange Commission (the "SEC"), pursuant to which the Company may offer and sell, at its option, securities having an aggregate offering price of up to \$100,000,000. On the same date, the Company entered into the 2020 ATM Facility pursuant to which the Company may offer and sell shares of its common stock, par value \$0.001 per share, having an aggregate offering price of up to \$50,000,000 to or through AGP, as sales agent, from time to time, in an "At The Market Offering" (as defined in Rule 415(a)(4) under the Securities Act of 1933, as amended) of the shares. The \$50,000,000 of common stock that may be offered, issued and sold under the ATM Prospectus is included in the \$100,000,000 of securities that may be offered, issued and sold by us under the Base Prospectus. Shares may be sold by any method deemed to be an "At The Market Offering." Under the 2020 ATM Facility, AGP will also be able to sell shares of common stock by any other method permitted by law, including in negotiated transactions with the Company's prior written consent. The Company will pay AGP commissions for its services in acting as its sales agent in the sale of the shares pursuant to the sales agreement. AGP is entitled to compensation at a fixed commission rate of the aggregate gross proceeds from the sale of the shares on the Company's behalf. The sales agreement for the 2020 ATM Facility contains representations, warranties and covenants that are customary for transactions of this type.

As of December 7, 2020 the balance of total cash, cash equivalents, and restricted cash is approximately \$26.3 million mainly as a result of sales of approximately \$11.9 million of the Company's securities through its 2019 ATM Facility which occurred subsequent to October 31, 2020.

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

The following discussion and analysis should be read in conjunction with the accompanying unaudited consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q. Some of the information contained in this management's discussion and analysis or set forth elsewhere in this Form 10-Q, including information with respect to our plans and strategy for our business, pending and threatened litigation and our liquidity includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section of our Annual Report on Form 10-K for the year ended April 30, 2020 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 2020 refers to the year ended April 30, 2020).

### Business Update Regarding COVID-19

The current COVID-19 pandemic has presented substantial health and economic risks, uncertainties and challenges to our business, the global economy and financial markets. It is not currently possible to predict how long the pandemic will last or the time it will take for economies to return to prior levels. The extent to which COVID-19 impacts our business, operations, financial results and financial condition, and those of our suppliers and customers will depend on future developments which are highly uncertain and cannot be predicted with certainty or clarity, including the duration and continuing severity of the outbreak and additional government actions to contain COVID-19. The volatility caused in the stock markets by the pandemic may make it difficult for the Company to raise capital. In March 2020, one of the Company's customers cancelled a portion of their contract due to the outbreak of COVID-19 and instead extended an existing lease. In April 2020, the Company declared force majeure on a contract with a different customer and delayed the deployment of its PB3 PowerBouy® in Chile from April 2020 to December 2020 due to travel restrictions imposed by the U.S. and Chile. For additional information on various uncertainties and risks posed by the COVID-19 pandemic, see Part II, Item 1A "Risk Factors" of this report.

As a result of the COVID-19 pandemic, in March 2020, the Company put in place a number of protective measures. These measures included the canceling of all non-critical travel, requesting that employees limit non-essential personal travel, eliminating all but essential third-party access to our facilities, enhancing our facility janitorial and sanitary procedures, encouraging employees to work from home to the extent their job function enables them to do so, encouraging the use of virtual employee meetings, and providing staggered shifts and social distancing measures for those employees associated with production operations. As of June 2020, the Company reoccupied its facilities although individuals can work from home if necessary.

On March 27, 2020, the U.S. Government passed into law the Coronavirus Aid, Relief and Economic Security Act, or the ("CARES Act"). On May 3, 2020, the Company signed a Paycheck Protection Program ("PPP") loan with Santander Bank, N.A. ("Santander") as the lender for \$890,347 in support through the Small Business Association ("SBA") under the PPP Loan. The PPP Loan is unsecured and evidenced by a note in favor of Santander as the lender and governed by a Loan Agreement with Santander. The interest rate is 1% and the loan is repayable over two years. The loan contains customary events of defaults relating to, among other things, payment defaults or breaches of the terms of the loan. Upon the occurrence of an event of default, the lender may require immediate repayment of all outstanding under the loan. Interest and principal payments are deferred for the first 6 months from the date of the loan. Principal and interest are payable monthly commencing 6 months after the disbursement date and may be repaid by the Company at any time prior to maturity with no prepayment penalties. The Company received the proceeds on May 5, 2020.

The SBA allows loan forgiveness for eligible costs incurred and paid which include a) payroll costs, b) interest on any real or personal property mortgage prior to February 15, 2020, c) rent on any lease in force prior to February 15, 2020, and d) utility payments for which service began before February 15, 2020. As of July 31, 2020, the Company has utilized all of the loan proceeds. While the Company currently believes that the use of the loan proceeds will meet the conditions for forgiveness of the loan and is in the process of preparing the SBA's forgiveness application, no assurance can be provided that the Company will obtain forgiveness of the loan, in whole or in part.

On June 5, 2020, the Paycheck Protection Program Flexibility Act ("PPPPFA") was signed into law. Among other changes, the PPPFA (a) reduced the amount of the loan required to be spent on payroll costs from 75% to 60%, (b) extended the covered period to 24 weeks from 8 weeks, (c) extended the repayment term of PPP loan from 2 years to 5 years, and (d) increased the deferred payment date from 6 months to 10 months. For the loans disbursed before June 5, 2020, the PPPFA provides the option to opt for 24 weeks for spending the loan instead of 8 weeks. The Company has opted for 24 weeks to spend the loan.

## Overview

We believe that we are a marine power solutions provider. We control the design, manufacture, sales, installation, operations and maintenance of our products and solutions while working closely with partners that provide payloads, integration services, and marine installation capabilities. We believe our solutions provide persistent and reliable distributed offshore power along with communications for remote surface and subsea applications. Our mission and purpose are to utilize our proprietary, state-of-the-art technologies to enhance the environment by reducing the global carbon footprint through clean and renewable solutions for reliable electrical power and, in so doing, drive demand for our products and services.

We also continue to develop and commercialize our proprietary systems that generate electricity by harnessing the renewable energy of ocean waves for our PB3 PowerBuoy®, and solar power for our newest product, the hybrid PowerBuoy®. The PB3 PowerBuoy® uses proprietary technologies that convert the kinetic energy created by the heaving motion of ocean waves into electricity. Based on feedback from our current customers, discussions with potential future customers in the offshore oil and gas, defense and security, science and research, and communications, as well as government applications in fishery protection, together with our market research and publicly available data, we believe that numerous markets have a direct need for our solutions. While our recent projects have been in the oil and gas industry, we believe there is an increasing need for our products and solutions in areas such as fishery protection, offshore windfarm support, marine surveillance, and ocean-based science and research applications. 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 and communications, either by supplying electric power to payloads that are integrated directly with our product or located in its vicinity, such as on the seabed and in the water column. We believe we are the leader in offshore autonomous ocean wave power conversion technology which provides renewable power for offshore operations that were previously difficult to decarbonize.

Our achievements during the first six months of fiscal 2021 included the Company's continued work on Enel Green Power ("EGP") and Eni S.p.A. ("Eni") projects. 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® power and 5G communications solution in support of the U.S. Navy's Naval Postgraduate School's Sea, Land, Air, Military Research Initiative ("SLAMR"). In June 2020, the Company signed a memorandum of understanding with Mackay Marine (a division of Mackay Communications) to develop a Marine Surveillance Solution.

We were incorporated in New Jersey in 1984, began business operations in 1994, and were re-incorporated in Delaware in 2007. We currently have five wholly-owned subsidiaries: Ocean Power Technologies Ltd., organized under the laws of the United Kingdom, Reedsport OPT Wave Park LLC, organized under the laws of Oregon, and Oregon Wave Energy Partners I, LLC, organized under the laws of Delaware, Ocean Power Technologies (Australasia) Pty Ltd ("OPTA"), organized under the laws of Australia. OPTA owns 100% of Victorian Wave Partners Pty. Ltd. ("VWP"), which is also organized under the laws of Australia.

## Our Products and Solutions

### *PB3 PowerBuoy®*

The PB3 generates electricity by harnessing the renewable energy of ocean waves. 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 name-plated capacity rating of up to a nominal 3 kilowatts of peak power during recharging of the onboard batteries. Power generation is deployment-site dependent whereby average power generated can increase substantially at very active sites. Our standard energy storage system ("ESS") has an energy capacity of up to a nominal 150 kilowatt-hours to meet specific application requirements. We believe there is a substantial addressable market for the current capabilities of our PB3, which we believe could be utilized in a variety of applications.

The PB3 is designed to generate power for use independent of the power grid in remote offshore locations. The hull consists of a main spar structure loosely 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 actuating system, an electric generator, a power electronics system, our control system, and our ESS which are 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 collected within an 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 prevent the PB3 from being damaged by storms.

The PB3 can be transported over land to the deployment port using conventional transportation methods. Once at port, the PB3 can be lifted into the water or onboard a vessel using a readily available crane of appropriate capacity. The PB3 may then be towed to site using a standard vessel (if the location is within an appropriate distance from the port), or the PB3 may be carried aboard a vessel to its offshore location and craned into the water at site. The PB3 is then attached to the mooring system, which is installed during a separate operation, after which a brief commissioning process places the PB3 into operation.

We believe that using wave energy for electricity generation has the following potential benefits, compared to existing incumbent solutions.

- *Scalability within a small site area.* Due to the dense energy in ocean waves, we believe that the electricity may be aggregated to supply electricity to larger payloads as a result of multiple PB3 which are placed in an array, occupying a relatively small area. We believe the array of a larger number of PB3 could offer end users a variety of advantages in availability, reliability and scalability.
- *Predictability.* The generation of power from wave energy can be forecasted several days in advance. Available wave energy can be calculated with a high degree of accuracy based on satellite images and meteorological data, even when the wave field is hundreds of miles away and days from reaching a PB3. Therefore, we believe end-users relying on PB3 for power may be able to proactively plan their logistics, payload scheduling and other operational activities based on such data,
- *Constant source of energy.* The annual occurrence of waves at certain specific sites can be relatively constant and defined with relatively high accuracy. Based on our studies and analyses of various sites of interest, we believe that we will be able to deploy our PB3 in locations where the waves could produce usable electricity for the majority of the year.

Based on our market research and publicly available data, including but not limited to the U.S. Department of Energy (“DOE”) 2019 Powering the Blue Economy Report, the Westwood Energy World ROV Operations Forecast 2019-2023, and the World Bank Database, we believe that numerous markets have a direct need for our PB3 including offshore oil and gas, defense and security, science and research, and communications, as well as government applications in fishery protection. Depending on payload power requirements, sensor types and other considerations, we have found that our PB3 could satisfy several application requirements within these markets. We believe that the PB3 consistently generates sufficient power to meet the requirements of many potential customer applications within our target markets, and that the hybrid could provide ample power in geographies where wave conditions may not be sufficient to allow the PB3 to generate sufficient power on its own for load center requirements.

#### *hybrid PowerBuoy®*

The Company has created a hybrid PowerBuoy® that is a solar powered and liquid-fueled surface buoy, compared to the wave power generating PB3. The hybrid is powered primarily by solar panels with a liquid-fueled Stirling engine to provide back-up power and is capable of providing reliable power in remote offshore locations, regardless of ocean wave conditions. We believe this product is complementary to the PB3 by providing the Company the opportunity to address a broader spectrum of customer deployment needs, including low-wave environments, with the potential for greater product integration within each customer project. It is primarily intended for shorter term deployment applications such as electric remotely operated vehicle (“eROV” or “ROV”) and autonomous underwater vehicle (“AUV”) inspections and short-term maintenance, topside surveillance and communications, and subsea equipment and controls. The hybrid is anticipated to be quickly deployable and cost-effective solution. The design has a high payload capacity for communications and surveillance, with the capability of being tethered to subsea payloads such as batteries, or with a conventional anchor mooring system. The hybrid generates power from both an array of solar panels and an efficient, clean burning 1kW Stirling engine fueled by liquid propane (or biofuel for Generation 2). This energy is stored in onboard batteries which power the aforementioned subsea and topside payloads. The Company has designed the hybrid with a Stirling engine system to outperform traditional diesel buoys, which we believe have more frequent service and refueling intervals and higher carbon intensities. We believe the hybrid will be able to operate over a broader range of temperature and ocean wave conditions than existing diesel buoys.

The towable, boat-shaped hull design of the hybrid is appropriate for deployment around the world. Power is generated independent of wave activity, making it a solution for providing power through extreme weather and in heaving seas, or in calm, low wave environments and is complimentary to the PB3.

As with the PB3, the control system uses sensors and an onboard computer to continuously monitor the hybrid subsystems. We believe that this ability to optimize and manage the electric power output of the hybrid is a significant advantage of our technology. In the event of extended cloudy periods, the control system automatically switches electricity generation from the solar panels to the backup engine. However, the load center (either the on-board payload or one in the vicinity of the hybrid) may continue to receive power from the on-board ESS. When more suitable solar power generation conditions return, the control system automatically stops the backup up engine and ESS replenishment recommences by way of solar electricity generation.

The hybrid is designed for use with a single point umbilical and mooring but can be adapted for a 3-point mooring installation for use as a temporary replacement for PB3 installations during planned maintenance or repairs.

The hybrid can be transported over land to the deployment port using conventional transportation methods. Once at port, the hybrid can be lifted into the water or onboard a vessel using a readily available crane of appropriate capacity. The hybrid may then be towed to site using a standard vessel (if the location is within an appropriate distance from the port), or the hybrid may be carried aboard a vessel to its offshore location and craned into the water at site. The hybrid is then attached to the single point mooring system, which is installed during a separate operation, after which a brief commissioning process places the hybrid into operation.

The hybrid is configured with a nominal 30 kilowatt-hours of battery energy storage and approximately 1 megawatt-hour of stored energy in the propane system. While the batteries are primarily charged through solar power generation, the propane powered Stirling engine system on the hybrid can be considered reserve energy storage, with propane having a much higher energy storage density than lithium-ion batteries. It can be utilized when needed based on load demand and will provide approximately 1 megawatt-hour of stored energy capacity. We believe that this amount of stored energy offers an attractive local, autonomous energy solution for clients in a range of industries, including but not limited to oil and gas and marine observation, particularly for shorter term deployments.

### *Subsea Battery*

We have developed a subsea battery that is complementary to both of our PowerBuoy® products and can be deployed together with our PowerBuoys® or on its own. 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 lithium ion subsea batteries supply power that can enable subsea equipment, sensors, communications and AUV and eROV recharge. Our PowerBuoys® are complimentary 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. Ideal for many remote offshore customer applications, these subsea batteries are anticipated to be high performance, cost-efficient, and quickly deployable.

The subsea battery has been designed to provide continuous and/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 100 kilowatt-hours of energy storage. The subsea battery can be transported over land to the deployment port using conventional transportation methods. Once at port, the subsea battery can be lifted onboard a vessel using a readily available crane of appropriate capacity. The battery can then be carried aboard a vessel to its offshore location and craned into the water at site. It comes installed on a ready deployable subsea skid suitable for installation on the seabed. The battery is then connected to the other components on the seabed with the use of ROVs or divers.

We believe that the growing demand for electrification of subsea infrastructure, and an increased switch to autonomous and renewable solution, offers multiple opportunities for deploying subsea battery powered solutions over the next few years.

### *Marine Surveillance Solution*

Our Marine Surveillance Solution payload consists of a high definition radar, gyro-stabilized high definition optical and thermal imaging cameras, vessel automatic identification system (AIS) detection, and integrated command and control software, paired with our autonomous PB3 PowerBuoy® or hybrid PowerBuoy® as a power and communications platform. Capabilities include 24/7 vessel tracking – including dark vessel detection, which refers to ships that operate primarily at nighttime which do not broadcast an AIS signal – automatic radar plotting, automated vessel warnings, and high definition optical and thermal video surveillance capable of providing evidentiary backup of activity to aid in prosecution.

Data from our Marine Surveillance Solution is transmitted to shore-based command stations via Wi-Fi, cellular, and/or satellite systems, depending upon location. Surveillance data can be integrated with readily available marine monitoring software to provide command and control features of a multi-buoy surveillance network. The data can also be integrated with satellite, terrestrial, and other data feeds to form a detailed surface and subsea picture of a monitored area.

A single Marine Surveillance Solution can monitor more than 1,600 square nautical miles of ocean territory on a permanent or temporary basis, with the ability to seamlessly link multiple surveillance assets together over large ocean areas giving end-users visibility into potentially damaging environmental or illegal activities. Customized solutions are also available including the addition of subsea sensors to monitor for acoustic signatures, tsunamis, and water quality.

### Commercial Activities

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

The table below shows the percentage of customer revenues that accounted for at least 10% of our consolidated revenues for at least one of the periods indicated:

	Three months ended October 31,		Six months ended October 31,	
	2020	2019	2020	2019
Eni S.p.A.	61%	23%	34%	19%
Premier Oil UK Limited	0%	13%	9%	30%
EGP	36%	47%	55%	24%
U.S. Navy	0%	10%	0%	17%
Other	3%	7%	2%	10%
	<u>100%</u>	<u>100%</u>	<u>100%</u>	<u>100%</u>

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

### Customers

- In November 2020, the Company entered into an agreement with the Offshore Operators Committee (“OOC”) under which the Company will provide engineering and technical services for a new project under the DeepStar Global Technology Consortium Program
- In October 2020, the Company entered into an agreement with Adams Communication & Engineering Technology, Inc. to conduct a feasibility study for the evaluation of a PB3 PowerBuoy® power and 5G communications solution in support of the U.S. Navy’s Naval Postgraduate School’s SLAMR.
- In March 2020, Eni exercised their option from the March 2018 contract to extend their lease of the PB3 for an additional 18 months. The initial provision in the March 2018 agreement provided for a minimum 24-month contract that included an 18-month PB3 lease and associated project management. In November 2020, Eni retrieved the PB3 and returned it to shore due to a mooring issue. The Company will be working with Eni to address a variety of possible next steps with the contract.

- In September 2019, we entered into two contracts with subsidiaries of EGP which include the sale of a PB3 PowerBuoy® and the development and supply of a turn-key integrated Open Sea Lab that will be the Company's first deployment off the coast of Chile. Due to the COVID-19 pandemic, the Company declared force majeure in April 2020. In June 2020 the Company signed a contract amendment to delay the deployment of its PB3 PowerBuoy® in Chile from May 2020 to September 2020 due to travel restrictions imposed by the U.S. and Chile in response to COVID-19 pandemic. In October 2020 the Company signed another contract amendment to delay the deployment of its PB3 PowerBuoy® in Chile from September 2020 to December 2020 due to travel restrictions imposed by the U.S. and Chile in response to COVID-19 pandemic. The contract is a result of a detailed feasibility study of the PowerBuoy® as an offshore autonomous platform hosting oceanographic sensor systems conducted in September 2018.
- In April 2019, we entered into an agreement with a leading oil and gas operator to conduct a detailed feasibility study of using the Company's technology to monitor subsea wells.
- In February 2019, we entered into a contract with the U.S. Navy to carry out the first phase of a project to design and develop a buoy mooring system which incorporates fiber optics for the transmission of subsea sensor data to airplanes, ships, and satellites.
- In June 2018, we entered into a contract with Premier Oil Plc. ("PMO") for the lease of a PB3 to be deployed in one of PMO's offshore fields in the North Sea. In March 2020, after the several months at sea the PB3 was decommissioned and returned to New Jersey for evaluation and refurbishment to prepare for another deployment.

### *Partnerships*

- In June 2020, we signed a memorandum of understanding with Mackay Marine, a division of Mackay Communications, Inc., to further optimize our Marine Surveillance System payload for both the PB3 and hybrid PowerBuoy®. Mackay Marine manufactures and supplies a wide variety of technically advanced equipment for commercial, military, and personal marine applications.
- In February 2020, we signed a letter of intent with Taiwan-based BAP Precision, Inc. ("BAP") to provide PowerBuoy® joint surveillance solutions for government agency contract pursuits for policing territorial waters.
- In May 2019, we signed a memorandum of understanding with Modus Seabed Intervention Ltd. ("Modus") for the purpose of developing and delivering commercial market solutions that offer a step-change in innovation and market value against conventional methodologies, specifically through development and marketing of a combined Hybrid AUV charging station which will be able to utilize the PowerBuoy® system for topside charging and communications.
- In April 2019, we signed a memorandum of understanding with Acteon Field Life Service Ltd. ("Acteon") to develop, explore and exploit mutual opportunities in the global oil and gas and renewable markets.
- In January 2019, we entered into a Joint System Solution Development and Marketing Agreement with Saab Seaeye Ltd. ("Saab"). The agreement anticipates a preliminary focus on AUV and eROV charging and communications systems.

### **Business Strategy**

In fiscal 2021, we have continued progress in marketing our products and solutions. We have made progress in transitioning from R&D to a commercialization focus with SELL, BUILD, SHIP as our motto and we intend to build on our success by implementing processes and solutions that cover the entire life cycle, from demand generation to close of contract, and from channel strategies to customer care.

A majority of the Company's opportunities with potential customers have been for projects in Western Europe, including the North Sea, as well as North America and Asia. Nearly two-thirds of these opportunities have progressed past the initial feasibility and non-disclosure agreement stage to more detailed, confidential discussions around specific customer applications. Many of these discussions occur at the executive, decision-making level, as well as the implementation level.

Many proposal requests are for projects where one of our PowerBuoys® products, either the PB3, the hybrid, or our subsea battery solution is part of a larger solution demonstration, and typically include the potential lease or sale of one or more PowerBuoys®, as well as required services and maintenance support. A majority of hybrid inquiries are for shorter term deployments and in calmer waters. Historically, demonstration projects have been a necessary step toward broad solution deployment and revenues associated with specific applications. A proposal phase typically lasts from three months to more than one year. During the demonstration project specification, negotiation and evaluation period, we are often subject to the prospective customer's vendor qualification process, which entails substantial due diligence of our company and capabilities and may include negotiation of standard terms and conditions. Many proposals contain provisions which would mandate the sale or lease of our PowerBuoy® product upon successful conclusion of the demonstration project.

We believe this is an accurate depiction of the overall sales cycle for new technology in each of our target markets, including our products and solutions. Cycle times for each step of the sales cycle will vary depending on several customer factors, including, but not limited to, technical evaluation, project priorities, project funding approval process, and alignment of new technology integration with the customer's broader operational strategy. We believe that potential demand, vis-à-vis specific application proposal requests, is indicative of significant progress in our commercialization strategy. We believe in the potential for growth as a result of our positioning for higher volume production of our products and solutions and their initial indications of demand for our products and solutions in multiple customer applications.

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

- *Integrated turn-key solutions sales or leases incorporating our products and services.* We believe our PB3, hybrid PowerBuoys® and our subsea battery solutions, as well as our Marine Surveillance Solution are well suited to enable many unmanned, autonomous (non-grid connected) offshore applications, such as topside and subsea surveillance and communications, subsea equipment monitoring, early warning systems platform and subsea power and buffering, and weather and climate data collection. We have investigated and realized market demand for some of these solutions as sales and leases within our selected markets, and we intend to sell and 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 also intend to pursue turn-key projects where we take on a prime contractor role to capture broader revenue opportunities while ensuring that solutions effectively address customer needs. We continue to increase our commercial capabilities through new hires in sales and application support, and through engagement of expert market consultants in various geographies.
- *Expand customer system solution offerings through new complimentary products that enable shorter and more cost-efficient deployments.* We completed the design and construction of the hybrid PowerBuoy® in 2020. This product builds on our existing expertise in offshore power systems. The hybrid PowerBuoy® is a solar powered buoy with a liquid-fueled Stirling engine as backup. The hybrid is to be highly complementary to the PB3 PowerBuoy® by providing the Company the opportunity to address a broader spectrum of customer deployment needs, including low-wave environments, with the potential for greater system integration within each customer project. The hybrid is primarily intended for shorter term deployment applications such as eROV and AUV inspections and short-term maintenance, topside surveillance and communications, and subsea equipment and controls. The Company has also developed a subsea battery system that is complimentary to the Company's PowerBuoy® products. The subsea battery system offers the possibility of creating a sea floor energy storage solution for remote offshore operations. These subsea battery systems contain lithium ion batteries, which provide high power density to supply power to subsea equipment, sensors, communications, and recharging of AUVs and eROV. Ideal for many remote offshore customer applications, these subsea battery systems are anticipated to be safe, high performance, cost-efficient, and quickly deployable.
- *Concentrate sales and marketing efforts in specific geographic markets.* We are currently focusing our marketing efforts on parts of North and South America, Europe, Asia and Western Africa. We believe that each of these areas has demand for our solutions, sizable end market opportunities, political and economic stability, and high levels of industrialization and economic development. We have opened an office in Houston, Texas to further support our customers and strengthen our dialogue with our solution partners.
- *Expand our relationships in key market areas through strategic partnerships and collaborations.* We believe that strategic partners are an important part of commercializing a new product. Partnerships and collaborations can be used to improve the development of overall integrated solutions, create new market channels, expand commercial know-how and geographic footprint, and bolster our product delivery capabilities. We believe that offering a turn-key solution, and not just power, is key to securing long term success. We have formed such a relationship with several well-known groups, including Mackay, BAP, Modus, Saab and Acteon. We continue to seek other opportunities to collaborate with application experts from within our selected markets.
- *Outsourcing of fabrication, deployment and service support.* We outsource all fabrication, anchoring, mooring, cabling supply, and in most cases deployment of our products and solutions in order to minimize our capital requirements as we scale our business. Our PTO is a proprietary subsystem and is assembled and tested at our facility. We believe this distributed manufacturing and assembly approach enables us to focus on our core competencies to ensure a cost-effective offering by leveraging a larger more established supply base. We also continue to seek strategic partnerships with regard to servicing of our products and solutions.



- *Cost reduction and solution development.* Our engineering efforts are mainly focused on addressing customer solutions; product and solution sales; reducing costs associated with production, installation and product life-cycle costs; and improving the energy output, reliability, maintenance interval and expected operating life of our products and solutions. We continue to optimize manufacturability of our designs with a focus on cost competitiveness, and we believe we will be able to address new applications by developing new payloads and solutions that address customer needs.

## **Capital Raises**

On January 7, 2019, the Company entered into the 2019 ATM Facility with AGP under which the Company may issue and sell to or through AGP, acting as agent and/or principal, shares of the Company's common stock having an aggregate offering price of up to \$25 million. Since inception of the program through October 31, 2020, under the 2019 ATM Facility, the Company sold and issued 10,942,100 shares of its common stock with an aggregate market value of \$11.1 million at an average price of \$1.01 per share, including 5,689,134 shares in fiscal year 2021 with an aggregate market value of \$6.4 million at an average price of \$1.12 per share and paid AGP a sales commission of approximately \$360,095 related to those shares. On November 20, 2020, the Company entered into a new At the Market Offering Agreement with AGP (the "2020 ATM Facility"). Under the 2020 ATM Facility, the Company may issue and sell to or through AGP, acting as agent and/or principal, shares of the Company's common stock having an aggregate offering price of up to \$50.0 million. In connection with the effectiveness of the 2020 ATM Facility, the 2019 ATM Facility was terminated. For more on the 2020 ATM Facility, see Note 19, Subsequent Events.

On October 24, 2019, the Company entered into a new common stock purchase agreement with Aspire Capital which provided that, subject to certain terms, conditions and limitations, Aspire Capital is committed to purchase up to an aggregate of \$10.0 million of shares of the Company's common stock over a 30-month period. Through September 18, 2020, the Company has sold 6,424,205 shares of common stock with an aggregate market value of \$4.0 million at an average price of \$0.63 per share pursuant to this common stock purchase agreement, including 5,025,000 shares in fiscal year 2021 with an aggregate market value of \$2.9 million at an average price of \$0.57 per share. The agreement was fully utilized and cancelled on September 18, 2020.

On September 18, 2020, the Company entered into a new common stock purchase agreement with Aspire Capital which provided that, subject to certain terms, conditions and limitations, Aspire Capital is committed to purchase up to an aggregate of \$12.5 million of shares of the Company's common stock over a 30-month period that does not exceed 19.99% of the outstanding common stock on the date of the agreement. The number of shares the Company could issue within the 19.99% limit is 3,722,251 shares. Shareholder approval is needed for sale of common stock over the 19.99% limit of the outstanding common stock on the date of the agreement. Through October 31, 2020, the Company has sold an aggregate of 500,000 shares of common stock with an aggregate market value of \$0.6 million at an average price of \$1.23 per share pursuant to this common stock purchase agreement.

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

## **Backlog**

As of October 31, 2020, the Company's backlog was \$0.8 million. As of April 30, 2020, backlog was \$1.0 million. Our backlog can include unfilled firm orders for our products and services from commercial or governmental customers. If any of our contracts were to be terminated, our backlog would be reduced by the expected value of the remaining terms of such contract.

The amount of contract backlog is not necessarily indicative of future revenue because modifications to or terminations of present contracts and production delays can provide additional revenue or reduce anticipated revenue. A substantial portion of our revenue is recognized using the input method used to measure completion over time of customer contracts, and changes in estimates from time to time may have a significant effect on revenue and backlog. Our backlog is also typically subject to large variations from time to time due to the timing of new awards.

## Going Concern

The consolidated financial statements have been prepared assuming the Company will continue as a going concern. The Company has experienced substantial and recurring losses from operations, which losses have caused an accumulated deficit of \$226.5 million at October 31, 2020. These factors raise substantial doubt about our ability to continue as a going concern. Based on the Company's current cash, cash equivalents and restricted cash balances, and its ability to raise additional equity under facilities currently in place, the Company believes that it will be able to finance its capital requirements and operations for at least the next 12 months. Among other things, the Company is currently evaluating a variety of different financing alternatives and we expect to continue to fund our business with sales of our securities and through generating revenue with customers.

The report of our independent registered public accounting firm on our consolidated financial statements filed with our Annual Report on Form 10-K for the year ended April 30, 2020, contains an explanatory paragraph regarding our ability to continue as a going concern, based on, among other factors, that our ability to continue as a going concern is dependent upon our ability to raise additional external capital and increase revenues. These factors, among others, raise substantial doubt about our ability to continue as a going concern. Our consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. We cannot assure you that we will be successful in our efforts to generate revenues, become profitable, raise additional outside capital or to continue as a going concern. If we are not successful in our efforts to raise additional capital sufficient to support our operations, we would be forced to cease operations, in which event investors would lose their entire investment in our company.

## Critical Accounting Policies and Estimates

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

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

## Recently Issued Accounting Standards

See Note 2 of the Notes to Consolidated Financial Statements.

## Financial Operations Overview

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

### *Revenues*

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

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

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

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

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

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

	<b>Three months ended October 31,</b>		<b>Six months ended October 31,</b>	
	<b>2020</b>	<b>2019</b>	<b>2020</b>	<b>2019</b>
	(in thousands)			
Eni S.p.A.	\$ 72	\$ 47	\$ 99	\$ 76
Premier Oil UK Limited	-	26	27	121
EGP	42	96	157	96
U.S. Navy	-	20	-	72
Other	4	15	4	41
	<u>\$ 118</u>	<u>\$ 204</u>	<u>\$ 287</u>	<u>\$ 406</u>

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

<b>Customer Location</b>	<b>Six months ended October 31,</b>	
	<b>2020</b>	<b>2019</b>
Europe	44%	59%
South America	55%	24%
North America	1%	17%
	<u>100%</u>	<u>100%</u>

### *Cost of revenues*

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

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

### *Engineering and product development costs*

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

### *Selling, general and administrative costs*

Our selling, general and administrative costs consist primarily of professional fees, salaries and other personnel-related costs for employees and consultants engaged in sales and marketing and support of our 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 money market fund and interest expense paid on certain obligations to third parties.

### *Foreign exchange gain (loss)*

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

We maintain cash accounts that are denominated in British pounds sterling, Euros and Australian dollars. These foreign-denominated accounts had a balance of \$0.3 million as of October 31, 2020 and \$0.6 million as of October 31, 2019, compared to our total cash, cash equivalents and restricted cash balances of \$15.8 million as of October 31, 2020 and \$11.4 million as of October 31, 2019. These foreign currency balances are translated each month and to our functional currency, the US dollar, and any resulting gain or loss is recognized in our results of operations.

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

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

## Results of Operations

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

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

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

	Three months ended October 31,		% change 2020 period to 2019 period
	2020	2019	
	(in thousands)		
Revenues	\$ 118	\$ 204	-42%
Cost of revenues	216	288	-25%
Gross loss	(98)	(84)	
Operating expenses:			
Engineering and product development costs	1,063	1,309	-19%
Selling, general and administrative costs	1,841	1,838	0%
Total operating expenses	2,904	3,147	
Operating loss	(3,002)	(3,231)	
Interest income, net	8	32	-75%
Other expense	(33)	-	-100%
Foreign exchange gain	3	10	-70%
Net loss	\$ (3,024)	\$ (3,189)	-5%

#### Revenues

Revenues for the three months ended October 31, 2020 and 2019 were \$0.1 million and \$0.2 million, respectively. The decrease of \$0.1 million of revenue for the three months ended October 31, 2020 was primarily due to lower revenue derived from our EGP project while the same period in the prior year included revenue from projects with Premier Oil and U.S. Navy.

#### Cost of revenues

Cost of revenues for the three months ended October 31, 2020 and 2019 were \$0.2 million and \$0.3 million, respectively. The decrease of \$0.1 million in cost of revenue is due to more costs incurred on our Premier Oil project in the prior year.

#### Engineering and product development costs

Engineering and product development costs for the three months ended October 31, 2020 and 2019 were \$1.1 million and \$1.3 million, respectively. The decrease of approximately \$0.2 million is the result of lower spending on new product development projects as compared to the same period in fiscal 2020.

#### Selling, general and administrative costs

Selling, general and administrative costs for the three months ended October 31, 2020 and 2019 were \$1.8 million and \$1.8 million, respectively. Spending was essentially flat compared to the same period in prior period and related primarily to employee related costs, professional fees and selling and marketing costs.

#### Interest income, net

Interest income, net during the three months ended October 31, 2020 was \$8,000, compared to \$32,000 during the three months ended October 31, 2019. The decrease of \$24,000 is due to a lower interest rate earned on investments in the three months ended October 31, 2020 as compared to the three months ended October 31, 2019.

### Foreign exchange gain/(loss)

Foreign exchange gain during the three months ended October 31, 2020 was \$3,000 compared to a foreign exchange gain of \$10,000 during the three months ended October 31, 2019. The difference was attributable primarily to the relative change in value of the British pound sterling, Euro and Australian dollar compared to the US dollar during the two periods.

### Six months ended October 31, 2020 compared to the six months ended October 31, 2019

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

	Six months ended October 31,		% change 2020 period to 2019 period
	2020	2019	
	(in thousands)		
Revenues	\$ 287	\$ 406	-29%
Cost of revenues	550	655	-16%
Gross loss	<u>(263)</u>	<u>(249)</u>	
Operating expenses:			
Engineering and product development costs	2,315	2,507	-8%
Selling, general and administrative costs	3,828	3,534	8%
Total operating expenses	<u>6,143</u>	<u>6,041</u>	
Operating loss	(6,406)	(6,290)	
Gain due to the change in fair value of warrant liabilities	-	6	-100%
Interest income, net	20	74	-73%
Other expense, net	(33)	-	-100%
Foreign exchange gain/(loss)	10	(4)	-350%
Net loss	<u>\$ (6,409)</u>	<u>\$ (6,214)</u>	3%

### Revenues

Revenues for the six months ended October 31, 2020 and 2019 were \$0.3 million and \$0.4 million, respectively. The decrease of \$0.1 million of revenue for the six months ended October 31, 2020 was primarily due to lower revenue derived from projects with Premier Oil and U.S. Navy.

### Cost of revenues

Cost of revenues for the six months ended October 31, 2020 and 2019 were \$0.6 million and \$0.7 million, respectively. The decrease of \$0.1 million in cost of revenue is due to more costs incurred on our Premier Oil and U.S. Navy projects in the prior year mostly offset by costs incurred on our EGP project in the current year.

### Engineering and product development costs

Engineering and product development costs for the six months ended October 31, 2020 and 2019 were \$2.3 million and \$2.5 million, respectively. The decrease of approximately \$0.2 million is the result of lower spending on new product development projects as compared to the same period in the prior year.

### Selling, general and administrative costs

Selling, general and administrative costs for the six months ended October 31, 2020 and 2019 were \$3.8 million and \$3.5 million, respectively. The increase compared to the same period in the prior year is due mainly to higher employee related costs of \$0.2 million and an increase in the estimated penalty payment of \$0.2 million relating to the Spanish tax audit partly offset by lower spending on other general and administrative costs of \$0.1 million.

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

The change in fair value of warrant liabilities during the six months ended October 31, 2020 was zero versus an unrealized gain of \$6,000 for the six months ended October 31, 2019.

### *Interest income, net*

Interest income, net during the six months ended October 31, 2020 was \$20,000 as compared to \$74,000 during the six months ended October 31, 2019. The decrease of \$54,000 is due to a lower interest rate earned on investments in the six months ended October 31, 2020 as compared to the six months ended October 31, 2019.

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

Foreign exchange gain during the six months ended October 31, 2020 was \$10,000 compared to a foreign exchange loss of \$4,000 during the six months ended October 31, 2019. The difference was attributable primarily to the relative change in value of the British pound sterling, Euro and Australian dollar compared to the US dollar during the two periods.

## **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 \$6.4 million and \$6.2 million for the six months ended October 31, 2020 and 2019, respectively. Refer to "Liquidity Outlook" below for additional information.

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

During the six months ended October 31, 2020, net cash flows used in operating activities was \$5.7 million, a decrease of \$0.7 million compared to net cash used by investing activities during the six months ended October 31, 2019. This decrease is mainly the result of lower cash spending on customer projects and product development costs in the six months ended October 31, 2020 as compared to the same period in the prior fiscal year.

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

Net cash used in investing activities during the six months ended October 31, 2020 was zero, a decrease of \$41,000 compared to net cash used by investing activities during the six months ended October 31, 2019. The decrease in net cash used in investing activities was due to lower spending on the purchase of property, plant and equipment.

### **Net cash provided by financing activities**

Net cash provided by financing activities during the six months ended October 31, 2020 was approximately \$10.7 million compared to net cash provided by financing activities during the six months ended October 31, 2019 of \$0.7 million. The increase in net cash provided by financing activities during the six months ended October 31, 2020 is primarily due to more proceeds from capital raises of \$8.7 million, \$0.9 million received from the PPP loan and \$0.4 million in a financing loan payable.

### **Effect of exchange rates on cash and cash equivalents**

The effect of exchange rates on cash and cash equivalents was an increase of \$27,000 in the six months ended October 31, 2020 and a decrease of \$5,000 in the six months ended for October 31, 2019. The effect of exchange rates on cash and cash equivalents results primarily from gains or losses on consolidation of foreign subsidiaries and foreign denominated cash and cash equivalents.

## **Liquidity Outlook**

Our financial statements have been prepared assuming we will continue as a going concern. We have experienced substantial and recurring losses from operations, which have contributed to an accumulated deficit of \$226.5 million at October 31, 2020. As of October 31, 2020, based in part on our equity raises, the Company had approximately \$15.8 million in cash, cash equivalents and restricted cash on hand. Based on the Company's current cash, cash equivalents and restricted cash balances, and its ability to raise additional equity under facilities currently in place, the Company believes that it will be able to finance its capital requirements and operations for at least the next 12 months. Among other things, the Company is currently evaluating a variety of different financing alternatives and we expect to continue to fund our business with sales of our securities and through generating revenue with customers. These conditions raise substantial doubt about our ability to continue as a going concern.

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

- the impact of COVID-19 pandemic on our business, operations, customers, suppliers and manufacturers;
- our ability to 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 a number of factors, including market conditions, and our operating performance;
- our ability to continue as a going concern;
- our estimates regarding expenses, future revenues and capital requirements;
- the adequacy of our cash balances and our need for additional financings;
- our ability to develop and manufacture commercially viable products;
- our ability to successfully develop and market new products and solutions, such as the subsea battery and Marine Surveillance Solutions;
- that we will be successful in our efforts to commercialize our products or the timetable upon which commercialization can be achieved, if at all;
- our ability to identify and penetrate markets for our products and solutions;
- our ability to implement our commercialization strategy as planned, or at all;
- our ability to improve the power output, survivability and reliability of our products;
- our relationships with our strategic partners may not be successful and we may not be successful in establishing additional relationships;
- the reliability of our technology and our products and solutions;
- our ability to improve the power output, survivability and reliability of our products;
- our ability to maintain the listing of our common stock on the Nasdaq Capital Market;
- our ability to raise capital through our current equity facilities;
- the impact of pending and threatened litigation on our business, financial condition and liquidity;
- changes in current legislation, regulations and economic conditions that affect the demand for renewable energy;
- our ability to compete effectively in our target markets;
- our limited operating history and history of operating losses;
- our sales and marketing capabilities and strategy in the United States and internationally; and
- our ability to protect our intellectual property portfolio.



Our business is capital intensive and to date, we have been funding our business principally through sales of our securities, and we expect to continue to fund our business with sales of our securities and, to a limited extent, with our revenues until, if ever, we generate sufficient cash flow to internally fund our business. This is largely a result of the high product development costs associated with our product development. We anticipate that our operating expenses will be approximately \$14.0 million in fiscal 2021 including expected savings from cost reduction initiatives and engineering and product development spending of more than \$6.9 million. We may choose to reduce our operating expenses through personnel reductions, and reductions in our research and development and other operating costs during the remainder of fiscal year 2021, if we are not successful in our efforts to raise additional capital. We cannot assure you that we will be able to increase our revenues and cash flow to a level which would support our operations and provide sufficient funds to pay our obligations for the foreseeable future. Further, we cannot assure you that we will be able to secure additional financing or raise additional capital or, if we are successful in our efforts to raise additional capital, of the terms and conditions upon which any such financing would be extended. If we are unable to raise additional capital when needed or generate positive cash flow, it is unlikely that we will be able to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

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

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

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

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

Not applicable.

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

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

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

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

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

## PART II — OTHER INFORMATION

### Item 1. LEGAL PROCEEDINGS

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

For information on matters in dispute, see Note 15 to the Consolidated Financial Statements in our Annual Report on Form 10-K for the year ended April 30, 2020, and 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, 2020 and set forth below in this Quarterly Report on Form 10-Q. These risk factors describe various risks and uncertainties to which we are or may become subject. These risks and uncertainties have the potential to affect our business, financial condition, results of operations, cash flows, strategies or prospects in a material and adverse manner. There have been no material changes in our risk factors from those disclosed in our Annual Report on Form 10-K filed with the SEC on June 29, 2020.

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

Our financial statements have been prepared assuming we will continue as a going concern. Due to the significant product development costs associated with our business and operations, we have experienced substantial and recurring losses from operations, which have contributed to an accumulated deficit of \$226.5 million as of October 31, 2020. As of October 31, 2020, based in part on our equity raises, the Company had approximately \$15.8 million in cash, cash equivalents and restricted cash on hand. Based on the Company's current cash, cash equivalents and restricted cash balances, and its ability to raise additional equity under facilities currently in place, the Company believes that it will be able to finance its capital requirements and operations for at least the next 12 months.

We continue to experience operating losses and currently have only two revenue producing contracts. During fiscal 2020, our net burn rate (cash used in operations less cash generated by operations) including engineering and product development spending was approximately \$0.9 million per month.

We have been funding our business principally through sales of our securities, and we expect to continue to fund our business with sales of our securities and, to a limited extent, with our revenues until, if ever, we generate sufficient cash flow to internally fund our business. These factors, among others, raise substantial doubt about our ability to continue as a going concern. Our consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. We anticipate that our operating expenses will be approximately \$14.0 million in fiscal 2021 including expected savings from cost reduction initiatives and engineering and product development spending of more than \$6.9 million. However, we may choose to reduce our operating expenses through personnel reductions, and reductions in our research and development and other operating costs during fiscal year 2021, if we are not successful in our efforts to raise additional capital. We cannot assure you that we will be able to increase our revenues and cash flow to a level which would support our operations and provide sufficient funds to pay our obligations for the foreseeable future. Further, we cannot assure you that we will be able to secure additional financing or raise additional capital or, if we are successful in our efforts to raise additional capital, of the terms and conditions upon which any such financing would be extended. If we are unable to meet our obligations, we would be forced to cease operations, in which event investors would lose their entire investment in our company.

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

We have incurred net losses since we began operations in 1994, including net losses of \$6.4 million during the first six months of fiscal year 2021 and \$10.4 million in fiscal year 2020. As of October 31, 2020, we had an accumulated deficit of \$226.5 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.

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

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

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

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

***The scale and scope of the recent COVID-19 outbreak, the resulting pandemic, and the impact on the financial markets is unknown and could adversely affect the Company's business, financial condition and results of operation at least for the near term.***

Since the beginning of January 2020, the COVID-19 outbreak has caused significant disruption in the financial markets both globally and in the U.S. As the U.S. faces the COVID-19 pandemic, we are following the recommendations of government and health authorities to minimize exposure risk for our employees. The rapid spread of COVID-19 globally also has resulted in increased travel restrictions and disruption and shutdown of certain businesses in the U.S. and abroad, including disruptions to our own business. We are closely monitoring this global health crisis and will reassess its strategy and operational activities on a regular, ongoing basis as the situation evolves.

As a result of the changes in work protocols, as well as related pandemic fears, quarantines and market downturns, we may experience impacts from changes in customer behavior. Our business is dependent upon the willingness and ability of our customers to conduct transactions, as well as the ability of customers to meet existing payment or other obligations. The spread of COVID-19 has caused severe disruptions in the worldwide economy, which has in turn disrupted the business, activities, and operations of our business and operations, as well as that of our customers. For example, our employees have been unable to travel to Chile to perform final testing and assembly of our PB3 PowerBuoy® for EGP. Due to the COVID-19 pandemic, the Company declared force majeure in April 2020. Due to travel restrictions imposed by the U.S. and Chile the Company has delayed the deployment of its PB3 PowerBuoy® in Chile from April 2020 to December 2020.

If COVID-19 were to continue to affect a significant amount of our workforce, we may experience delays or the inability to produce and deliver solutions to our customers on a timely basis. In addition, one or more of our customers, service providers or suppliers may experience financial distress, file for bankruptcy protection, go out of business, or suffer disruptions in their business due to the COVID-19 outbreak. As with EGP, travel restrictions due to COVID-19 may also prevent our employees from completing customer work. The global scale and scope of COVID-19 is unknown and the duration of the business disruption and related financial impact cannot be reasonably estimated at this time.

The extent to which the coronavirus impacts our results will ultimately depend on future developments, which are highly uncertain, and will include emerging information concerning the severity of COVID-19 and the actions taken by governments and private businesses to attempt to contain COVID-19. However, we believe the coronavirus has and will continue to adversely affect our business, financial condition and results of operations at least for the near term.

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

On October 24, 2019, we issued to Aspire Capital 194,805 shares of common stock as a commitment fee pursuant to the terms of a common stock purchase agreement dated October 24, 2019. As of September 18, 2020, we have sold 6,424,205 shares of common stock with an aggregate market value of \$4.0 million at an average price of \$0.63 per share pursuant to this agreement with Aspire Capital. This agreement was fully utilized and cancelled on September 18, 2020.

On September 18, 2020, the Company entered into a new common stock purchase agreement with Aspire Capital. Through October 31, 2020, the Company has sold an aggregate of 500,000 shares of common stock with an aggregate market value of \$0.6 million at an average price of \$1.23 per share pursuant to this common stock purchase agreement.

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

<u>Period</u>	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans</u>	<u>Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plan</u>
August 1 - August 31	-	\$ -	-	-
September 1 - September 30	-	\$ -	-	-
October 1 - October 31	-	\$ -	-	-

**Item 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**Item 4. MINE SAFETY DISCLOSURES**

Not applicable.

**Item 5. OTHER INFORMATION**

None.

**Item 6. EXHIBIT INDEX**

- 4.1 [Registration Rights Agreement, dated September 18, 2020 between Ocean Power Technologies, Inc. and Aspire Capital Fund, LLC \(incorporated by reference from Exhibit 4.1 to the Company's Current Report on Form 8-K filed on September 18, 2020\).](#)
- 10.1 [Common Stock Purchase Agreement, dated September 18, 2020, between Ocean Power Technologies, Inc. and Aspire Capital Fund, LLC \(incorporated by reference from Exhibit 10.1 to the Company's Current Report on Form 8-K filed on September 18, 2020\).](#)
- 10.2 [Subcontract between Ocean Power Technologies, Inc. and Adams Communication & Engineering Technology Inc. dated effective October 20, 2020 \(incorporated by reference from Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 27, 2020\).](#)
- 31.1 [Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 31.2 [Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 32.1 \* [Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 32.2 \* [Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002](#)
- 101 The following financial information from Ocean Power Technologies, Inc.'s Quarterly Report on Form 10-Q for the quarter ended July 31, 2020, formatted in eXtensible Business Reporting Language (XBRL): (i) Consolidated Balance Sheets – October 31, 2020 (unaudited) and April 30, 2019, (ii) Consolidated Statements of Operations (unaudited) – three and six months ended October 31, 2020 and 2019, (iii) Consolidated Statements of Comprehensive Loss (unaudited) – three and six months ended October 31, 2020 and 2019, (iv) Consolidated Statement of Stockholders' Equity (unaudited) – three and six months ended October 31, 2020 and 2019 (v) Consolidated Statements of Cash Flows (unaudited) – six months ended October 31, 2020 and 2019, (vi) Notes to Consolidated Financial Statements.\*\*

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

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

**SIGNATURES**

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

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

Date: December 7, 2020

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

Date: December 7, 2020

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

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

I, George H. Kirby III, certify that:

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

Date: December 7, 2020

*/s/ George H. Kirby III*

George H. Kirby III

*President and Chief Executive Officer*

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

I, Matthew T. Shafer, certify that:

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

Date: December 7, 2020

*/s/ Matthew T. Shafer*

Matthew T. Shafer

*Chief Financial Officer*

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

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

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

Date: December 7, 2020

*/s/ George H. Kirby III*

\_\_\_\_\_  
George H. Kirby III

*President and Chief Executive Officer*

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

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

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

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

Date: December 7, 2020

*/s/ Matthew T. Shafer*

\_\_\_\_\_  
Matthew T. Shafer  
Chief Financial Officer

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

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