

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

**Form 10-K**

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

For the fiscal year ended April 30, 2024

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.**

**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)*

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

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

| <u>Title of Each Class</u>               | <u>Trading Symbol(s)</u> | <u>Name of Exchange on Which Registered</u> |
|------------------------------------------|--------------------------|---------------------------------------------|
| Common Stock, par value \$0.001          | OPTT                     | NYSE American                               |
| Series A Preferred Stock Purchase Rights | n/a                      | NYSE American                               |

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

None

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

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

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

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

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

Large accelerated filer       Accelerated filer       Non-accelerated Filer       Smaller reporting company   
Emerging growth company

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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

The aggregate market value of the common stock of the registrant held by non-affiliates as of October 31, 2023, the last business day of the registrant's most recently completed second fiscal quarter, was \$17.6 million based on the closing sale price of the registrant's common stock on that date as reported on the NYSE American.

The number of shares outstanding of the registrant's common stock as of July 22, 2024 was 92,708,981.

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**OCEAN POWER TECHNOLOGIES, INC.**  
**ANNUAL REPORT ON FORM 10-K**  
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PowerBuoy<sup>®</sup>, PB-Vue<sup>®</sup>, PowerTower<sup>®</sup>, Making Waves in Power<sup>®</sup>, Talk on Water<sup>®</sup>, WAM-V<sup>®</sup> and the Ocean Power Technologies logo are trademarks of Ocean Power Technologies, Inc. All other trademarks appearing in this annual report are the property of their respective holders.

### Special Note Regarding Forward-Looking Statements

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

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

You should not unduly rely on these forward-looking statements, which speak only as of the date of this filing. Unless required by law, we undertake no obligation to publicly update or revise any forward-looking statements to reflect new information or future events or otherwise.

Our fiscal year begins on May 1 and ends on April 30. When we refer to a particular fiscal year, we are referring to the fiscal year ending on April 30 of that year. References to fiscal 2024 are to the fiscal year ended April 30, 2024.

Unless the context indicates otherwise, the terms “Company,” “Ocean Power Technologies,” “OPT,” “we,” “our” or “us” as used herein refers to Ocean Power Technologies Inc. and its subsidiaries.

## PART I

### ITEM 1. BUSINESS

#### Overview

Our solutions focus on three major service areas: Data as a Service (“DaaS”), which includes data collected by our Wave Adaptive Modular Vessel (WAM-V®) autonomous vehicles or our PowerBuoy® PB product lines; Robotics as a Service (“RaaS”), which provides a lower cost subscription model for our customers to access use of our WAM-V’s®; and Power as a Service (“PaaS”), which includes our PowerBuoy® products.

Our mission is to provide intelligent maritime solutions and services that enable more secure and more productive utilization of our oceans and waterways, provide clean energy power services, and offer sophisticated surface and subsea maritime domain awareness solutions. The Company achieves this through our proprietary, state-of-the-art technologies that are at the core of our clean and renewable energy platforms, autonomous systems, solutions and services. The Company is involved in the entire life cycle of product development, from product design through assembly, testing, deployment, maintenance and upgrades, while working closely with partners across our supply chain. The Company also works closely with our third-party partners that provide us with, among other things, software, controls, sensors, integration services, and marine installation services. Our solutions are based on proprietary technologies that enable autonomous, zero or low carbon emitting, and cost-effective data collection, analysis, transportation and communication. Our solutions are primarily suited to ocean and other offshore environments, and support generation of actionable intelligence on a standalone basis or working with other data sources. We channel the information we collect, and other communications, through control equipment linked to edge computing and cloud hosting environments. The data collected by OPT’s technologies underscores the Company’s unique position as a system of systems provider. What sets OPT apart is its ability to enhance these data collection capabilities by integrating the WAM-V and PB systems. This integration enables the use of artificial intelligence and Machine Learning not only to improve data accuracy and operational efficiency but also delivery of actionable intelligence.

In November 2023 we announced that we have substantially completed our research and development phase and are primarily focused on commercial activities. We have built a suite of products (more fully described below) that we believe will be the basis for our current and future commercial success resulting in meaningful progress in orders, pipeline, and backlog. This pivot to commercial activities has enabled reallocation of headcount, resulting in approximately \$4.5 million in annual run rate savings, and a material reduction in third-party expenditures. The majority of our employees are now dedicated to customer sales, assembly, delivery and operations support.

We were incorporated under the laws of the State of New Jersey in April 1984 and began commercial operations in 1994. On April 23, 2007, we reincorporated in Delaware.

#### Our Solutions

##### Data as a Service

Our DaaS solution is at the forefront of our strategic goal to be a leader in offshore data collection, integration, analytics and real time communication for a variety of important applications. For example, our solutions can track surface vessel movement for maritime border enforcement and illegal fishing interdiction, provide security for offshore wind farms and oil and gas fields, and provide harbor or port security as well as logistics support. We have the ability to support aquaculture and gather information on ocean currents, water quality, wind and other weather metrics, provide photography, and map shorelines or subsurface bathymetry, objects and activity. We also offer 24/7 monitoring solutions that can provide meaningful real time information, and long-term data collection and analytics for sophisticated applications across many industries and scientific applications. Additionally, the stability of our WAM-V® platform makes it an ideal solution to produce high quality sonar data in many sea conditions for subsea surveys. WAM-V’s® can also be outfitted with various equipment for the performance of marine infrastructure surveys, berth clearance surveys, dredging surveys, and mining pit surveys.

In October 2020, the Company launched its DaaS offering in support of the U.S. Navy's Naval Postgraduate School's ("NPS") Field Experimentation (formerly Sea, Land, Air, Military Research Initiative). In February 2024, the Company received additional funding from the Naval Postgraduate School for the year-long deployment of a PowerBuoy® in Monterey Bay. The PowerBuoy®, integrating our MDAS along with cutting-edge Satellite communication and AT&T 5G technology, will demonstrate its persistent surveillance and communications capacities in a maritime environment. This deployment marks a significant milestone in maritime technology, showcasing the potential of standalone at-sea infrastructure nodes to support diverse operational needs. We have further expanded our DaaS offering through field demonstration such as ANTX Coastal Trident 2022, as well as the Naval Task Force 59 for the Digital Horizon field exercise and the International Maritime Exercise (IMX) in Bahrain. Additional DaaS contracts include Sulmara for survey services with our WAM-V® platform and Phase I funding through National Oceanic and Atmospheric Administration's (NOAA) Small Business Innovation Research (SBIR) program.

In September 2023, the Company received an award of three separate Indefinite Delivery Indefinite Quantity (IDIQ) Multiple-Award Contracts (MAC) from NOAA. NOAA has selected OPT as one of several Multiple Award IDIQ contract holders to provide Uncrewed Maritime Systems (UMS) Services to NOAA's Office of Marine and Aviation Operations (OMAO), Uncrewed Systems Operation Center (UxSOC). Under these contracts, OPT will bring its expertise to utilize cutting-edge UMS to support NOAA in conducting vital marine resource surveys and research while also playing a pivotal role in enhancing NOAA's meteorological and oceanographic observations, further advancing our understanding of the natural world. Finally, OPT will collaborate with NOAA to explore and characterize the depths of our oceans, contributing to the discovery and preservation of invaluable marine ecosystems.

Additionally, the Company was awarded a contract to provide scientific hardware delivery, training, and integration services under a subcontract for a U.S. government agency. This project seeks to identify and integrate sensors and systems and share data suitable for the full spectrum of maritime operations. We will provide the required hardware, hardware deployment support, software, software deployment support, integration services, surveillance and telemetry data, and associated training in support of a legacy PB3 PowerBuoy® equipped with our Maritime Domain Awareness (MDA) solution. The project will be deployed in support of security efforts to detect illegal, unreported, and unregulated ("IUU") fishing, dark vessels, and human/drug trafficking in operation 24/7/365. As further discussed under "Commercial Activities," the Company was awarded a contract in support of foreign law enforcement partners. This collaboration aims to protect vital marine species and combat illegal, unreported, and unregulated (IUU) fishing activities in critical habitats using our state-of-the-art uncrewed technologies and demonstrates unprecedented, networked surveillance capabilities and evidence collection.

### ***Maritime Domain Awareness Solution***

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

We have designed our solution to provide detailed, localized maritime domain awareness that can be utilized for a wide range of applications across market segments. Our MDAS base hardware consists of a high-definition radar, a stabilized high-definition optical and thermal imaging camera, and a vessel Automatic Identification System ("AIS") detection module. This hardware can be customized or supplemented by other solutions, depending on the requirements of our customers. These devices can be mounted on our products, such as our legacy PB3 and NextGen PB or WAM-V®, and then, utilizing integrated command and control software, data would be sent to us and to our customers via secure communications channels. Multiple sensors can be used on a single unit based on the comprehensiveness of the needs of our customers.

Our MDAS processes data onboard our platforms (i.e., edge computing) and transmits the results to our cloud-based analytics platform via secure Wi-Fi and cellular and satellite communications. We anticipate integrating our MDAS solution into our WAM-V's® to add mobile assets for patrols or interdiction and utilizing satellite communication to expand the availability of our data service. Surveillance data can be integrated with third party marine monitoring software or with our own MDA software solution to provide command and control features of a multi-platform surveillance network. As an example, one or more WAM-Vs® can be networked to our self-powered buoy, which acts as a central data and communication hub. These WAM-Vs® can significantly increase the range of our MDAS network solutions. The data can also be integrated with satellite, weather, bathymetric, and other third-party data feeds to form a detailed surface and subsea picture of a monitored area. All vessel video, radar, and track data is securely stored in our cloud, or the customer's cloud environment and is accessible for as long as required by the customer for further analysis and reference.

The Company launched the first commercially ready MDAS on a test buoy off the coast of New Jersey in September 2021. The system includes our proprietary integration of sensors, hardware and software, supported by cloud infrastructure as well as having a web-based user interface that displays camera, radar, AIS and live chart data. During the first half of calendar 2024 we successfully demonstrated the system multiple times for potential customers, including a showcase in San Diego Bay at the U.S. Navy's Advanced Naval Technology Exercise, and remote demonstrations using assets deployed off New Jersey for potential customers active in the Mediterranean, South America and Middle East.

### ***Autonomous Vehicles***

Our Autonomous Vehicles business incorporates the patented WAM-V® technology, which enables roaming capabilities for unmanned maritime systems in waters around the world. The first WAM-V® was launched in 2007 as a new vehicle class to deliver reliable autonomous surface vehicles to customers that could provide robust, real-time data collection and reporting. Our Autonomous Vehicles business also provides RaaS, allowing customers to lease WAM-V® robotics and access information from our WAM-Vs® while we maintain ownership and maintenance and repair responsibilities. Today, WAM-Vs® operate in ten countries for commercial, military defense and scientific uses. Our WAM-Vs® exist in three primary sizes of 8, 16, and 22 feet. However, many of the design components are common across the sizes, allowing for integration of different payloads and adaptation of the payload platforms for larger equipment. All sizes can be adapted to suit electric or liquid fuel propulsion methods.

The WAM-V® product line highly complements the Company's business strategy and can be used inshore, nearshore, and offshore. This business continues to grow and is further expanding into core marine survey and maritime security markets in the Middle East, Europe, Asia, Oceania and the Americas. We continue to find ways to integrate Autonomous Vehicles with the Company's existing platforms and service offerings and expect to take advantage of new synergistic opportunities as they arise. In addition, in connection with our Merrows offering noted below, we are already integrating data streams relating to all aspects of, on, under, adjacent to, or bordering on a sea, ocean, or other navigable waterway onto the WAM-V® to expand our offering to provide a roaming MDA solution to our customers.

### ***Recent Technological Advancements***

In August 2023 we successfully demonstrated a WAM-V attaching itself remotely to a buoy and establishing a connection that enabled charging. This successful electrical connection that enabled charging represents a significant step forward in the integration of renewable energy sources within the maritime industry and paves the way for a future where electrically propelled autonomous vessels can operate for extended durations, opening doors to potential new applications within the maritime domain. We are continuing to advance the ability to remotely charge our WAM-V® from our PowerBuoy® platforms, enabling persistent, resident and roaming capabilities.

The Company continues to advance its efforts with the WAM-V® in the defense and national security industry. To that end, it has started working with various U.S. Government agencies to provide its assets on a Contractor Owned Contractor Operated, Government Owned Government Operated, and Government Owned Contractor Operated basis. These advances are being supported through the hiring of employees that are U.S. citizens and the Company's workforce is now approximately 25% veterans. As part of these efforts, the Company is also working with other Unmanned Surface Vehicle (USV), Unmanned Aerial Vehicle (UAV), and Unmanned Underwater Vehicle (UUV) providers to support autonomous swarming services for the defense industry.

In April 2024 the Company announced Merrows, a projected significant step forward to enhance maritime domain awareness and underline the critical importance of ocean security's role in national security. Merrows is OPT's groundbreaking consolidated solution offering comprehensive ocean surveillance and involves the deployment of sophisticated Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance systems. These systems are integrated within OPT's roaming technologies, such as the Wave Adaptive Modular Vessel, and resident technologies, like the PB, to offer an unparalleled level of surveillance and data analysis capability. This initiative, which builds on OPT's recently completed R&D efforts, demonstrates the company's commitment to safeguarding the world's oceans through advanced technology and innovation.

In May 2024 the Company announced it is approaching 15MWh of renewable energy production from its family of PB. The recent launch of its Next Generation PB off the coast of New Jersey has materially accelerated average energy production by combining solar, wind, and wave energy production capabilities. The energy generation numbers are based on deployments in the Atlantic, Pacific, Mediterranean, and North Sea. OPT has demonstrated and delivered use cases as a proven solution for Anti-Submarine Warfare, Intelligence, Surveillance, and Reconnaissance, USV Charging, and Environmental Sensing. These numbers show that non-grid connected marine energy production is not just for the R&D community but is a commercially available solution.

### **Robotics as a Service**

During fiscal 2023 the Company introduced the subscription model for our customers to access our WAM-V's®. Under this model we lease our WAM-V's to our customers over a fixed time period or provide a specified number of use days, typically with a guaranteed minimum. This model provides a lower cost entry point for our customers to access our products, provides a try before buying opportunity, and allows our customers increased access during periods of increased need. The Company expects to benefit from the growing RaaS trend, providing greater visibility into predicting revenue and planning supply for demand, while providing our customers with flexibility and a lower cost of entry.

### **Power as a Service**

PaaS solutions deliver value to customers by utilizing our managed power platforms. We continue to commercialize our proprietary power platforms that generate electricity primarily by harnessing the renewable energy of ocean waves. In addition to offering our commercial legacy PB3, we have added solar power options to our next generation PowerBuoy® (the "NextGen PB") and have the option of adding small wind turbines to supplement power generation. The NextGen PB includes versions with and without a wave energy converter (WEC), with the non-WEC version replacing our previous hybrid PB. Our focus for these solutions is on bringing autonomous clean power to our customers wherever it is required. Moreover, offshore data and communications networks require power to function, and our solution solves this need without requiring ongoing battery replacement or older technologies such as shore station power cables. Many of the lessons learned from the deployments of both our legacy PB3 and demonstrator systems have been used to develop the next generation of PowerBuoy® systems that are based on modularity for WEC and non-WEC applications. The legacy PB3 will continue to be available and supported in addition to the support provided to the NextGen PB, which was fully commercialized during fiscal 2024.

### **Next Generation PowerBuoy® (NextGen PB)**

The NextGen PB is our future platform that integrates the lessons learned from the legacy PB3 and our demonstrator systems. It consists of two versions, one utilizing solar and wind power and one utilizing solar and wind power plus wave energy conversion capability, to provide reliable power in remote offshore locations, regardless of ocean wave conditions. Both versions utilize the same spar shape, thus increasing modularity and decreasing part count and costs. The WEC technology in the NextGen PB is based on our ongoing Mass on Spring Wave Energy Converter (MOSWEC) development which has the advantages of smaller size, lower cost, environmentally sealed design, and increased energy generation capability. The prototype of the solar and wind PowerBuoy® and the prototype of the MOSWEC PowerBuoy® has been tested off the coast of New Jersey and the solar and wind system was used during the MDAS demonstration for ANTX during fiscal 2023.



We believe this product addresses a broader spectrum of customer deployment needs, including low-wave and nearshore environments, with the potential for greater product integration within each customer project. The NextGen PB is intended to provide a stable energy platform for our MDAS solution, and for agile deployment of other intelligence gathering surface and subsea sensors, subsea power applications, such as a surface communications hub for electric remotely operated vehicles (“eROV”) and autonomous underwater vehicles used for mine counter measures, unexploded ordnance disposal, subsea acoustic monitoring, underwater inspections and short-term maintenance, and subsea equipment monitoring and control. The design has a high payload capacity for surveillance and communications equipment, including subsea acoustics, with the capability of being tethered to subsea payloads such as batteries, or with a conventional anchor mooring system. Energy is stored in onboard lithium-ion batteries which can power subsea and topside payloads. The control system uses sensors and an onboard computer to continuously monitor the subsystems. The NextGen PB is designed to be able to operate over a broad range of temperature and ocean wave conditions. It has a 50kW-hour battery system which can be expanded up to 100 kW-hour energy.

### ***Legacy PB3 PowerBuoy®***

The legacy PB3 uses proprietary technologies that convert the hydrokinetic energy of ocean waves into electricity. The legacy PB3 generates a nominal nameplate capacity rating of up to three kilowatts (“kW”) of peak power. Our Energy Storage System (“ESS”) has a capacity of up to a nominal 150 kW-hours to meet specific application requirements.

The legacy PB3 is designed to generate power for use independent of the power grid in offshore locations. As ocean waves pass the legacy PB3, the rising and falling of the waves are converted into mechanical energy, which in turn, drives the electric generator. The power electronics system then conditions the electrical output which is stored within the ESS.

The operation of the legacy PB3 is controlled by our customized, proprietary control system. The control system uses sensors and an onboard computer to continuously monitor the legacy PB3 subsystems. We believe that this ability to optimize and manage the electric power output of the legacy PB3 is a significant advantage of our technology.

### **Strategic Consulting Services**

In November 2023 OPT divested its non-core strategic consulting team so that it can more fully focus its efforts and resources on the commercialization of its cutting-edge pipeline of products – particularly for the national security and defense markets. Going forward, the focus of our Strategic Consulting Services will be on delivering value to our customers through services which can be integrated in support of our broader PaaS, DaaS and/or RaaS solutions.

### **Strategy and marketing**

Our strategy includes developing integrated solutions and services, including autonomous and cloud-based delivery systems for ocean intelligence, ocean data and predictive analytics to provide actionable intelligence including our product offering Merrows. We also have a number of resellers and strategic alliances, including partnerships recently entered into in the Middle East and USA to advance our product and services and gain further adoption from our target markets. Our marketing efforts are focused on offshore locations that require a cost-efficient solution for renewable, reliable, and persistent power, data collection, and communications, either by supplying electric power to payloads that are integrated directly with our products or located in its vicinity, such as on the surface, the seabed, or in the water column. Our recent projects have been primarily focused on military and government applications.

Our recent market analysis reveals evolving dynamics within the offshore MDA sector, notably influenced by the technological revolution that enhances MDA capabilities through advanced, low-cost unmanned systems. This shift, highlighted by the National Plan to achieve MDA by the Department of Homeland Security (“DHS”) and the Government Accountability Office (“GAO”) in their 2022 ‘Unmanned Maritime Systems’ report on Maritime Security, is further exemplified by the U.S. Coast Guard’s March 2023 Unmanned System Strategic Plan. This plan outlines a vision to effectively employ, defend against, and regulate unmanned systems in maritime operations, underscoring the strategic importance of collaborative international efforts in maritime security. The U.S. is actively encouraging Pacific allies to bolster their maritime surveillance capabilities to counteract regional coercive behaviors, reflecting a broader trend towards democratizing technology to enhance global maritime safety, security, and prosperity. This aligns with our company’s positioning, as our products are well-suited to enable the Coast Guard and other maritime bodies to achieve their mission-critical capabilities in surveillance, detection, classification, identification, and prosecution, which are essential for executing statutory missions. Moreover, large defense contractors’ increasing interest in the “ocean data collection” space, through acquisition of small and mid-size unmanned and autonomous surface vehicle companies, signifies a growing market and application opportunities for our unmanned system offerings. Within the United States, our MDAS deployed on NextGen PB can also be deployed domestically, enhancing our market size.

Unmanned systems are increasingly in demand by defense and security and commercial companies to reduce costs and improve safety in offshore operations. Also, geopolitical developments such as conflict in the Middle East and Eastern Europe demonstrate the need for countries to protect their borders. In addition, the need to protect exclusive economic zones from illegal fishing activities and protect natural resources on the seabed are accelerating the adoption of solutions or technologies that collect, transmit, and synthesize data to provide actionable intelligence and decision-advantage to clients. Our recent operations in Bahrain and in the Asia Pacific region show the broadening geographic opportunity for our services, especially in the defense and security markets. This includes support for other unmanned assets, such as aerial drones, deployment of underwater vehicles, that can then communicate via PowerBuoy® deployed communication links, and as a deployment platform for secure communication networks.

We are focused on serving defense and security organizations, while also targeting offshore wind, science and research, and ports and harbors. Our pipeline continues to grow and comprises primarily participants in defense and security markets. In addition, we continue to see a growing number of commercial opportunities as we witness growing interest from offshore wind companies for autonomous monitoring, surveillance and survey-related services during various stages of the project development cycle, including initial permitting that can reduce risk in permit obtainment and legal challenge. Further, we are attracting interest targeted toward subsea applications, using proprietary sensor payloads for environmental monitoring and subsea intelligence. We believe that our buoys and WAM-Vs® are uniquely able to deliver these services either as a standalone solution or in combination with other systems. Furthermore, we are becoming a trusted provider of solutions for the hydrography survey market, especially for shallow water operations.

## **Competitive Advantages**

We continue to commercialize our current and future products and solutions by targeting customers in our principal markets (defense and security, offshore oil and gas, science and research, and offshore wind, as well as government applications in border protection, fishery protection and marine protected areas) that require resident, semi-resident, or roaming platforms. Our platforms provide stable and reliable power sources in nearshore and remote maritime locations for short and long-term deployments. We believe that our solutions and our existing commercial relationships provide the following competitive advantages in our target markets:

- *Numerous applications within multiple major market segments.* We have designed our solutions to have multiple maritime applications that can be used globally by customers. Our WAM-V® autonomous vehicles are designed for nearshore and offshore deployments as fully or semi-autonomous systems and can operate in force multiplier mode. Our vehicles can support customized subsea and surface payloads, including other remotely operated or autonomous systems such as aerial drones and ROVs. Multiple applications exist in the hydrographic survey market, across a range of industries including offshore wind and oceanographic monitoring. Our legacy PB3 was designed for longer-term deployment in moderate to high ocean wave locations. Our NextGen PB is a replacement for the legacy PB3 with added capabilities at a lower cost, as it can also address shorter term deployments as well as meet the needs of customers with projects in low sea state locations. Our subsea battery enables persistent power to be delivered from the seabed to support autonomous, all-electric subsea operations. Together, all these products can be integrated to provide customized power solutions for our customers. Our PowerBuoy® platforms can also act as persistent or short term self-powered solution platforms for payloads, such as our MDA package, which can provide real-time perimeter security, vessel tracking and area surveillance for government defense, fishery protection, and offshore energy applications.

- *Considerable life-cycle cost savings over current solutions for many applications.* Our PowerBuoy® platforms are designed to operate over extended intervals between required maintenance activities. We believe that our PowerBuoys® will reduce costs over multi-year operations. These cost savings are mostly due to reduced vessel and personnel servicing activities. For short and long term deployments, our NextGen PB is a cost-efficient means of providing MDA and subsea power solutions. Our subsea battery can provide power to seafloor systems when combined with a PowerBuoy® for power regeneration, thus reducing or, in some cases, eliminating the need for manned vessels to replace or recharge expended subsea batteries during mission life. Our WAM-V® vehicles displace carbon and capital-intensive manned vessels, enabling savings to be realized even during short term deployments. For shorter term deployments and in nearshore waters, the WAM-V® might replace the need for a manned vessel entirely. For long term deployments and in offshore waters, the WAM-V® enables material reductions in costs and carbon emissions from traditional large survey vessels.
- *Real-time data communications.* Our systems can be equipped with a variety of communications equipment, such as 5G, 4G LTE, satellite, VHF, and Wi-Fi, which enables the transmission of data on a frequent or continuous basis. We believe that more frequent data communication could enable an end-user to more quickly and proactively make data-driven decisions which could result in economic advantages. Real-time data communications are an essential component of our WAM-V® operations and our MDAS payload, allowing persistent autonomous remote monitoring of marine traffic.
- *Modular and scalable designs.* Our WAM-Vs® exist in three primary sizes of 8, 16, and 22 feet, and many of the design components are common across the sizes, allowing for integration of different payloads and adaptation of the payload platforms for larger equipment. All sizes can be adapted to suit different propulsion methods. In addition, the portability of the WAM-V allows for quick relocation of the entire system by air, sea or ground. Our PowerBuoy® platforms are designed with a modular energy storage system which allows us to tailor its configuration to specific application requirements, including expansion of energy storage capacity, potentially allowing for a more customized solution and potential cost savings for our customers. We believe that the modular design of our subsea battery enables clients to specify larger energy storage than would be possible with just buoys and have this placed at the seabed and near existing electric subsea equipment.
- *Integrated Designs.* All our products are designed to operate with each other in mesh or array setups. Our Merrows suite of solutions enables integration of data streams and supports machine learning and artificial intelligence model development. We are also commercializing our existing MDA payload to operate on WAM-Vs® and believe that future integration of docking and charging stations for WAM-Vs® into our PowerBuoys® will provide additional solutions for our customers. These stations will enable our WAM-Vs to charge up using our renewable power generators thus materially increase autonomous mission duration. The stations will also enable enhanced maritime domain awareness capabilities. We have also designed our systems to work with other assets being provided into larger projects and programs.
- *Flexible electrical, mechanical and communication interfaces for sensors.* The WAM-V® and PowerBuoy® platforms can be equipped with payloads, either mounted on or within the platforms, or tethered to the platforms. The PowerBuoys® have mechanical and electrical interfaces which allow for simplified integration of payloads, creating flexibility for the end-user. The stable platforms of the WAM-Vs® allow for a broad range of subsea and surface sensors and assets to be integrated. Flexible interfaces reduce cost through simplified integration and deployment.

- *Reduced carbon emission, environmentally benign system design.* Our PowerBuoys® emit no carbon during operation. We further believe that our PowerBuoys® do not present significant risks to marine life, nor do they emit pollutants, and therefore have minimal environmental impact. Our electric WAM-Vs® primary source of energy is from batteries, thus enabling zero emission operations. WAM-Vs® have been demonstrated as suitable for sensitive marine area operations due to their shallow draft and zero emission profile.
- *Ocean and factory-tested technology.* We have deployed more than 80 WAM-Vs® to date across the world for commercial customers and government agencies. Our WAM-Vs® are designed to operate in a broad range of oceanic conditions and regions. In the field maintenance is designed into the WAM-Vs®. Our legacy PB3 and Next Generation PowerBuoy® are designed to be durable, with a three-year interval between required maintenance activities. The legacy PB3 has maintained operational performance through hurricanes, tropical storms and North Sea winter storms and has been successfully deployed for several clients. The Company maintains access to ocean testing through the use of three permitted test sites in New Jersey that allow us to perform water testing of new PowerBuoy® products and payloads. The subsea battery has been pressure-tested to its design depth at the Deep Ocean Test Facility in Annapolis, Maryland. We sea trial every WAM-V either in the Bay Area or near our New Jersey locations prior to customer delivery and acceptance. Further, we continue to focus on standardizing manufacturing and production testing procedures and work closely with our supply base to ensure production repeatability.
- *Prior commercial relationships enabled the development of our technology.* Our prior and existing relationships with a broad range of government agencies, including, inter alia, the U.S. Navy, U.S. Department of Energy (“DOE”), U.S. DHS, and NOAA, and our prior and existing relationships with commercial entities have allowed us to further develop our solutions for a variety of needs in various industries. We believe these relationships have helped position us within the public and private sectors for future commercial opportunities, which enhance our market visibility and attractiveness to our prospective customers.
- *Access to domestic supply chain.* Our strategy is to utilize domestic supply chain sources, which are generally available, to improve operations and collaboration with our supply partners. We believe this strategy reduces some of our exposure to global sourcing and supply chain uncertainties.

## **Our Target Markets**

The Company takes a rigorous approach to market evaluation. Utilizing our deep internal industry knowledge as well as publicly available and purchased data, we evaluate total addressable market sizes. We apply screening criteria to narrow our focus within these markets and identify sub-segments and associated service addressable market sizes. These market evaluations are updated on an ongoing basis. The DOE has identified eight non-grid applications where renewable marine energy could provide consistent, reliable power. The identified marine energy applications are ocean observation, underwater vehicle charging, marine aquaculture, marine algae, seawater mining, seawater desalination, coastal resiliency and disaster recovery, and isolated communities. We have been focused on addressing the energy needs of some of these applications (e.g., ocean observation, underwater vehicle charging), and other offshore applications (e.g., maritime domain awareness, well monitoring and powering subsea equipment control systems).

### *Defense and Security*

Our MDAS provides the ideal understanding of the global maritime domain impacting the defense and security markets by generating actionable intelligence from the sea. This modular, standalone solution can be deployed across multiple platforms and provides remote, autonomous monitoring that enables enforcement of maritime law in dangerous and remote ocean environments to improve safety at sea. Applications include port security, maritime border protection, and IUU fishing protection, among others. Using an integrated suite of monitoring components and data communications and analysis software, our MDAS can enable 24/7, real-time, unmanned offshore monitoring capabilities.

We believe that our buoys are uniquely positioned to be used to provide power and communications for multiple applications within the defense and security markets. The ability of the buoys to power multiple payloads may be an attractive feature for these markets, as their systems can be easily integrated into other PowerBuoy® applications allowing their operation to be concealed. One example of an application for domestic and international defense departments and defense contractors includes forward deployed energy and communications outposts (which is a current U.S. Department of Defense program), both above and below sea surface. Buoys enabled with our MDAS provide actionable intelligence from 24/7/365 radar and AIS vessel tracking (including “dark vessels”), automatic notifications and vessel warnings, real-time visual and Infra-Red video surveillance, with an integrated command and control user interface. Other examples of such applications include perimeter security, early detection and warning systems, remote sensing stations, high frequency radar, sonar, electro-optical and infrared sensors for maritime security, network communications systems, and unmanned underwater vehicle docking stations.

In addition, our WAM-V® is an ideal platform servicing multiple applications within the defense and security markets, including high value asset protection, marine domain awareness, security perimeter, mine counter measures and explosive ordinance disposal, anti-submarine warfare, and border security. Multiple WAM-V’s® can also autonomously work together to provide a security perimeter and coordinate to intercept suspicious vessels and provide valuable information before the threat gets near the protected asset. The portability of the WAM-V® provides quick relocation of the entire system by air, sea or ground and the scalability of the WAM-V® technology means that a common platform can be used for multiple missions with varying requirements. Our platforms and systems are designed to be operated in compliance with our customers’ and our internal cybersecurity standards and integrate with our customers’ command and control systems (“C2”). Additionally, we actively manage cybersecurity at the corporate level, by taking ongoing steps to protect data and systems from cyber threats. This continuous cycle of identifying risks, implementing safeguards, monitoring for attacks, and adapting to new threats reduces the risk of a cyberattack and the potential damage it can cause.

IUU fishing has become a global issue with both environmental and economic consequences. According to a report published in Science Advances by the American Association for the Advancement of Science, it is estimated the global economic impact from illegal fishing to be as high as \$50 billion. Most exclusive economic zone monitoring is done by offshore patrol vessels (“OPV”), which is one of the fastest growing naval product markets. We believe that our autonomous MDAS solution, which can be combined with mobile assets such as our WAM-V® or satellite imagery, can deliver substantial economic impact to governments over incumbent solutions in securing remote fisheries and MPAs. In the U.S. specifically, IUU fishing is considered a major maritime threat by the DHS.

#### *Offshore Oil and Gas*

We believe the offshore oil and gas industry is undergoing a significant transformation as it continues to invest in new technologies that enable carbon reduction, cost savings, and the electrification and digitization of operations. There are over 10,000 offshore oil and gas platforms worldwide, including exploration, production, reservoir management, and sites pending decommissioning based on information from organizations such as the U.S. Bureau of Ocean Energy Management (“BOEM”) and industry organizations and publications. Driven by the growing demand for electrification, we believe that we have opportunities to implement one or more buoys at some of these sites to displace current power solutions, or augment existing technologies. Customer feedback obtained through engineering studies with multiple oil and gas customers has helped identify target applications for our buoys – namely, temporary power and control communications for subsea fields experiencing umbilical degradation and subsea docking stations for future resident ROV/AUV applications for inspection, maintenance, and repair. The market for remote and autonomous charging of subsea assets, such as ROVs and AUVs, is rapidly taking shape. Based on various reports, other applications in the oil and gas market include providing power to unmanned platforms and area surveillance during decommissioning activities. Although estimates vary in these reports, they generally point towards more than 2,000 platforms (and corresponding wells) that need to be decommissioned over the next 10 years across the globe. We see this market materializing primarily in the North Sea and regions such as Brazil and Australia. Furthermore, there is an increasing market demand for providing interim power and control solutions for tiebacks where control and monitoring umbilicals are exhibiting failures. In addition, we believe the survey capability afforded by our WAM-V’s® is perfectly suited to serve a broad range of survey needs of the oil and gas industry often required for permit obtainment. WAM-V® stability produces excellent sonar data quality in higher sea conditions than comparably sized vessels and can be used as a force multiplier to existing manned assets or as the sole deployment tool. WAM-V’s® can be outfitted with various sonar solutions depending on requirements and identify any underwater obstacles or hazards.

### *Marine Charting*

Since 2019, WAM-Vs® have been used in support of nautical charting efforts for NOAA-backed projects in the Great Lakes and Western Alaska. WAM-V's® are teamed up with manned assets to provide enhanced capability, improving the project's production efficiency and lowering the carbon footprint, when compared to a manned asset.

### *Science and Research*

The science and research market provides environmental intelligence to the entire ocean enterprise, which supports ocean measurement, observation and forecasting, and is an important provider of information to maritime commerce and the entire "blue economy." Maritime commerce and the scientific community depend on information in areas such as meteorology, climate change, ocean currents, and biological processes to inform operations and development. These groups often require a power and communications solution in remote offshore locations. Additionally, the increased interest in protecting marine habitats offers opportunities to collaborate with governments and NGOs to monitor marine sanctuaries.

### *Offshore Wind and Other Markets*

Opportunities also exist in other markets such as supporting offshore wind farm development and aquaculture. According to the U.S. Department of Energy's 2023 Offshore Wind Market Report, the U.S. offshore wind energy pipeline has reached 52,687 megawatts (MW) as of May 2023, including projects at various stages from installed to those in permitting. Investment in the offshore wind sector is accelerating. In 2022, approximately \$2.7 billion was invested in infrastructure to support offshore wind projects, indicating a robust financial commitment to sustainable energy solutions.

The offshore wind fleet is forecast to grow 15-fold by 2040 and move further offshore with Europe alone connecting over 500 turbines in 2019. While these turbines develop significant power, there are opportunities pre-installation of the turbines to autonomously collect ocean data during the early stages and monitor marine habitats during construction. There are also opportunities to support ongoing survey work once wind farms are operational to mitigate carbon emissions and to provide communication stations for aerial drones performing maintenance inspection tasks. Furthermore, the U.S. recently approved the permits for the first major utility scale offshore wind farm. Providing wave power solutions to utility scale renewable developments offers an attractive proposition to support renewable power and autonomous operations. Our solutions can support aquaculture development with systems such as species escape tracking, effluent monitoring, and other water quality considerations.

Our WAM-V's® are currently used to perform sonar surveys that support the marine infrastructure required for offshore wind development and installation. They can also assist during the planning and environmental permitting phase including metocean and environmental data and mammal tracking. We can also protect operations through MDA to monitor operations and vessel traffic and motion data analysis for predictive maintenance and safety.

We also provide offshore engineering, consulting, and design services for offshore wind, drilling contractors, defense contractors, construction yards, engineering firms, and oil and gas, wave energy, and marine construction and service companies including design review, forensic investigation, and expert witness services.

### **Business Strategy**

During the fiscal year ended April 30, 2024, we have continued to advance our marketing programs, products, and solutions (including Merrows noted above). We have substantially completed our research and development efforts, thus positioning the Company to increase its focus on delivering intelligent maritime solutions and services, particularly in the national security and defense markets. We intend to build on these efforts by introducing additional processes and making investments in appropriate human capital, operations, and manufacturing capabilities. In support of our focus on the national security and defense markets, we have developed a defense specific sales team, including veterans from the U.S. Navy and Swedish Navy.

In addition, on November 20, 2023, we retained Rear Admiral Victorino “Vic” G. Mercado (Retired) as a special advisor to the Company’s Board of Directors. We are leveraging Vic’s experience, expertise, and networks as we build on our momentum in providing intelligent maritime solutions to the U.S. Government and defense and security sectors, and carefully navigate the challenges of securing access to and protecting highly sensitive and confidential information.

The majority of the Company’s potential customers are in areas of defense and security, hydrographic survey, offshore wind, offshore and coastal communication networks, and MDA, including mitigation of IUU fishing, where the end use may be both domestic and abroad.

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

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

- Provide integrated turn-key solutions, purchases or leases. We believe our DaaS, RaaS and PaaS solutions, together with our platforms, are well suited to enable unmanned, autonomous (non-grid connected) offshore applications, such as intelligence, surveillance, and reconnaissance (ISR), mine counter measure operations, topside and subsea surveillance and communications, surveying, subsea equipment monitoring, early warning systems platform, subsea power and buffering, and weather and climate data collection. We have investigated and realized market demand for some of these solutions, and we intend to sell and/or lease our products to these markets as part of these broader integrated solutions. Additionally, we intend to provide services associated with our solution offerings such as paid engineering studies, value-added engineering, maintenance, remote monitoring and diagnostics, application engineering, planning, training, project management, and marine and logistics support required for our solution life cycle. As our MDAS development continues, we expect that this will also include data and cloud services, as well as Counter Unmanned Underwater Vehicle (“CUUV”) WAM-V ® capability. CUUV represents emerging technologies designed to detect, track, and neutralize unmanned underwater vehicles and is an important area of growth in ensuring maritime security. Recent demonstrations successfully showcased the ability to detect multiple underwater threats, including, singular and swarming micro–Autonomous Underwater Vehicles (“AUV”).
- Expand customer system solution offerings through new complementary products that enable more cost-efficient deployments that make shorter missions more feasible. We are continuously innovating new solutions to deliver enhanced value to our customers, such as enhancing our MDAS and improving our deployment platforms solutions, such as our PowerBuoys® and WAM-Vs®. We have substantially completed development of our next generation PowerBuoy® that incorporates wave, wind, and solar power generation capabilities in a robust yet cost effective system that supports shorter term missions as well as the ability to operate in near shore and low wave environments. This effort was partially funded by the DOE SBIR Phase II award. In addition, we have integrated PowerBuoy® and WAM-V® capabilities, including WAM-V® recharging from a PowerBuoy®, with future plans to integrate MDAS capabilities into our WAM-Vs®, thus extending our reach and providing both fixed and mobile MDAS offerings to our customers.

- Focus WAM-Vs® on the defense and security, hydrographic survey, and surveillance industries. We are well positioned to capitalize on the growing demand for unmanned surface vehicles to provide maritime safety, security, and awareness of what is happening in the maritime domain, including surveillance, detection, classification, and identification. The ability of our WAM-Vs® to handle various payloads allows us to target navigation surveys, marine infrastructure surveys, berth clearance surveys, dredging surveys, and mining pit surveys. Near-term future markets for our WAM-Vs® include the use of WAM-Vs® for the launch of aerial drones and underwater survey equipment. WAM-Vs® are easily and economically shipped via land, air, or sea, and their modular design enables us to quickly reduce their size for storage or shipment. The ability to disassemble a WAM-V® reduces the footprint by as much as 75%, and as a result, a 20-foot container can hold four 16-foot WAM-Vs®. In addition, our 8-foot WAM-V® can be checked as baggage on a standard commercial flight. To integrate our solutions and add roaming as an option or enhancement to our MDAS, we are advancing developments to further integrate MDAS into the WAM-V® platform and develop additional autonomy capabilities.
- Focus sales efforts on key global markets in the U.S., Middle East, Latin America, and Sub Saharan Africa. These efforts are already yielding success as evidenced by the February 2024 orders received from a Latin American customer for fully integrated WAM-V Unmanned Surface Vehicles totaling over \$1.25 million. While we are marketing our products and services globally, we have focused on several key markets and applications, including U.S. and foreign defense and security applications with our MDAS offering; and the hydrographic survey market with regard to our WAM-Vs®. We believe that each of these areas has demand for our solutions, sizable end market opportunities, and high levels of industrialization and economic development. Our headquarters in Monroe Township, New Jersey and our office in Richmond, California enable us to support the geographic diversity of our customers and strengthen our dialogue with our solution partners located on both the east and west coasts of the U.S.
- Expand our relationships in key market areas through strategic partnerships and collaborations. We believe that strategic partners are an important part of expanding visibility to our products. Partnerships and collaborations can be used to improve the development of overall integrated solutions, create new market channels, expand commercial know-how and geographic footprint, and bolster our product delivery capabilities. We have formed such a relationship with several well-known groups, and we continue to seek other opportunities to collaborate with application experts from within our selected markets. These partnerships have helped us source services, such as installation expertise, and products, such as MDA enabling equipment, to meet our development and customer obligations. We have been actively pursuing additional opportunities to bring in-house skills, capabilities, and solutions that are complementary to our strategy and enable us to scale more quickly.
- Partner with fabrication, deployment and service contractors. In order to minimize our capital requirements as we scale our business, we intend to optimize and utilize state of the art fabrication, anchoring, mooring, cabling supply, and in some cases, deployment of our products and solutions. We believe this domestically distributed manufacturing and assembly approach enables us to focus on our core competencies and ensure a cost-effective product by leveraging a larger more established supply base. We continue to seek strategic partnerships regarding servicing of our products and solutions.



- Expand survey and security market applications. Through our WAM-V® products, we can increase our ability to lease vehicles specifically to support shoreline and offshore survey markets as well as security applications while integrating MDA into these solutions.

## **Marketing and Sales**

We continue to enhance our marketing capabilities across our target markets, and we are actively marketing our products and solutions. During fiscal 2024 we significantly streamlined our marketing and sales team to focus on the defense and security markets, both in the U.S. and internationally, as well as expanded into global regions we believe offer the most opportunity for growth, such as Latin America. We believe the addition of this deep industry knowledge positions us well for success in these markets in fiscal 2025 and beyond. Because some of our solutions use technology that is not yet fully adopted by customers within our target markets in every case, we expect that the customer decision process will continue to include substantial time educating end-users and stakeholders, which may result in the continuation of a lengthy sales cycle.

One of the primary ways we showcase our Company's products, services and expertise is through demonstrations, conferences, and selective use of trade shows. We utilize our database to select conferences and trade shows where we will have the most effective visibility to our potential clients. During fiscal 2025, we have plans to continue to attend and present at various demonstrations, conferences, and trade shows in the U.S., Europe, and the Middle East.

Additionally, we seek to enter strategic relationships to develop application solutions with commercial and military sensor and equipment manufacturers.

## **Competition**

We expect to compete with other providers in the DaaS, RaaS, and PaaS industries. Our DaaS solution competes with other data acquisition companies in a variety of industries, from sensor and measurement equipment providers to other providers of autonomous vehicles.

Our PaaS solution competes with other offshore autonomous power sources, primarily consisting of subsea batteries, solar and fossil-fuel power sources, where many of the providers are substantially larger than us and may have access to greater financial resources. Incumbent sources of offshore power may also represent established and reliable power sources and may have already gained customer acceptance. Our ability to compete successfully for business from applications seeking offshore power will depend on (a) our ability to produce and store energy reliably and at a total cost that is competitive with or lower than that of other sources, and (b) the demonstrated reliability of our products and positive customer perception of our company. We also may have the opportunity to cooperate with other solution providers, such as other suppliers of subsea batteries where our PowerBuoys® could provide recharging capabilities or other providers of autonomous surface or underwater vehicles where our PowerBuoys® could provide charging and enhanced communications capabilities.

The vast majority of the companies in the DOE's wave energy converter database are small, early-stage companies with a limited number of employees that do not have our in-ocean validation experience. Only a few of these companies have conducted testing similar to ours, such as accelerated life testing and extensive wave tank testing on small-scale models of their devices. We believe our in-ocean experience is critical towards proving the reliability, survivability and performance of any wave energy system, which we believe our future customers will require before adopting any wave generated energy solution. It is our belief that experience gained through full scale in-ocean deployments, coupled with other types of factory and laboratory testing, and our resulting understanding of risks and failure modes provides us with an advantage compared to potential wave energy competitors.

Competition for the WAM-V® product line and RaaS solution includes companies which market solutions as ASVs and USVs. There are several established competitors in this space, with the pace of new entrants increasing in-line with the expanding market opportunities. Through our ongoing product development and building upon our years of commercial deployment data, we believe that we continue to maintain a first mover advantage in the smaller scale autonomous offshore power market.

We continuously monitor non-traditional competitive threats, such as multi-domain drones and artificial intelligence tools utilizing satellite data. We have had discussions with companies in these markets to evaluate synergistic solution development where we believe there may be a demand for cooperative solutions.

## **Commercial Activities**

As noted above, we are now primarily focused on commercial activities. We have built a suite of products that we believe will be the basis for our current and future commercial success resulting in meaningful progress in orders, pipeline, and backlog. We continue to seek new strategic relationships and further develop our existing partnerships. We collaborate with companies that have developed or are developing in-ocean applications requiring a persistent source of power that is also capable of real time data collection, processing and communication, to address potential customer needs. For the fiscal years ended April 30, 2024 and 2023, the Company had four and two customers whose revenue accounted for at least 10% of the Company's consolidated revenue, respectively. These revenues accounted for approximately 52% and 32% of the Company's total revenue for the respective periods.

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

### *Current and Recent Contracts*

The following contracts were entered into during fiscal 2024:

- The Company secured funding from the Naval Postgraduate School (NPS) in Monterey, California, for the year-long deployment of a PowerBuoy® in Monterey Bay, California. The PowerBuoy®, integrating MDAS along with cutting-edge Satellite communication and AT&T 5G technology, will demonstrate its persistent surveillance and communications capacities in a maritime environment. This deployment marks a significant milestone in maritime technology, showcasing the potential of standalone at-sea infrastructure nodes to support the Joint Force's diverse operational needs. It aims to explore and exploit the value that such autonomous at-sea infrastructure can provide, particularly in enhancing situational awareness and communication capabilities for maritime operations. Furthermore, this deployment signifies the first installation of AT&T cellular technology on one of our commercially proven ocean buoys. This advancement is a testament to the ongoing collaboration between OPT and AT&T, which began with the SLAMR initiative at NPS and has now evolved into a focused effort to enable AT&T's pioneering 5G At Sea initiative.
- The Company received a volume order from Sulmara, a prominent player in offshore services, of WAM-V 16 uncrewed surface vehicles, making this the largest single order of WAM-Vs to date. The order, valued at \$1.6 million, underscores our commitment to providing innovative and sustainable solutions for the offshore industry. Due to demand, production is already underway and will allow for revenue recognition in fiscal year 2025.
- The Company received a contract in support of foreign law enforcement. This collaboration aims to protect vital marine species and combat illegal, unreported, and unregulated fishing activities in critical habitats using our state-of-the-art uncrewed technologies and demonstrates unprecedented, networked surveillance capabilities and evidence collection, allowing authorities to gather critical information and support legal actions while keeping personnel safely out of harm's way until the precise time and conditions favor interdiction efforts.
- The Company received an award of three separate IDIQ Multiple-Award Contracts from NOAA. NOAA has selected us as one of several Multiple Award IDIQ contract holders to provide Uncrewed Maritime Systems Services to NOAA's Office of Marine and Aviation Operations uncrewed systems operation center. These contracts have the potential to result in millions of dollars of revenue for us, and the ordering period is set to span three years, commencing on September 1, 2023, and concluding on August 31, 2026.

- The Company received the largest quantity order in the Company’s history, marking a significant commercial milestone. A valued customer engaged in the offshore energy service industry in Latin America placed purchase orders for multiple WAM-V USV’s, representing a substantial investment totaling over \$1.6 million and highlighting OPT’s continued expansion in the region. The WAM-V’s will be deployed in hydrographic applications and by utilizing their adaptability and reliability will provide unrivaled versatile multi-application solutions. This landmark order not only underscores the growing demand for OPT’s innovative solutions but also solidifies the Company’s position as a leader in the marine robotics industry.

## **Business Relationships**

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

Our third-party software companies are contributing to the Company’s MDAS by providing integration software, control software, autonomy and systems integration for the buoy sensor payload. In addition, they are assisting the Company with designing and building a customized data platform that supports the Company’s MDAS with sensor data feed management, secure communications management, a cloud-based infrastructure, and web-based user interface. The platform was designed with a flexible architecture that allows the Company to integrate new sensor technologies and third-party analytics capabilities and share MDAS data with customers and partners. We also keep in contact with several offshore specialists and marine operations partners globally to support our deployment, maintenance, and recovery operations and projects.

## **Backlog**

As of April 30, 2024, the Company’s backlog was \$4.9 million. As of April 30, 2023, the backlog was \$4.0 million. Our backlog only includes unfilled firm orders for our products and services from commercial or governmental customers. If any of our contracts were to be terminated, our backlog would be reduced by the expected value of the remaining terms of such contract.

The amount of contract backlog is not necessarily indicative of future revenue because modifications to or terminations of present contracts and production delays can provide additional revenue or reduce anticipated revenue. A substantial portion of our revenue is recognized using the input method which measures 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.

## **Product and Solution Development**

### *MDAS*

Expanding on our experience with our own initial prototype Marine Surveillance Solutions (“MSS”) system, we intend to continuously look for ways to further enhance and develop the next generation MDAS, which will combine radar, marine AIS and camera data with a custom developed command and control system to provide actionable information for our end users. We believe the sensor suite will be a combination of marine environment tested off-the-shelf components selected to optimize performance and cost.

This system could be utilized as a standalone node or in an array, which will provide near real-time information about the marine activity within a customer's area of interest.

#### *Legacy PB3 PowerBuoy®*

We now consider the legacy PB3 to be a mature system and all development activities ceased during fiscal 2024.

During fiscal 2024, we completed the commercial development of our NextGen PB, which incorporates lessons learned and customer feedback from various deployments of the legacy PB3, prototype buoys, and test buoys to optimize power generation through hybridization of renewable energy sources and lower installed cost of the system. As the NextGen PB is now fully commercialized, we have begun to de-emphasize next generation system fundamental research and development, instead focusing our efforts on ongoing product development, including continuous improvement and life cycle management. Integration of WEC capabilities into the NextGen PB and corresponding enhanced power generation capabilities is currently in the final development stages and expected to be completed in the fall of 2024.

#### *WAM-V®*

We will continue to develop the capabilities of the WAM-V® 8, WAM-V® 16, and WAM-V® 22 variants for the marine survey and defense & security markets. Control systems' development will continue to provide additional features based on feedback from existing customers as well as the experience gained from our RaaS offering. Additionally, we will continue to develop and enhance our obstacle detection and obstacle avoidance capabilities, further advancing our progress towards the full Convention on the International Regulations for Preventing Collisions at Sea (COLREGS) compliance (an international agreement that sets out the rules of the road for ships and other vessels at sea). We also see a growing market for launch and recovery systems and are working to integrate such systems into our WAM-Vs®.

#### *Adjacent Capability Development*

We continue to work with our partners to develop and deploy integration of adjacent technologies, such as aerial drones and underwater vehicles, into our products and solutions.

### **Intellectual Property**

We believe that our experience differentiates us from other providers of DaaS, RaaS, PaaS, and WEC technologies. As a result, our success depends in part on our ability to obtain and maintain protection of our proprietary products, technology and know-how, to operate without infringing upon the rights of others, and to prevent others from infringing upon our rights. Our policy is to protect our position by, among other methods, filing U.S. and foreign patent applications related to our patented technology, inventions and improvements that are important to the development of our business. We also rely on trade secrets, know-how, and continuous technological innovation and may rely on licensing opportunities to develop and maintain our competitive position.

As of April 30, 2024, we have been issued 70 U.S. patents, of which 38 are active, 20 have expired and 12 were abandoned. Outside of the U.S., we have been issued 280 patents across 25 countries with 26 of the active U.S. patents having at least one corresponding issued foreign patent. Our patent portfolio includes patents and patent applications with claims directed to

- System design, including buoy, battery chargers, generators, power take off, printed circuit boards, and WEC;
- WEC control systems;
- Wave power and thermal motor power conversion;
- Buoy anchoring and mooring design and power cable connection;
- Wave WEC farm architecture;
- Systems and methods for vehicle charging;
- WAM-V® technology; and
- Buoy based cellular networks.

The expiration dates for our issued U.S. patents range from fiscal year ending 2024 to 2041. We do not consider any single patent or patent application that we hold to be material to our business, although our ability to maintain and solidify our proprietary position for our technology will depend on our success in continuing to obtain effective patent claims and enforcing those claims once granted relative to the whole of our patent portfolio. In addition, certain technologies that we developed with U.S. federal government funding are subject to certain government rights as described in "Risk Factors - Risks Related to Intellectual Property."

We use trademarks on nearly all our products and believe that having distinctive marks is an important factor in marketing our products. We have registered our PowerBuoy<sup>®</sup>, PB-View<sup>®</sup>, PowerTower<sup>®</sup>, Making Waves in Power<sup>®</sup>, Talk on Water<sup>®</sup>, and WAM-V<sup>®</sup> trademarks in the U.S. Trademark ownership is generally of indefinite duration when marks are properly maintained in commercial use.

## **Regulation**

Our products are subject to regulation in the U.S. and in foreign jurisdictions concerning, among other areas, site approval, use restrictions, and environmental approval and compliance. These regulations are adopted or updated on a regular basis, especially because our products include cutting-edge technology that is often changing faster than the regulations can be adopted or amended. WAM-Vs<sup>®</sup> are subject to a patchwork of rules and regulations in the U.S. and in foreign jurisdictions concerning the operation of autonomous and unmanned surface vehicles. Often, rules and regulations specific to autonomous, unmanned, and/or unmanned surface vehicles do not exist or are not explicitly defined. We advise our customers to always follow the rules and regulations as they apply in the jurisdiction in which they are operating.

The renewable energy industry has also been subject to increasing regulation. As both the renewable energy and wave energy industries continue to evolve, we anticipate that wave energy technology and our PowerBuoys<sup>®</sup> and their deployment will be subject to increased oversight and regulation in accordance with international, national and local regulations relating to safety, site approval, and environmental protection.

*Site Approval.* In the U.S., federal agencies regulate the siting of long-term renewable energy projects and related-uses located on the outer continental shelf (“OCS”), which is generally more than three miles offshore. OCS projects longer than one-year in duration are regulated by the U.S. Bureau of Ocean Energy Management (“BOEM”). For projects located within three miles of the U.S. shore, regardless of duration, the adjacent state would be responsible for issuing a lease and other required authorizations for the location of the project. Generally, the same process applies to foreign sites where site approval is contingent on meeting both national and local regulatory and environmental requirements. In connection with issuing permits or leases enabling project use, the respective government agency often requires site restoration or other activities at the conclusion of the permit or lease period.

*Environmental Approval, Compliance, and Health and Safety.* We are subject to various foreign, federal, state and local environmental protection and health and safety laws and regulations governing, among other things: the generation, storage, handling, use and transportation of hazardous materials; the emission and discharge of hazardous materials into the ground, air or water; and the health and safety of our employees.

*Subsidies and Incentives.* Renewable energy subsidies and incentives are generally applicable only to electric generation and supply to the utility grid. However, our autonomous applications may result in a reduction of carbon emissions, which our potential customers may be able to publicize in their environmental stewardship reports upon our review and permission.

## **Manufacturing**

Our core in-house manufacturing activity includes the assembly, final systems integration and testing of our products and components, which is conducted at our New Jersey headquarters and at our California facility.

Our corporate headquarters and most of our manufacturing operations are located in Monroe Township, New Jersey. This facility offers approximately 56,000 square feet of manufacturing and office space and allows for expansion of our manufacturing capabilities and a move toward higher volume production of our solutions. We believe our current manufacturing facilities are suitable, adequate and provide productive capacity for the Company. In April 2023, we entered into a lease for a new facility in Richmond, CA, providing improved resources as well as surge manufacturing and on water testing capability.

## Human Capital

The Company believes that its future success is dependent in part on its continued ability to attract, hire and retain qualified personnel. Therefore, investing in, developing and maintaining human capital is critical to our success. None of the Company's employees are covered by collective bargaining agreements. The Company is an equal opportunity employer, and as such, provides equal employment opportunities to all employees and applicants for employment without regard to race, color, creed, ancestry, national origin, citizenship, sex or gender (including pregnancy, childbirth, and pregnancy-related conditions), gender identity or expression (including transgender status), sexual orientation, marital status, religion, age, disability, genetic information, service in the military, or any other characteristic protected by applicable federal, state, or local laws and ordinances. On April 30, 2024, the Company had 43 full-time employees as compared to 72 at the end of fiscal 2023. The year over year decrease was partially the result of a decrease in headcount needed as a result of the completion of Research and Development activities as well as cost cutting measures on our previously disclosed path to profitability. The Company is committed to providing its employees with a healthy and safe work environment, which include policies to guide our efforts. We take a proactive approach to the identification and control of environment, health and safety hazards and risks. We work to continuously improve our Quality, Health, Safety, and Environment ("QHSE") performance through methodologies that aim to prevent workplace injuries and illness, emphasize quality production, and provide ongoing safety education to employees. On June 2, 2021, the Company achieved ISO 45001 certification from Bureau Veritas (BV) for a 3-year term for its New Jersey location. On May 31, 2024 the Company again achieved ISO 45001 certification from BV for another 3-year term for its New Jersey location. During fiscal 2025, we plan to expand this certification to include our new Richmond, CA facility. ISO 45001 is an international occupation health and safety certification. We also recently passed our annual external audit from BV related to this certification. The safety management system provides procedures to enhance our safety profile and reduce incidents, so that all our employees go home safely every day. During fiscal 2023 the Company began work to become ISO 9001 certified for all our locations and expects to obtain this certification during fiscal 2025. Our focus during fiscal 2025 will be on implementing stop work authority, identification of hazards and risks whether at sea or in the shop, identification of lagging and leading indicators, and performance of quality investigations. Our long-term goal is to become a generative QHSE culture.

## ESG

The Company recognizes the importance of Environmental, Social and Governance (ESG) as essential elements to its success, delivering products that help reduce our customers' carbon emission and preserve our oceans' natural resources. As such, our Board of Directors has established an Environmental and Sustainability Committee (ES), which assists the Board of Directors in fulfilling its oversight responsibilities by assessing the effectiveness of the Company's programs and initiatives that support environmental stewardship, social responsibility, and sustainability policies, programs, and practices of the Company. The Company is committed to delivering innovative products and solutions while simultaneously working with high integrity, quality, a strong governance culture and respect for our employees, customers, vendors and the people in the communities where we do business.

In line with this commitment, the Company's products and solutions support Sustainable Development Goal 14 (Goal 14 or SDG 14) which aims to protect and ensure "life below water" and is one of the 17 Sustainable Development Goals established by the United Nations in 2015. OPT's products and services align with this goal by offering a means to mitigate IUU fishing, collecting ocean data to support climate science, and removing carbon emitting energy sources from our oceans.

The Company believes that consideration of ESG matters is important to how it, and its solutions and services affect the environments, communities and societies in which it operates around the world. By adhering to international, national, and local customs, we believe we meet our governance obligations from the environment to personnel to safety as well as an ability to enable responsible development. The Company views itself as a responsible corporate citizen throughout the execution of its operations, as emphasized by its goal to provide low-carbon power and data solutions for offshore industries, scientific research, and territorial security. It is the Company's goal that all products have a minimal environmental impact footprint compared to alternative solutions. This includes minimizing the emissions for both our facilities and products, implementing and deploying a database to track our carbon savings, utilizing renewable energy to power offshore data solutions, and providing products and solutions that monitor sensitive ecological areas.

Each deployed legacy PB3 operating in place of fossil fuel-based power in PaaS applications can directly displace four tons of carbon annually, or roughly the amount of carbon produced by two average automobiles. When combined with our MDAS for applications typically serviced by a manned guard vessel powered by diesel fuel, this can indirectly displace more than 300 tons of carbon for every 10 vessel days replaced, or the equivalent of removing more than 125 cars from the road. The WAM-Vs® are used in many applications, as described in previous sections, with one of the most common being hydrographic surveys. WAM-Vs® can either replace a manned vessel for near shore surveys or serve as a force multiplier to expand the range and speed of offshore surveys for a manned survey vessel. Each survey vessel day replaced by a WAM-V® can displace over 14 tons of carbon. Over a full survey season, this could exceed 1300 tons of carbon displacement, the equivalent of more than 500 cars worth of annual emissions.

During fiscal 2023, the Company worked with the NJ Clean Energy Program to conduct an energy audit and benchmarking report to compare our NJ facility's energy usage to other commercial buildings in similar industries and provide recommendations to improve efficiencies. The Company also performed an audit of the carbon footprint for all Company business travel. Carbon offsets were purchased which exceeded the total carbon footprint of the annual NJ facility energy usage and Company wide business travel. In parallel, the Company has initiated an environmental impact assessment on our products, starting with the legacy PB3, with a focus on the potential of any environmental hazards of materials. Further data has been gathered around the legacy PB3 to determine the risk to marine life associated with our batteries. For recent deployments, we received a permit from the US Army Corps of Engineers and confirmation from the U.S. Department of Commerce National Oceanic and Atmospheric Administration that the PowerBuoy® installation poses no material risk to marine life. Our batteries contain no toxic or rare earth metals and have a minimal risk of fires or explosions. In the unlikely event that water comes into contact with live batteries, wireless remote operation allows for the immediate discharge of energy to mitigate the risk of electrolysis that could create an explosive mixture of hydrogen and oxygen within the buoy. Further research is being performed into hazardous materials and any other risks related to our WAM-V® product line, including risk associated with the batteries we use in this product.

#### **Available Information**

Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and all amendments to those reports are made available free of charge through the Investor Relations section of the Company's website ([www.oceanpowertechnologies.com](http://www.oceanpowertechnologies.com)) as soon as practicable after such material is electronically filed with, or furnished to, the SEC. Material contained on our website is not incorporated by reference in this report. Our executive offices are located at 28 Engelhard Drive, Suite B, Monroe Township, New Jersey, 08831, and our telephone number is (609) 730-0400. Since June 2021, our common stock has traded on the NYSE American exchange under the symbol "OPTT", and previously, it traded on Nasdaq under the same symbol. The public may also read and copy any materials that we file with the Securities and Exchange Commission ("SEC") at the SEC's Public Reference Room at 100 F Street, NE, Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet website that contains reports and other information regarding issuers that file electronically with the SEC located at <http://www.sec.gov>.

#### **ITEM 1A. RISK FACTORS**

You should carefully consider the following risk factors together with the other information contained in this Annual Report, and in prior periodic and current reports. If any of the following risks occur, they may materially harm our business and our financial condition and results of operations. In this event, the market price of our common stock could decline, and your investment could be lost.

## **Risks Related to Our Financial Condition**

### ***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 \$27.5 million and \$26.3 million in fiscal 2024 and 2023, respectively. As of April 30, 2024, we had an accumulated deficit of \$307.6 million. 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 loss and 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 services or whether we can achieve profitability. There is significant uncertainty about our ability to successfully commercialize our products in our targeted markets. Even if we do achieve commercialization of our products and services and become profitable, we may not be able to achieve or, if achieved, sustain profitability on a quarterly or annual basis.

### ***We may not be able to raise sufficient capital to continue to operate our business.***

Historically, we have funded our business operations through sales of equity securities. We have raised approximately \$0.5 million during fiscal 2024, and had an unrestricted cash balance of \$3.2 million as of April 30, 2024. We do not know whether we will be able to secure additional funding if needed in the future or, if secured, whether the terms will be favorable to us or our investors. Our ability to obtain additional funding will be subject to several factors, including market conditions, our operating performance, litigation and investor sentiment. These factors may make additional funding unavailable, or the timing, dollar amount, and terms and conditions of additional funding unattractive.

If we issue additional securities to raise capital, our existing shareholders could experience dilution or may be subordinated to any rights, preferences or privileges granted to the new security holders. Any new securities issued could have rights senior to those associated with our common stock and could contain covenants that could restrict our operations. Should the financing we require to sustain our working capital needs be unavailable or prohibitively expensive when we require it, our business, operating results, financial condition and prospects could be materially and adversely affected.

### ***There are doubts about our ability to continue as a going concern.***

Our current cash balance may not be sufficient to fund our planned expenditures through twelve months from the filing date of this Form 10-K. These conditions raise substantial doubt about our ability to continue as a going concern. The ability to continue as a going concern is dependent upon our operations in the future and/or obtaining the necessary financing to meet our obligations and repay our liabilities arising from normal business operations when they become due. The accompanying consolidated financial statements have been prepared on a basis which assumes we are a going concern and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from any uncertainty related to our ability to continue as a going concern. Such adjustments could be material. There can be no assurance that sufficient funds required during the next year or thereafter will be generated from operations or that funds will be available from external sources, such as debt or equity financings or other potential sources. The lack of additional capital resulting from the inability to generate cash flow from operations, or to raise capital from external sources would have a material adverse effect on its business. Furthermore, there can be no assurance that any such required funds, if available, will be available on attractive terms or that they will not have a significant dilutive effect on our existing stockholders.

### ***Our business could be affected by macroeconomic risks.***

The Company's operations and performance depend significantly on global and regional economic conditions. Macroeconomic conditions, including inflation, slower growth or recession, changes to fiscal and monetary policy, tighter credit, higher interest rates, high unemployment and currency fluctuations can materially and adversely affect demand for the Company's products and services. In addition, confidence and spending can be materially adversely affected in response to financial market volatility, negative financial news, declines in income or asset values, energy market dislocations and cost increases, labor and healthcare costs and other economic factors. An adverse impact on demand for the Company's products, uncertainty about, or a decline in, global or regional economic conditions can have a significant impact on the Company's suppliers and other partners. Potential effects include financial instability; inability to obtain credit to finance operations and purchases of the Company's products; and insolvency. We cannot predict the timing or scale of these various macroeconomic conditions, but they could have a material adverse effect on our business, results of operations and financial condition.

### ***Adverse developments affecting the financial services industry, including events or concerns involving liquidity, defaults, or non-performance by financial institutions, could adversely affect our business, financial condition, or results of operations.***

We currently maintain cash balances in accounts at U.S. financial institutions that we believe are high quality. These accounts are in non-interest-bearing and interest-bearing operating accounts and may, from time to time, exceed the Federal Deposit Insurance Corporation ("FDIC") insurance limits. If such banking institutions were to fail, we could lose all or a portion of those amounts held more than such insurance limitations. In addition, actual events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions, our third-party vendors and counterparties or other companies in the financial services industry or the financial services industry generally, or concerns or rumors about any events of these kinds or other similar risks, have in the past and may in the future lead to market-wide liquidity problems, which could adversely affect our business, financial condition, results of operations and liquidity.



Although we assess our banking relationships as we believe necessary or appropriate, our access to funding sources and other credit arrangements in amounts adequate to finance or capitalize our respective current and projected future business operations could be significantly impaired by factors that affect us, the financial institutions with which we have arrangements directly, or the financial services industry or economy in general. These factors could include, among others, events such as liquidity constraints or failures, the ability to perform obligations under various types of financial, credit or liquidity agreements or arrangements, disruptions or instability in the financial services industry or financial markets or concerns or negative expectations about the prospects for companies in the financial services industry. These factors could involve financial institutions or financial services industry companies with which we have financial or business relationships but could also include factors involving financial markets or the financial services industry generally.

In addition, investor concerns regarding the U.S. or international financial systems could result in less favorable commercial financing terms, including higher interest rates or costs, and tighter financial and operating covenants, or systemic limitations on access to credit and liquidity sources, thereby making it more difficult for us to acquire future financing or access to capital on acceptable terms or at all. As the ability to access capital has historically been, and is expected to continue to be, one of our primary sources of liquidity, any adverse impacts on our ability to access such credit and liquidity sources as a result of adverse developments affecting the financial services industry could adversely affect our business, financial condition, results of operations.

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

Our reporting currency is the U.S. dollar, however sometimes we incur costs in the local currency of countries in which our customers and suppliers are located. As a result, we are subject to currency translation risk. A percentage of our revenue has historically been generated outside the U.S. and can be denominated in foreign currencies of our customers. Changes in exchange rates between foreign currencies and the U.S. dollar could affect our revenue and cost of revenue and could result in exchange losses. We cannot accurately predict the impact of future exchange rate fluctuations on the results of our operations. Currently, we do not engage in any exchange rate hedging activities and, as a result, any volatility in currency exchange rates may have an immediate adverse effect on our business, financial condition and results of operations.

### **Risks Related to Growth of Our Business**

***If sufficient demand for our solutions and services or new products does not develop or takes longer to develop than we anticipate, our revenue generation will be limited, and it is unlikely that we will be able to achieve and, if achieved, then sustain profitability.***

Even if wave energy and maritime domain awareness technology achieve broad commercial acceptance, our products, including our MDAS offering, NextGen PB and Legacy PB and WAM-V<sup>®</sup> autonomous surface vessels may not prove to be commercially viable technologies. We have invested a significant portion of our time and financial resources since our inception in the development of our PowerBuoys<sup>®</sup> but have not yet achieved successful large scale or profitable commercialization of our PowerBuoys<sup>®</sup>. We have also added the WAM-V<sup>®</sup> product line, but we have not achieved profitability with this product line. As we seek to manufacture, market, sell and deploy our PowerBuoys<sup>®</sup> and WAM-Vs<sup>®</sup> in greater quantities, we may encounter unforeseen hurdles that would limit the commercial viability of these products, including unanticipated manufacturing, deployment, operating, maintenance and other costs. We may also encounter technical obstacles to deploying, operating and maintaining PowerBuoys<sup>®</sup>, WAM-Vs<sup>®</sup>, or other products.

If demand for our solutions and products fails to develop sufficiently, it is unlikely that we will be able to grow our business or generate sufficient revenue.

In addition, if we are not successful in commercializing our new solutions and products, or are significantly delayed in doing so, our business, financial condition and results of operations will be adversely affected.

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

Our success depends on the skills, experience and efforts of our management and other key product development, manufacturing, and sales and marketing employees. We cannot be certain that we will be able to attract, retain and motivate such employees. The loss of the services of one or more of these employees could have a material adverse effect on our business. There is a risk that we will not be able to retain or replace these key employees. Implementation of our business plans will be highly dependent upon our ability to hire and retain senior executives as well as talented staff in various fields of expertise.

Changes in senior management are inherently disruptive, and efforts to implement any new strategic or operating goals may not succeed in the absence of a long-term management team. Changes to strategic or operating goals stemming from the appointment of new executives may themselves prove to be disruptive. Periods of transition in senior management leadership are often difficult as new executives gain detailed knowledge of our operations. Cultural differences may also impact changes in strategy and style. Without consistent and experienced leadership, customers, employees, suppliers, creditors, shareholders and others may lose confidence in us.

To be successful, we need to attract and retain key personnel. Qualified individuals, including engineers, software developers, project managers and sales leadership, are in high demand, and we may incur significant costs to attract and retain them. All our employees are at-will employees, which means they can terminate their employment relationship with us at any time, and their knowledge of our business and industry would be difficult to replace. If we lose key personnel, or do not hire or retain other personnel for key positions, this could have a material adverse effect on our business, financial condition, results of operations or cash flows.

***Our non-U.S. sales and operations are subject to risks inherent in conducting business outside the U.S., many of which are beyond our control including:***

- political and social attitudes, laws, rules, regulations, and policies within countries that favor local companies over US companies, including government-supported efforts to promote local competitors;
- global trade issues and uncertainties with respect to trade policies, including tariffs, trade sanctions, and international trade disputes, and the ability to obtain required import and export licenses;
- differing legal systems and standards of trade which may not honor our intellectual property rights, and which may place us at a competitive disadvantage;
- pressures from foreign customers and foreign governments for us to increase our operations in the foreign country, which may necessitate the sharing of sensitive information and intellectual property rights;
- multiple conflicting and changing governmental laws and regulations, including varying labor laws and tax regulations;
- reliance on various information systems and information technology to conduct our business, making us vulnerable to cyberattacks by third parties or breaches due to employee error, misuse, or other causes, that could result in business disruptions, loss of or damage to our intellectual property and confidential information (and that of our customers and other business partners), reputational harm, transaction errors, processing inefficiencies, or other adverse consequences;
- regional or global economic downturns or recessions, varying foreign government support, unstable political environments, and other changes in foreign economic conditions;

- the impact of public health epidemics, such as the COVID-19 pandemic, on employees, suppliers, customers and the global economy;
- difficulties in managing a global enterprise, including staffing, managing distributors and representatives, and repatriating cash;
- longer sales cycles and difficulties in collecting accounts receivable; and
- different customs and ways of doing business.

To date, our operations have not been materially adversely affected by global conflicts including Russia's invasion of Ukraine, the current Israel/Palestine conflict, or the recent attacks on merchant ships in the Red Sea. However, further escalation of these or other conflicts could result in, among other negative consequences, a disruption to the global economy and supply chain leading to a shortage of parts, materials and services needed to manufacture and timely deliver our products. Any such shortages could negatively impact our suppliers' ability to meet our demand requirements and, in turn, our ability to satisfy our customer demand. These challenges, together with other challenges associated with operating an international business, may adversely affect our ability to recognize revenue and our other operating results.

***If we are unable to effectively manage our growth, this could adversely affect our business and operations.***

The scope of our operations to date has been limited, and we do not have experience operating on the scale that we believe may be necessary to achieve profitable operations. We added two acquisitions over the last three fiscal years (one of which was subsequently divested in November 2023), and now have operations in New Jersey and California, without significantly increasing our support staff. Our current personnel, facilities, systems and internal procedures and controls may not be adequate to support our future growth plans, which we expect to include organic growth as well as additional acquisitions and partnerships. This factor, when combined with the technical complexity of some of our development efforts, may result in our inability to meet certain customer expectations or deadlines and could result in an amendment to, or termination of, customer contracts or relationships. To realize our desired growth, we may need to add sales, marketing and engineering offices in our existing and/or additional locations nationally or internationally, which may result in additional organizational complexity and cost.

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

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

An important element of our business strategy is to enter into service contracts with our customers under which we would be paid fees for services related to the maintenance and operation of our products purchased from us. In addition, we may offer to lease our products, sell power generated by our products or sell data gathered by sensors on our products. Even if customers purchase or lease our products, they may not enter into service contracts with us. We may not be able to negotiate services or other contracts that provide us with any additional profit opportunities. Even if we successfully negotiate and enter into such service contracts, our customers may terminate them prematurely, or they may not be profitable for a variety of reasons, including the presence of unforeseen hurdles or costs. In addition, if we were unable to perform adequately under such service contracts, our efforts to successfully market our products could be impaired. Any one of these outcomes could have an adverse effect on our business, financial condition and results of operations.

***Actions of activist shareholders could be disruptive and costly and the possibility that activist shareholders may gain representation on or control of our board of directors could adversely affect our results of operations, financial condition, or share price.***

While we strive to maintain constructive communications with our stockholders, we have been, and may in the future be, subject to actions initiated by activist shareholders, including without limitation three different lawsuits filed by Paragon Technologies, Inc. in Delaware. While the Company has successfully defended against these lawsuits, these efforts resulted in significant expense and management distraction. See below for further information regarding the Paragon lawsuits. Any activist campaign against OPT that contests, conflicts with, or seeks to change, our board composition, leadership, strategic direction, or business mix could have an adverse effect on us because: (i) responding to actions by activist shareholders could disrupt our operations, be costly or time-consuming, or divert the attention of our board of directors and senior management from their regular duties, which could adversely affect our results of operations or financial condition; (ii) perceived uncertainties, including as a result of possible changes to the composition of our board, as to our future direction may lead to the perception of a change in the direction of the business or lack of continuity, any of which may be exploited by our competitors, cause concern to our customers and/or employees and result in the loss of potential business opportunities, or make it more difficult to attract and retain qualified personnel and business partners, and may affect our relationships with vendors, customers and other third parties; (iii) these types of actions could cause significant fluctuations in our share price based on temporary or speculative market perceptions or other factors that do not necessarily reflect the underlying fundamentals and prospects of our business; and (iv) if individuals are elected to our board of directors with a specific agenda, it may adversely affect our ability to effectively implement our business strategy and create additional value for our shareholders.

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

We have been, and expect to continue to be, highly dependent on third parties to supply or manufacture components for our products, including for pre-fabrication elements. If, for any reason, our third-party manufacturers or vendors are not willing or able to provide us with components or supplies in a timely fashion, or at all, our ability to manufacture and sell many of our products could be impaired. Specifically, we have concerns about the delivery of semiconductors and specialty metals, which are necessary to produce our products, as well as our ability to find vendors for pre-fabrication elements of our products. Other global supply chain issues have caused our vendors to delay orders, or to request increased pricing that we may not always be able to pass on to our customers.

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

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

***Our targeted markets are competitive and highly complex. We compete against incumbent solutions already being utilized by our customers and potential customers. If we are unable to compete effectively, we may be unable to increase our revenue and achieve or maintain profitability.***

Our principal targeted markets include defense and security, offshore oil and gas, science and research, marine charter, and offshore wind. In our targeted markets, which are highly competitive, we compete against incumbent power and maritime domain awareness solutions already being utilized by our customers and potential customers. If we are unable to demonstrate to our customers and our potential customers that our products and services are competitive and reliable to alternative solutions, or if it takes us longer to do so than we anticipate, we may be unable to expand our business, maintain our competitive position, satisfy our contractual obligations, continue to commercialize our products, or become profitable. In addition, if the cost associated with these development efforts exceeds our projections, our results of operations could be materially and adversely affected.

In addition, competition may arise from other companies manufacturing similar products, developing different products that produce energy more efficiently than our products, or developing autonomous vehicles that perform better or have other characteristics that customers prefer, could make our products less attractive or render them obsolete. If we are not successful in manufacturing systems and solutions required for the application, we may not be able to respond effectively to competitive pressures from competing technologies or improvements to existing technologies. If we are unable to respond effectively to such competitive forces, our business, financial condition and results of operations could be adversely affected. Our targeted markets are subject to their own inherent risks, and if those risks should materialize, then our business, financial condition and results of operations could be adversely affected.

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

We market and plan to market our services and products in multiple global regions, including parts of North and South America, Europe, Sub-Saharan Africa, Middle East, and Asia, and we are therefore subject to risks associated with having international operations. Revenue from customers who are based outside of the U.S. accounted for 4% of our revenue in fiscal 2024 and 12% of our revenue in fiscal 2023. Risks inherent in international operations include, but are not limited to, the following:

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

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

***Failure of our information systems or those of third parties or breaches of data security could cause significant harm to our business.***

Our systems and processes involve the storage and transmission of proprietary information and sensitive or confidential data, including personal information of employees, and possibly customers and others. In addition, we rely on information systems controlled by third parties. Information system failures, network disruptions, and system and data security breaches, manipulation, destruction, ransom, or leakage, whether intentional or accidental, could impair our ability to provide services to our customers or otherwise harm our ability to conduct our business. Any such failures, disruptions or breaches could also impede the development, manufacture or shipment of products, interrupt or delay processing of transactions and reporting financial results, result in theft or misuse of our intellectual property or other assets, or result in the unintentional disclosure of personal, proprietary, sensitive, or confidential information of employees, customers, and others. Our development and use of our MDAS platforms, cloud-based offerings, as well as our evolution toward DaaS, PaaS and RaaS models, require us to host increasing amounts of our own data as well as customer data, and increases the risk that our and our customers' data and financial and proprietary information could be more susceptible to such failures and data breaches.

***Cyber-security breaches of our systems and information technology could adversely impact our ability to operate or meet contractual obligations.***

We utilize, develop, install and maintain a number of information technology systems. Various privacy and security laws require us to protect sensitive and confidential information from disclosure. In addition, we are bound by our customers and other contracts, as well as our own business practices, to protect confidential and proprietary information (whether it be ours or a third party's information entrusted to us) from disclosure. Our computer systems, as well as those of our customers, contractors and other vendors, face the threat of unauthorized access, computer hackers, viruses, malicious code, cyber-attacks, phishing and other security incursions and system disruptions, including attempts to improperly access our confidential and proprietary information, as well as the confidential and proprietary information of our customers and other business partners. Industry-accepted security measures and technology to secure computer systems, and the information stored by cloud vendors on these systems are subject to threats. For example, as we plan to receive projects from the U.S. Department of Defense ("DoD"), we will have to meet their framework for establishing cyber security standards and best practices, what they call Cybersecurity Maturity Model Certification at various levels as we grow our business with DoD. There can be no assurance that our efforts will prevent these threats, or that we will be able to secure appropriate certifications in this area. Further, as these security threats continue to evolve, we may be required to devote additional resources to protect, prevent, detect and respond against such threats. A party who circumvents our security measures, or those of our customers, contractors or other vendors, could misappropriate confidential or proprietary information, improperly manipulate data, or cause damage or interruptions to systems. If we are unable to protect sensitive information, our customers or governmental authorities could question the adequacy of our security processes and procedures and our compliance with applicable laws and regulations, including evolving government cyber security requirements for government contractors. Any of these events could damage our reputation, result in litigation and regulatory fines and penalties, or have a material adverse effect on our business, financial condition, results of operations or cash flows.

***Our ability to use net operating loss carryforwards to offset future taxable income for U.S. federal income tax purposes may be limited.***

We have federal net operating loss ("NOL") carryforwards that are available to offset future taxable income. We may recognize additional NOLs in the future. Section 382 of the Internal Revenue Code of 1986, as amended (the "Code") imposes an annual limitation on the amount of taxable income that may be offset by a corporation's NOLs if the corporation experiences an "ownership change" as defined in Section 382 of the Code. An ownership change occurs when our "five-percent shareholders" (as defined in Section 382 of the Code) collectively increase their ownership in OPT by more than 50 percentage points (by value) over a rolling three-year period. Additionally, various states have similar limitations on the use of state NOLs following an ownership change.

If an ownership change occurs, the amount of the taxable income for any post-change year that may be offset by a pre-change loss is subject to an annual limitation that is cumulative to the extent it is not all utilized in a year. This limitation is derived by multiplying the fair market value of our stock as of the ownership change by the applicable federal long-term tax-exempt rate. To the extent that a company has a net unrealized built-in gain at the time of an ownership change, which is realized or deemed recognized during the five-year period following the ownership change, there is an increase in the annual limitation for each of the first five-years that is cumulative to the extent it is not all utilized in a year. If an ownership change should occur in the future, our ability to use the NOL to offset future taxable income will be subject to an annual limitation and will depend on the amount of taxable income generated by us in future periods. There is no assurance that we will be able to fully utilize the NOL and we may be required to record an additional valuation allowance related to the amount of the NOL that may not be realized, which could impact our results of operations.

As noted, we believe that these NOL carryforwards are a valuable asset for us. Consequently, we have a Section 382 Tax Benefits Preservation Plan in place, to protect our NOLs during the effective period of the rights plan. Although the Tax Benefits Preservation Plan is intended to reduce the likelihood of an “ownership change” that could adversely affect us, there is no assurance that the restrictions on transferability in the rights plan will prevent all transfers that could result in such an “ownership change”. The Tax Benefits Preservation Plan could make it more difficult for a third party to acquire, or could discourage a third party from acquiring, us or a large block of our common stock. A third party that acquires 4.9% or more of our common stock could suffer substantial dilution of its ownership interest under the terms of the Tax Benefits Preservation Plan through the issuance of common stock or common stock equivalents to all shareholders other than the acquiring person. The foregoing provisions may adversely affect the marketability of our common stock by discouraging potential investors from acquiring our stock. In addition, these provisions could delay or frustrate the removal of incumbent directors and could make more difficult a merger, tender offer or proxy contest involving us, or impede an attempt to acquire a significant or controlling interest in us, even if such events might be beneficial to us and our shareholders. Pursuant to the terms of the Tax Benefits Preservation Plan, the Board of Directors has authority to grant an exception to the 4.9% ownership threshold which could potentially limit the utilization of our NOLs.

### **Risks Related to Product Development and Commercialization**

*We have only manufactured a limited number of PowerBuoys®, and to date we have not produced these products in any significant quantity for commercial production. These products do not have a sufficient operating history to accurately predict how they will perform over their estimated useful life.*

To date, we have only manufactured a limited number of PowerBuoys®. As a result, our products may not have a sufficient operating history to confirm how they will perform over their estimated useful life. Our technology may not yet have demonstrated that our engineering and test results can be duplicated in volume or in commercial production. If our products are ultimately proven ineffective or unfeasible, we may not be able to expand the commercial production of our products or we may become liable to our customers for quantities we are obligated to produce but are unable to produce. If our products perform below expectations, we could lose customers and face substantial repair and replacement expenses which could in turn adversely affect our business, financial condition and results of operations.

*We face the possibility of a range of potential accident and safety risks and hazards, including hazards associated with extreme weather, wind and other environmental conditions, which are inherent in offshore operations.*

Portions of our operations are subject to hazards and risks inherent in the building, testing, deploying and maintenance of our products, particularly offshore operations. These hazards and risks could result in personal injuries or loss of life. The unintentional release of a PowerBuoy® product from its mooring, for example, due to extreme environmental conditions and damage caused by its drifting, and other damages which may include damage to our properties, including our products, and the properties of others, or other consequential damages. Certain weather events could increase in frequency or severity requiring potential design changes or limiting the windows available for offshore operations.

Our autonomous vessels could cause other types of damage, including collisions with other vessels, property of others, or even swimmers or other persons or property utilizing a body of water where the WAM-V® is operating. This could also lead to the suspension of certain of our operations, large damage claims, damage to our safety reputation and a loss of business. Some of these risks may be uninsurable, and some claims may exceed our insurance coverage. Therefore, the occurrence of a significant accident or other risk event or hazard that is not fully covered by insurance could materially and adversely affect our business and financial results and, even if fully covered by insurance, could materially and adversely affect our business due to the impact on our reputation for safety.

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

We have a number of critical relationships with strategic partners, specifically our software development partners. Generally, these types of relationships obligate a party to provide certain services or perform certain tasks in connection with the relationship with the alliance partner, and we are generally responsible for paying the costs we incur relating to such services or tasks. These relationships generally are not expected to provide us with any revenue or sources of financing. If we are unable to reach agreements with additional suitable alliance partners, we may fail to meet our business objectives for the commercialization of our products. We may face significant competition in seeking appropriate alliance partners. Moreover, these development agreements and strategic alliances are complex to negotiate and time consuming to document. We may not be successful in our efforts to establish additional strategic relationships or other alternative arrangements. The terms of any additional strategic relationships or other arrangements that we establish may not be favorable to us. Furthermore, even if we can find, negotiate and enter these relationships, such arrangements may be conditional upon our receipt of additional funding. There can be no assurance that we will receive such additional funding. In addition, strategic relationships may not be successful, and we may be unable to sell and market our products to these companies, their affiliates and customers in the future, or growth opportunities may not materialize.

***We have limited manufacturing, deployment and internal software development experience. If we are unable to increase our software development and manufacturing capacity in a cost-effective manner, our business may be materially harmed.***

We manufacture key components of our products, while outsourcing the manufacturing for other components of our products. We have only manufactured our products in limited quantities for use in development and testing and have limited commercial manufacturing and deployment experience, and our work with our vendors has not included work on multiple orders on time-critical deadlines. Our future success depends on our ability to significantly increase both our manufacturing capacity and production and service throughput in a cost-effective and efficient manner, and to manage multiple vendors with several orders that have specific deadlines. In order to meet our growth objectives, we will need to increase our engineering, contract management, and manufacturing staff. There is intense competition for hiring qualified technical and engineering personnel. Therefore, we may not be able to hire a sufficient number of qualified personnel to allow us to meet our growth objectives.

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

In addition, historically we have outsourced the majority of our software development activities. We may be unable to hire appropriate outsourced resources to enable us to meet the software development needs of our products and solutions. If we cannot do so, we may be unable to expand our business and become profitable or do so in time to meet the needs of our customers.



***Problems with the quality or performance of our products would adversely affect our business, financial condition and results of operations.***

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

***We must continually improve existing services and products, design and sell new products and improve reliability in order to compete effectively.***

The markets for our services and products are characterized by rapid technological change, evolving industry standards and continuous improvements of products. Due to constant changes in our markets, our 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. 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; or
- New products experience reliability or quality problems, or otherwise do not meet customer preferences or requirements.

**Risks Related to Intellectual Property**

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

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

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

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

***Foreign laws may not afford us sufficient protections for our intellectual property, and we may not be able to obtain patent protection outside of the U.S.***

Intellectual property rights protection continues to present significant challenges to U.S. companies operating around the world. The body of law is often relatively undeveloped compared to the commercial law in the U.S. and only limited protection of intellectual property may be available in those jurisdictions. Although we have taken precautions to protect our intellectual property, any local design or manufacture of products that we undertake in a foreign jurisdiction could subject us to an increased risk that unauthorized parties will be able to copy or otherwise obtain or use our intellectual property, which could harm our business. We may also have limited legal recourse in the event we encounter patent or trademark infringement. If we are unable to manage our intellectual property rights, our business and operating results may be seriously harmed.

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

Our products or use of our trademarks may infringe, or be claimed to infringe, upon patents, patent applications or trademarks under which we do not hold licenses or other rights. Third parties may own or control these patents, patent applications or trademarks in the U.S. and abroad. Third parties could bring claims against us that would cause us to incur substantial expenses and, if successfully asserted against us, could cause us to pay substantial damages. Further, if a patent or trademark infringement suit were brought against us, we could be forced to stop or delay manufacturing or sales of the product or component that is the subject of the suit.

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

In addition to infringement claims against us, we may become a party to other types of patent or trademark litigation and other proceedings, including proceedings declared by the U.S. Patent and Trademark Office and proceedings in the European Patent Office, regarding intellectual property rights with respect to our products and technology. The cost to us of any patent or trademark litigation or other proceeding, even if resolved in our favor, could be substantial. In addition, if we were to license our intellectual property to others, we may be required to indemnify our licensee if the licensed intellectual property is found to be infringing on a third party's rights. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources.

***Our contracts with governmental entities could negatively affect our intellectual property rights, and our ability to commercialize our products could be impaired.***

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

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

### **Risks Related to Regulatory and Compliance Matters**

***If we are unable to obtain all necessary regulatory permits and approvals, it is possible that we will not be able to implement our planned projects or business plan.***

Offshore deployment of our products is heavily regulated. Each of our deployments is subject to multiple permitting and approval requirements. We and our customers are dependent on state, federal and regional government agencies for such permits and approvals. Due to the unique nature of ocean power generation and the associated potential for environmental hazards stemming from deployment of our products, we expect our projects to receive close scrutiny by permitting agencies, approval authorities and the public, which could result in substantial delay in the permitting process. New regulations surrounding the deployment of autonomous vessels could restrict or limit our ability to deploy WAM-Vs® in certain jurisdictions. Successful challenges by parties opposed to our deployments could result in increased costs, or in the denial of necessary permits and approvals.

If we or our clients are unable to obtain necessary permits and approvals in connection with any or all our projects, those projects would not be implemented, and our business, financial condition and results of operations would be adversely affected. If we violate or fail to comply with these permits and approvals, we could be fined or otherwise sanctioned by regulators.

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

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

***Environmental and other regulation of our business, including potential climate change regulation, could adversely impact us by increasing our production cost or restricting our ability to deliver products to our customers.***

Climate change serves as a risk multiplier increasing both the frequency and severity of natural disasters that may affect our business operations. Moreover, there has been a broad range of proposed and promulgated state, national and international regulation aimed at reducing the effects of climate change. In the U.S., there is a significant possibility that some form of regulation will be enacted at the federal level to address the effects of climate change. Such regulation could take several forms that could result in additional costs in the form of taxes, consultant costs, the restriction of output, investments of capital to maintain compliance with laws and regulations or required acquisition or trading of emission allowances. Climate change regulation continues to evolve, and it is not possible to accurately estimate either a timetable for implementation or our future compliance costs relating to implementation.

***A portion of products we acquire from our suppliers are manufactured in foreign countries, making the price and availability of these products subject to international trade risks and other international conditions.***

A portion of our parts for our products are sourced from foreign countries, some of which in the future are, or could become subject to trade restrictions, including increased tariffs or quotas, embargoes and customs restrictions, which would increase the cost or could reduce the supply of products available to us, and could have a material adverse effect on our business, financial condition and results of operations. Tariffs on imports from foreign countries, as well as changes in tax and trade policies, such as a border adjustment tax or disallowance of certain tax deductions for imported product, could materially increase our manufacturing costs, the costs of our imported products or our income tax expense, which would have a material adverse effect on our financial condition and results of operations. Tariffs imposed by foreign countries on imports of our products could also adversely affect our international sales. Any increase in manufacturing costs, the cost of our products or limitation on the amount of products we can purchase, could have a material adverse effect on our financial condition and results of operations.

***Our business involves the use of hazardous materials, which require compliance with environmental and occupational safety laws regulating the use of such materials. If we violate these laws, we could be subject to significant fines, liabilities or other adverse consequences.***

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

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

## **Risks Related to Litigation**

***Litigation is costly and time-consuming to defend, and if decided against us, could require us to pay substantial judgments or settlements. We may be the subject of future securities or other litigation, which could adversely affect our company, our business and our liquidity.***

Any litigation is costly, and time consuming to defend and may distract our management from the daily operations of our business. We may be the subject of additional future litigation, which could have a material adverse effect on our business, financial condition, results of operations or cash flows. Although we maintain insurance coverage, we cannot assure you that this insurance coverage will be sufficient to cover the substantial fees of lawyers and other professional advisors relating to these pending lawsuits or any future litigation, our obligations to indemnify our officers and directors who may become parties to such pending and future actions, or the amount of any judgments or settlements that we may be obligated to pay in connection with these lawsuits. In addition, prior judgements and settlements have caused our insurance premiums and retention amounts to increase, and we may be subject to additional increases in the future or be subjected to other changes in our insurance coverage. Further, given the volatility of the market price of our common stock, we may be subject to future class action securities and other litigation. Accordingly, we have incurred and may continue to incur substantial legal expenses, judgments and/or settlements relating to pending and future litigation and our management's time and attention may be diverted from the operation of our business, which could materially and adversely affect the Company.

***We may become the target of securities litigation, which is costly and time-consuming to defend.***

In the past, companies that experienced significant volatility in the market price of their publicly traded securities have become subject to class action securities litigation. Our stock price has been volatile, and class action securities litigation and derivative lawsuits have been filed against us, and it is possible that additional lawsuits could be brought against us in the future. The results of complex legal proceedings are difficult to predict. These lawsuits assert types of claims that, if resolved against us, could give rise to substantial damages, and an unfavorable outcome or settlement of these lawsuits, or any future lawsuits, could have a material adverse effect on our business, financial condition, results of operations and/or stock price. Even if any future lawsuits are not resolved against us, the costs of defending such lawsuits may be material to our business and our operations. Moreover, these lawsuits may divert our management's attention from the operation of our business. For more information on our legal proceedings, see Item 3 "Legal Proceedings" of this Annual Report and Note 16 "Commitments and Contingencies - Litigation" in the accompanying consolidated financial statements for the fiscal year ended April 30, 2024.

## **Risks Related to Our Common Stock**

***If we issue additional shares of our equity securities in the future, our shareholders may experience substantial dilution in the value of their investment or their ownership interest.***

Our certificate of incorporation currently authorizes us to issue up to 100,000,000 shares of our common stock and to issue and designate the rights of, without shareholder approval, up to 5,000,000 shares of preferred stock. In the future, if we were required to raise additional capital, we may offer additional shares of our common stock or other securities convertible into or exchangeable for our common stock at prices that may not be the same as the price per share paid by other investors, and dilution to our shareholders in the value of their investment and their ownership and voting interest in the Company could result. We may sell shares or other securities in any other offering at a price per share that is less than the price per share paid by existing investors, and investors purchasing shares or other securities in the future could have rights superior to existing shareholders.

In addition, we have a significant number of stock options and restricted stock units outstanding. To the extent that outstanding stock options, warrants or restricted stock units have been or may be exercised or other shares issued, current shareholders and future investors who have purchased our common stock will experience further dilution. In addition, we may choose to raise additional capital due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent that we issue new securities or raise additional capital through the sale of equity or convertible debt securities, the issuance of these securities could result in further dilution to our shareholders or result in downward pressure on the price of our common stock.

***Historically, our stock price has been volatile, and this is likely to continue; purchasers of our common stock could incur substantial losses as a result.***

Historically, the market price of our common stock has fluctuated significantly, and we expect that this will continue. Purchasers of our common stock could incur substantial losses relating to their investment in our stock as a result. Also, the stock market, particularly microcap stocks, experiences volatility that has often been unrelated or disproportionate to the operating performance of particular companies. These broad market fluctuations could result in fluctuations in the price of our common stock, which could cause purchasers of our common stock to incur substantial losses. The market price for our common stock may be influenced by many factors, including the items identified within these Risk Factors and the other information included within this annual report.

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

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

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

In June 2023, our Board of Directors adopted a Section 382 Tax Benefits Preservation Plan in an effort to diminish the risk that the Company’s ability to utilize its net operating loss carryovers to reduce potential future federal income tax obligations may become substantially limited. The Section 382 Tax Benefits Preservation Plan is also intended to act as a deterrent to any person or group acquiring beneficial ownership of 4.99% or more of the outstanding common stock without the approval of our Board of Directors.

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

In addition, Section 203 of the Delaware General Corporation Law prohibits a publicly-held Delaware corporation from engaging in a business combination with an interested shareholder, which is generally a person who together with its affiliates owns or within the last three years has owned 15% of our voting stock, for a period of three years after the date of the transaction in which the person became an interested shareholder, unless the business combination is approved in a prescribed manner. Accordingly, Section 203 may discourage, delay or prevent a change in control of our company.

***If securities or industry analysts fail to cover us, or do not publish research or publish unfavorable or inaccurate research about our business, our stock price and trading volume could decline.***

Currently we do not have significant analyst coverage, however, the trading market for our common stock could be influenced by the research and reports that industry or securities analysts may publish about us, our business, or our industry from time to time. If no analyst covers us, or ultimately one or more of these analysts cease coverage or fail to publish reports on the Company regularly, we could lose visibility in the financial markets, which in turn could cause the price or trading volume of our common stock to decline.

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

We have not paid any cash dividends on our common stock to date. We currently intend to retain our future earnings, if any, to fund the development and growth of our business. In addition, the terms of any future debt agreements may preclude us from paying dividends. Also, there can be no assurance that the Company will have the liquidity necessary to pay dividends in the future if we want to do so. As a result, prospective investors and shareholders should make or maintain an investment in our common stock solely on the basis that potential future capital appreciation, if any, of our common stock will be the sole only source of gain for our shareholders for the foreseeable future and there can be no assurance that any such future capital appreciation will occur.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

Not applicable.

#### **ITEM 1C. CYBERSECURITY**

We depend on information technology and systems for various operations and for capturing accounting, technical and regulatory data for reporting, analysis, and archiving. Our primary business systems mostly consist of purchased and licensed software programs that integrate with our internal solutions. As of the filing date of this report, our risk assessment process related to cybersecurity includes conducting vulnerability assessments using a combination of internal and third-party capabilities to perform technical assessments, vulnerability scanning, and incident and event monitoring. With the oversight of our Board of Directors, our management team is responsible for implementing a thorough, risk-based cybersecurity program aimed at safeguarding our data, along with the data of our customers and partners, and based on well-organized cybersecurity frameworks under a central control figure. Risks from cybersecurity threats did not materially impact our business strategy, operations, or financial condition for the twelve months ended April 30, 2024 and 2023 and are not reasonably likely to do so in the future, but no assurances can be made along those lines.

Additional information about cybersecurity risks we face is discussed in Item 1A of Part I, “Risk Factors,” under the headings “Failure of our information systems or those of third parties or breaches of data security could cause significant harm to our business” and “Cybersecurity breaches of our systems and information technology could adversely impact our ability to operate or meet contractual obligations,” which should be read in conjunction with the information above.

#### **ITEM 2. PROPERTIES**

Our headquarters are currently located in Monroe Township, New Jersey, where we occupy approximately 56,000 square feet under a lease expiring on April 30, 2026. We use this facility for administration, research and development, as well as manufacturing, assembly and testing of our products.

Additionally, we have a property located on the University of California Berkeley in Berkeley, California, where we occupy 1,220 square feet under a lease which is currently operating month-to-month. Additionally, we have begun leasing a property located in Richmond, California where we will occupy approximately 11,500 square feet under a lease expiring on June 18, 2028. We believe that our facilities are sufficient for our current needs and are in good condition in all material respects.

#### **ITEM 3. LEGAL PROCEEDINGS**

On June 16, 2023, Paragon Technologies, Inc., a Delaware corporation that is a shareholder of the Company (“Paragon”), informed the Company that Paragon was planning a proxy contest against the Company and intended to nominate candidates for election to the Company Board of Directors (the “OPT Board”) at the Company’s 2023 Annual Meeting (the “2023 Annual Meeting”). Subsequently, Paragon disclosed its intention to replace a majority of the six-member OPT Board with initially five purported nominees, including three members of the Paragon Board of Directors, and, thereby, seek control of the Company. In furtherance of Paragon’s threatened agenda, Paragon brought three litigation matters against the Company in the Delaware Court of Chancery.

(a) *(Del. Code §220 Complaint)* On July 27, 2023, Paragon filed a complaint in the Court of Chancery of the State of Delaware against the Company seeking to compel the inspection of certain books and records of the Company pursuant to 8 Del. Code § 220. On January 31, 2024, the Court issued a ruling for the Company to deliver certain books and records to Paragon, and the books and records that were subject to the Court’s final order were produced to Paragon on April 8, 2024. No additional activity has occurred.

- (b) *Breach of Fiduciary Duties Complaint*) On October 10, 2023, Paragon filed an additional complaint in the Court of Chancery of the State of Delaware against the Company, and the members of its Board of Directors, claiming certain breaches of their fiduciary duties. The complaint sought only injunctive relief against the Company, and not monetary damages, and therefore the financial exposure derived therein was limited to applicable legal fee and costs at that stage, which was material to FY 24. On November 2, 2023, Paragon sought leave to amend its complaint to add additional claims. The Court granted this motion for leave to amend, provided that the Court would not delay the hearing on the matters raised in the initial complaint, which was set for November 28, 2023. This hearing on the initial complaint was held and on November 30, 2023, the Court ruled in favor of the Company and denied Paragon's motion for injunctive relief. The status of the in the amended complaint is still pending. On February 28, 2024, the Company successfully finalized its 2023 annual meeting of stockholders in spite of Paragon's repeated attempts to contest the meeting. On July 10, 2024, the Company requested Paragon's counsel to dismiss this litigation, given there has been no activity for 6 months. We are awaiting a response.
- (c) 1 (*Del. Code §225 Complaint*) On April 11, 2024, Paragon filed an action in the Delaware Court of Chancery against the Company, and the members of its Board of Directors, challenging the results of the 2023 Annual Meeting (concluded on February 28, 2024), alleging that a quorum was not present for the meeting. On May 7, 2024, the Company filed its answer, including that the Final Report of the Inspector of Election (which Paragon selected) confirmed that a quorum was present. On June 20, 2024, Paragon filed a Motion to Dismiss the case "without prejudice." On June 28, 2024, the Company responded to Paragon's Motion to Dismiss, claiming that the case should be dismissed: (a) "with prejudice"; or (b) "without prejudice," but in such event Paragon should reimburse OPT's fees and costs for defending the case.

As clearly evidenced by the above, Paragon has filed three lawsuits against the OPT Board and the Company in an effort to seek control of the Company, without following appropriate governance standards and without offering fair value to the stockholders.

In addition, Sham Gad, the CEO of Paragon has also maintained in public that the nature of Paragon's proposed investment in the Company was "non-dilutive." To that point, on April 24, 2024, Paragon made the following "non-dilutive \$3MM preferred stock" offer to the Company: "...The preferred would have the option to be convertible to common stock, at \$0.05 a share, or 25% of the 30-day average trading price, whichever is higher...". After the Board correctly rejected the \$3MM preferred stock offer, on June 7, 2024, Paragon issued a press release that proclaimed its offer was non-dilutive. In fact, Paragon's offer was highly dilutive because the offer stipulated that the proposed OPT preferred stock to be issued to Paragon would be convertible to OPT common stock at a 75% discount to the fair market value of the common stock. The Paragon offer thus essentially amounted to a change in control of the Company at 25% of its fair market value.

In order to defend the best interests of the Company's shareholders against Paragon's lawsuits and public statements, the Company has spent approximately \$3.9 million in fees and costs.

#### *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. In the quarter ended October 31, 2020, the Company recorded an additional reserve of €117,145.81 (or approximately \$154,000) to Selling, general and administrative costs in the Statement of Operations making the total reserve €279,869.81, which amount was paid by the Company to the Spanish Tax Administration on January 25, 2021. As of April 30, 2024, the Company had no reserve related to this audit. The Company has appealed the decision of the Tribunal tax assessment to the Spanish National Court. The Company expects a ruling on the appeal prior to the end of fiscal 2025.

#### **Item 4. MINE SAFETY DISCLOSURES**

None.



## PART II

### **ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

#### **Shareholders**

Our common stock was listed on the Nasdaq Capital Market, under the symbol "OPTT" until June 2021 when the listing was transferred to the NYSE American under the same symbol. As of July 22, 2024, there were 119 holders of record for shares of our common stock. Since a portion of our common stock is held in "street" or nominee name, we are unable to determine the exact number of beneficial holders.

We adopted a Section 382 Tax Benefits Preservation Plan on June 30, 2023 to diminish the risk we could experience an "ownership change" as defined in Section 382 of the Internal Revenue Code of 1986, as amended, which could substantially limit or permanently eliminate our ability to utilize its net operating loss carryovers to reduce potential future income tax obligations. Under this plan, a person who acquires, without the approval of our Board of Directors, beneficial ownership of 4.99% or more of the outstanding common stock could be subject to significant dilution. See Note 19 to the consolidated financial statements included herein for more.

#### **Dividend Policy**

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

#### **Transfer Agent Information**

Our transfer agent is Computershare Trust Company, N.A. Computershare is located at 250 Royal Street, Canton, MA 02021-1011. Its contact information is: U.S. and Canada: (800) 662 - 7232, International (781) 575-4238, and its website is located at [www.computershare.com](http://www.computershare.com).

#### **Purchases of Equity Securities by the Issuer**

There were no purchases of equity securities by the Company for the year ended April 30, 2024.

## Equity Compensation Plan Information

The following table sets forth the indicated information as of April 30, 2024, with respect to our equity compensation plans:

| <u>Plan Category</u>                                    | <u>Number of Shares to<br/>be Issued Upon<br/>Exercise of<br/>Outstanding Options<br/>and Restricted Stock</u> | <u>Weighted-Average<br/>Exercise Price of<br/>Outstanding Options</u> | <u>Number of Shares<br/>Remaining Available<br/>for Future Issuance<br/>Under Equity<br/>Compensation Plans<br/>(Excluding Shares<br/>Reflected in First<br/>Column)</u> |
|---------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Equity compensation plans approved by shareholders:     |                                                                                                                |                                                                       |                                                                                                                                                                          |
| Stock Options                                           | 734,543                                                                                                        | \$ 2.12                                                               | —(1)                                                                                                                                                                     |
| Restricted Stock Units                                  | 5,124,529                                                                                                      | N/A                                                                   |                                                                                                                                                                          |
| Equity compensation plans not approved by shareholders: |                                                                                                                |                                                                       |                                                                                                                                                                          |
| Stock Options                                           | —                                                                                                              | —                                                                     | —                                                                                                                                                                        |
| Restricted Stock Units                                  | —                                                                                                              | N/A                                                                   | 161,487(2)                                                                                                                                                               |

(1) Consists of shares of our common stock available for issuance under the 2015 Omnibus Incentive Plan.

(2) Consists of shares of our common stock available for issuance under the 2018 Employee Inducement Incentive Award Plan.

Our equity compensation plans consist of a 2006 Stock Incentive Plan and a 2015 Omnibus Incentive Plan which were approved by our shareholders. Once the 2015 Omnibus Incentive Plan was approved by the shareholders on October 22, 2015, no further stock options or other awards were awarded under the 2006 Stock Incentive Plan and it was terminated. Shares that are forfeited under the 2006 Stock Incentive Plan on or after October 22, 2015, will become available for issuance under the 2015 Omnibus Incentive Plan.

The equity compensation plan that has not been approved by our shareholders is our 2018 Employee Inducement Incentive Award Plan.

## Unregistered Sales of Equity Securities and Use of Proceeds

Not Applicable.

## ITEM 6. [Reserved]

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

*You should read the following discussion and analysis of our financial condition and results of operations together with our consolidated financial statements and the related notes and other financial information included elsewhere in this Annual Report. Some of the information contained in this discussion and analysis or set forth elsewhere in this Annual Report, including information with respect to our plans and strategy for our business and related financing, includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section of this Annual Report, and elsewhere in this report, for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis. Our fiscal year ends on April 30. References to fiscal 2024 are to the fiscal year ended April 30, 2024.*

## **Business Overview**

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

The Company provides ocean data collection and reporting, marine power, offshore communications, and Maritime Domain Awareness System (“MDA” or “MDAS”) products, integrated solutions, and consulting services. In April 2024 the Company announced Merrows, a groundbreaking consolidated solution offering for comprehensive ocean surveillance. Merrows encompasses the collection and transmission of data relating to all aspects of, on, under, adjacent to, or bordering on a sea, ocean, or other navigable waterway. OPT’s approach to addressing this challenge involves the deployment of sophisticated Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance (C5ISR) systems. These systems are integrated within OPT’s roaming technologies, such as the Wave Adaptive Modular Vessel (WAM-V), and resident technologies, like the PowerBuoys® (PB), to offer an unparalleled level of surveillance and data analysis capability.

The Company offers our products and services to a wide range of customers, including those in government and offshore energy, oil and gas, construction, wind power and other industries. The Company is involved in the entire life cycle of product development, from product design through manufacturing, testing, deployment, maintenance and upgrades, while working closely with partners across our supply chain. The Company also works closely with our third-party partners that provide us with, among other things, software, controls, sensors, integration services, and marine installation services. Our solutions are based on proprietary technologies that enable autonomous, zero or low carbon emitting, and cost-effective data collection, analysis, transportation and communication. Our solutions are primarily suited to ocean and other offshore environments, and support generation of actionable intelligence on a standalone basis or working with other data sources. We channel the information we collect, and other communications, through control equipment linked to edge computing and cloud hosting environments.

## **Business Update Regarding Macroeconomic Condition**

Adverse macroeconomic conditions, including inflation, political instability, regional conflicts, slower growth or recession, policy changes, higher interest rates, and currency fluctuations may have a negative impact on our business. These adverse conditions could impact the spending budgets of our customers, and therefore could adversely affect the sales of our products and services.

We will continue to monitor these conditions, and, if necessary, adjust our operations in response to these conditions such as scaling back, changing direction, or pausing certain planned expenditures.

## **Capital Raises**

On November 20, 2020, the Company entered into an At-the-Market Offering Agreement with Alliance Global Partners (AGP) (the “2020 ATM Facility”). The 2020 ATM Facility was terminated by the Company effective June 2, 2023.

On August 7, 2023, the Company entered into a Controlled Equity Offering Sales Agreement (the “2023 ATM”) with Cantor Fitzgerald & Co. (“Cantor”), as sales agent, which was terminated effective December 2, 2023.

On March 21, 2024, the Company entered into an At-the-Market Offering Agreement with AGP with an aggregate offering price of up to \$7,000,000 (the “2023 ATM Facility”). As of April 30, 2024, the Company had received proceeds of approximately \$0.5 million under the 2023 ATM Facility.

The sale of additional equity under new facilities could result in dilution to our shareholders. If additional funds are raised through the issuance of debt securities or preferred stock, these securities could have rights senior to those associated with our common stock and could contain covenants that would restrict our operations. The Company cannot be certain that additional equity and/or debt financing will be available to the Company as needed on acceptable terms, or at all. If we are unable to obtain required financing when needed, we may be required to reduce the scope of our operations, including our planned incremental 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 April 30, 2024 and 2023, the Company's backlog was \$4.9 million and \$4.0 million, respectively. Our backlog includes unfilled firm orders for our products and services from commercial or governmental customers. If any of our contracts were to be terminated, our backlog would be reduced by the expected value of the remaining terms of such contract.

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

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

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

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

#### ***Revenue recognition***

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

The nature of the Company's contracts may give rise to several types of variable consideration, including unpriced change orders, liquidated damages and penalties. Variable consideration can also arise from modifications to the scope of services. Variable consideration is included in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur once the uncertainty associated with the variable consideration is resolved. Our estimates of variable consideration and determination of whether to include such amounts in the transaction price are based largely on our assessment of legal enforceability, performance, and any other information (historical, current, and forecasted) that is reasonably available to us. There was no variable consideration as of April 30, 2024 or 2023. The Company presents shipping and handling costs, that occur after control of the promised goods or services transfer to the customer, as fulfillment costs in costs of goods sold and regular shipping and handling activities charged to operating expenses.

The Company recognizes revenue when or as it satisfies a performance obligation by transferring a good or service to a customer, either (1) at a point in time or (2) over time. A good or service is transferred when or as the customer obtains control. The evaluation of whether control of each performance obligation is transferred at a point in time or over time is made at contract inception. Input measures such as costs incurred are utilized to assess progress against specific contractual performance obligations for the Company's services. The selection of the method to measure progress towards completion requires judgment and is based on the nature of the services to be provided. For the Company, the input method using costs or labor hours incurred best represents the measure of progress against the performance obligations incorporated within the contractual agreements. If estimated total costs on any contract project a loss, the Company charges the entire estimated loss to operations in the period the loss becomes known. The cumulative effect of revisions to revenue, estimated costs to complete contracts, including penalties, change orders, claims, anticipated losses, and others are recorded in the accounting period in which the events indicating a loss are known and the loss can be reasonably estimated. These loss projections are re-assessed for each subsequent reporting period until the project is complete. Such revisions could occur at any time and the effects may be material. During the fiscal year ended April 30, 2024 the Company recognized approximately \$3.6 million in revenue related to performance obligations satisfied at a point in time and approximately \$1.9 million in revenue related to performance obligations satisfied over time.

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

The Company has two types of fixed-price contracts, firm fixed-price and cost-sharing. Under firm fixed-price contracts, the Company receives an agreed-upon amount for providing products and services specified in the contract, and a profit or loss is recognized depending on whether actual costs are more or less than the agreed upon amount. Under cost-sharing contracts, the fixed amount agreed upon with the customer is only intended to fund a portion of the costs on a specific project. Under cost sharing contracts, an amount corresponding to the revenue is recorded in cost of revenue, 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 fiscal years ended April 30, 2024 and 2023, the majority of the Company's contracts were classified as firm fixed-price and the balance were cost-sharing.

The Company's revenue also includes revenue from certain contracts which do not fall within the scope of ASC 606, but under the scope of ASC 842. At inception of a contract for those classified under ASC 842, the Company classifies leases as either operating or financing in accordance with the authoritative accounting guidance contained within ASC Topic 842, "Leases". If the direct financing or sales-type classification criteria are met, then the lease is accounted for as a finance lease. All others are treated as operating leases. The Company recognizes revenue from operating lease arrangements generally on a straight-line basis over the lease term, or as agreed upon in-use days are utilized, which is presented in Revenue in the Consolidated Statement of Operations. The Company also enters into lease arrangements for its PowerBuoys® and WAM-V® with certain customers. Revenue related to multiple-element arrangements is allocated to lease and non-lease elements based on their relative standalone selling prices or expected cost plus a margin approach. Lease elements generally include a PowerBuoy®, WAM-V®, and components, while non-lease elements, which the Company expects to become more prevalent, generally include engineering, monitoring and support services. In the lease arrangement, the customer may be provided with an option to extend the lease term or purchase the leased buoy or WAM-V® at some point during and/or at the end of the lease term.

## Financial Operations Overview

As of the years ended April 30, 2024 and 2023, the Company had four and two customers, respectively, whose revenue accounted for at least 10% of the Company's consolidated revenue. These customers accounted for approximately 52% and 32% of the Company's total revenue for the respective periods.

We currently focus our sales efforts in key global markets in North America, South America, Europe and Asia. The following table shows the percentage of our revenue by geographical location of our customers for fiscal 2024 and 2023:

| Customer Location             | Fiscal year ended April 30, |      |
|-------------------------------|-----------------------------|------|
|                               | 2024                        | 2023 |
| North America & South America | 96%                         | 88%  |
| Europe                        | 4%                          | 3%   |
| Asia and Australia            | —%                          | 9%   |
| Total                         | 100%                        | 100% |

### *Cost of revenue*

Our cost of revenue consists primarily of subcontracts, incurred material, labor and manufacturing overhead expenses, such as engineering expense, equipment depreciation, maintenance, and facility related expenses, and includes the cost of equipment to customize the PowerBuoy®, WAM-V® and our other products supplied by third-party suppliers. Cost of revenue also includes PowerBuoy® and other product system delivery and deployment expenses and may include losses recorded at the time a loss is forecasted to be incurred on a contract.

### *Operating Expenses*

#### *Engineering and product enhancement costs*

Our engineering and product enhancement costs consist of salaries and other personnel-related costs and the costs of products, materials and outside services used in our product enhancement and unfunded research activities. Our product enhancement costs relate primarily to our efforts to increase the power output and reliability of our PowerBuoy® system and other products, to enhance and optimize data monitoring and controls systems, and the development of new products, product applications and complementary technologies. We expense all of these 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 of our products, and costs for executive, accounting and administrative personnel, professional fees and other general corporate expenses.

#### *Interest income, net*

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

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

We transact business in various countries and have exposure to fluctuations in foreign currency exchange rates. Since we conduct our business in U.S. dollars and our functional currency is the U.S. dollar, our main foreign exchange exposure, if any, results from changes in the exchange rate between the U.S. dollar and transactions settled in foreign currencies.

The Company completed the process of winding down its Australian subsidiary during fiscal 2024. The Company began the process of winding down its UK subsidiary during fiscal 2024 and expects this to be completed during fiscal 2025. The unrealized gains or losses resulting from foreign currency balances translation are included in Accumulated Other Comprehensive Loss within Shareholders' Equity. Foreign currency transaction gains and losses are recognized within our Consolidated Statements of Operations.

We currently do not hedge our exchange rate exposure. However, we assess the anticipated foreign currency working capital requirements and capital asset acquisitions of our foreign operations and 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 Outlook".

### *Fiscal Years Ended April 30, 2024 and 2023*

The following table contains selected Consolidated Statements of Operations information, which serves as the basis of the discussion of our results of operations for the fiscal years ended April 30, 2024 and 2023:

|                                                  | <b>Fiscal years ended April 30,</b> |             |
|--------------------------------------------------|-------------------------------------|-------------|
|                                                  | <b>2024</b>                         | <b>2023</b> |
|                                                  | (in thousands)                      |             |
| Revenue                                          | \$ 5,525                            | \$ 2,732    |
| Cost of revenue                                  | 2,699                               | 2,496       |
| Gross (loss) profit                              | 2,826                               | 236         |
| Change in fair value of contingent consideration | (72)                                | 1,112       |
| Other operating expenses                         | 32,229                              | 28,340      |
| Total operating expenses                         | 32,157                              | 29,452      |
| Operating loss                                   | (29,331)                            | (29,216)    |
| Interest income, net                             | 800                                 | 902         |
| Other income, employee retention credit          | —                                   | 1,251       |
| Other income, proceeds from insurance claim      | —                                   | 458         |
| Other income                                     | 2                                   | —           |
| Loss on disposition of assets                    | (210)                               | —           |
| Foreign exchange gain                            | 2                                   | 1           |
| Loss before income taxes                         | (28,737)                            | (26,604)    |
| Income tax benefit                               | 1,254                               | 278         |
| Net loss                                         | \$ (27,483)                         | \$ (26,326) |

### *Revenue*

Revenue for the fiscal years ended April 30, 2024 and 2023 were approximately \$5.5 million and \$2.7 million, respectively, representing an increase of approximately \$2.8 million, or 102%, from 2023. The \$2.8 million increase in revenue for the full year was mainly attributable to increases from sales and/or leases of USV products of \$1.7 million and buoy products of \$1.5 million, partially offset by decreases in consulting and other revenue of \$0.4 million.

#### *Change in fair value of contingent consideration*

The change in fair value of contingent consideration for the fiscal year ended April 30, 2024, and 2023 was a loss of \$0.1 million and a gain of \$1.1 million respectively. This reflects the remeasurement of fair value upon the completion of the second and first earn out period as defined in the purchase and sale agreement related to the MAR acquisition.

#### *Operating Expenses*

Our operating expenses include both product development costs (substantially completed during fiscal year 2024) as well as administrative costs, including the costs of products, materials and outside services used in our product development and unfunded research activities. Also included are professional fees, salaries and other personnel-related costs for employees and consultants engaged in sales and marketing and costs for executive, accounting and administrative personnel, and other general corporate expenses. Operating expenses during the fiscal year ended April 30, 2024 were \$32.2 million as compared to \$28.3 million for fiscal year 2023. The increase of \$3.9 million is primarily due to expenses related to the activist shareholder activities noted above.

#### *Interest income, net*

Interest income, net consists of interest received on cash and cash equivalents, investments in money market accounts and short-term investments and is net of interest expense paid on certain obligations to third parties. Total cash, cash equivalents, restricted cash, and short-term investments was \$3.3 million as of April 30, 2024, compared to \$34.9 million as of April 30, 2023. Interest income, net was approximately \$0.8 million and \$0.9 million for fiscal 2024 and 2023, respectively, and reflects the decreased balance of our short term investments throughout the year, offset by rising interest rate environment experienced during fiscal 2024.

#### *Other income*

Other income for the fiscal year ended April 30, 2024 and 2023 was zero and \$1.7 million, respectively. The amount in the prior year relates to employee retention credits applied for previously filed payroll tax returns with the Internal Revenue Service and proceeds received for an insurance claim.

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

Foreign exchange gain was approximately \$2,000 for fiscal year 2024 as compared to a foreign exchange gain of \$1,000 for fiscal year 2023. The difference was attributable to the relative change in value of the British pound sterling dollar compared to the U.S. dollar.

#### *Income tax benefit*

Income tax benefit reflects the sale by the Company of New Jersey State net operating losses and research development credits under the New Jersey Economic Development Authority Tax Transfer programs, resulting in \$1.3 million and \$0.3 million of tax benefit related to the fiscal year ended April 30, 2024 and 2023, respectively.

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

During the fiscal year ended April 30, 2024, net cash flows used in operating activities was \$29.8 million, an increase of \$8.1 million compared to net cash used in operating activities during the fiscal year ended April 30, 2023. This increase is mainly driven by increased inventory purchases to satisfy backlog and pipeline of \$3.2 million, increased contract liabilities of \$2.3 million, increased accrued expenses of \$1.8 million, as well as increased net operating losses of \$1.2 million.



### **Net cash provided by investing activities**

Net cash provided by investing activities was approximately \$25.5 million for fiscal year 2024 versus net cash provided by investing activities of approximately \$20.5 million for fiscal year 2023. During fiscal 2024 many investments made during fiscal 2023 matured, resulting in cash inflows at maturity, which were then used to fund operating expenses.

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

Net cash provided by financing activities during the fiscal year ended April 30, 2024 was approximately \$469,000 compared to net cash used in financing activities during the fiscal year ended April 30, 2023 of \$14,000. The increase in net cash provided by financing activities during the fiscal year ended April 30, 2024 was due to the proceeds received through issuance of stock under our At the Market offering.

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

The effect of exchange rates on cash and cash equivalents was not material during fiscal 2024 or fiscal 2023.

### **Liquidity Outlook**

Since our inception, the cash flows from customer revenue have not been sufficient to fund our operations and provide the capital resources for our business. For the two-year period ended April 30, 2024 our aggregate revenue was \$8.3 million, our aggregate net losses were \$53.8 million and our aggregate net cash used in operating activities was \$51.5 million.

Subsequent to fiscal year end 2024 and through the date of filing management obtained additional capital financing of approximately \$6.2 million under the 2023 ATM Facility. The Company's current cash balance may not be sufficient to fund its planned expenditures through twelve months from the filing date of the Form 10-K. These conditions raise substantial doubt about the Company's ability to continue as a going concern. The ability to continue as a going concern is dependent upon the Company's operations in the future and/or obtaining the necessary financing to meet its obligations and repay its liabilities arising from normal business operations when they become due. The accompanying consolidated financial statements have been prepared on a basis which assumes the Company is a going concern and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from any uncertainty related to the Company's ability to continue as a going concern. Such adjustments could be material.

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

- Our ability to improve, market and commercialize our products, and achieve and sustain profitability;
- our continued improvement of our proprietary technologies, and expected continued use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services;
- our ability to obtain additional funding, as and if needed, which will be subject to several factors, including market conditions, and our operating performance;
- our history of operating losses, which we expect to continue for at least the short term and possibly longer;
- our ability to manage challenges and expenses associated with communications and disputes with activist shareholders, including litigation;
- our ability to manage and mitigate risks associated with our internal cyber security protocols and protection of the data we collect and distribute;
- our ability to protect our intellectual property portfolio;
- the impact of inflation related to the U.S. dollar on our business, operations, customers, suppliers, manufacturers, and personnel;

- our ability to meet product enhancement, manufacturing and customer delivery deadlines and the potential impact due to disruptions to our supply chain or our ability to identify vendors that can assist with the prefabrication elements of our products, as a result of, among other things, staff shortages, order delays, and increased pricing from vendors and manufacturers;
- our estimates regarding future expenses, revenue, and capital requirements;
- our ability to identify and penetrate markets for our products, services, and solutions;
- our ability to effectively respond to competition in our targeted markets;
- our ability to establish relationships with our existing and future strategic partners which may not be successful;
- our ability to maintain the listing of our common stock on the NYSE American;
- the reliability of our technology, products and solutions;
- our ability to increase or more efficiently utilize the synergies available from our product lines;
- changes in current legislation, regulations and economic conditions that affect the demand for, or restrict the use of our products;
- our ability to expand markets across geographic boundaries;
- our ability to be successful with Federal government work which is complex due to various statutes and regulations applicable to doing business with the Federal government;
- our ability to be successful doing business internationally which requires strict compliance with applicable import, export, ITAR, anti-bribery and related statutes and regulations;
- the current geopolitical world uncertainty, including Russia's invasion of Ukraine, the Israel/Palestine conflict and recent attacks on merchant ships in the Red Sea;
- our ability to hire and retain key personnel, including senior management, to achieve our business objectives; and
- our ability to establish and maintain commercial profit margin

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 this report. 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.

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

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

#### **Recent Accounting Pronouncements**

The Company does not believe that any recently issued, but not yet effective, accounting standards, if currently adopted, will have a material effect on the Company's consolidated financial position, results of operations, or cash flows.

In December 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures ("ASU 2023-09"), which improves the transparency of income tax disclosures by requiring companies to (1) disclose consistent categories and greater disaggregation of information in the effective rate reconciliation and (2) provide information on income taxes paid disaggregated by jurisdiction. ASU 2023-09 is effective for fiscal years beginning after December 15, 2024, although early adoption is permitted. The guidance should be applied on a prospective basis with the option to apply the standard retrospectively. We are currently evaluating the impact of adopting this ASU 2023-09 on our consolidated financial statements and disclosures.

In November 2023, the FASB issued ASU No. 2023-07, “Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures.” This ASU improves financial reporting by requiring disclosure of incremental segment information. The new guidance is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. We are currently evaluating the impact of adopting this ASU 2023-07 on our consolidated financial statements and disclosures.

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Not applicable.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

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

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

None.

**ITEM 9A. CONTROLS AND PROCEDURES**

*Evaluation of Disclosure Controls and Procedures*

Our management, with the participation of our Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”) (our principal executive officer and principal financial officer, respectively), has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934) as of the end of the period covered by this Annual Report on Form 10-K. The Company’s disclosure controls and procedures are designed to provide reasonable assurance that information we disclose in reports that we file or submit under the Securities Exchange Act of 1934 is gathered and communicated to management, including our principal executive and financial officers, to allow timely decisions regarding disclosure and that such information is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission’s rules and forms. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of a simple error or mistake. Based on their evaluation, our CEO and CFO concluded that, as of April 30, 2024, our internal control over financial reporting and the Company’s disclosure controls and procedures were not effective.

*Management’s report on Internal Control over Financial Reporting*

The Company’s management is responsible for establishing and maintaining adequate internal control over financial reporting. The Company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

The Company's management assessed the effectiveness of internal control over financial reporting as of April 30, 2024, based upon the framework presented in "Internal Control-Integrated Framework" (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. Based on its assessment, Management concluded that that our internal control over financial reporting was not effective as of April 30, 2024 due to the following:

- Deficiencies related to control activities around stock-based compensation. Specifically, management review controls over the completeness and accuracy of stock-based compensation were not designed or operating effectively.
- Deficiency in risk assessment and design of controls related to inventory account balances and related disclosures. Management concluded that it did not design and implement sufficient controls related to inventory to prevent or detect material misstatements timely.

When the deficiencies identified within each of the above areas are considered in aggregate, these deficiencies rise to the level of material weaknesses.

These material weaknesses did not result in a material misstatement to our annual or interim financial statements. As the business grows, new processes and procedures will need to be implemented. We are continuing our remediation plan and are in the process of implementing measures designed to improve internal control over financial reporting to remediate the control deficiencies that led to our material weaknesses. This includes, among other things, reviewing the need for additional resources as well as ensuring personnel possess or obtain appropriate expertise to perform specific reviews of technical areas, and designing and implementing improved processes.

Notwithstanding the identified material weaknesses, management believes that the financial statements and related financial information included in this Form 10-K fairly present, in all material respects, our balance sheets, statements of operations, statements of changes in stockholders' equity (deficit) and statements of cash flows as of and for the periods presented. We are committed to establishing and maintaining a strong internal control environment. We will continue to assess the effectiveness of our internal control over financial reporting and implement measures designed to help ensure that control deficiencies contributing to the material weaknesses are remediated as soon as possible.

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

Other than as described above, there were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended April 30, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

#### **ITEM 9B. OTHER INFORMATION**

None.

#### **ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS**

Not applicable.

### PART III

#### **ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The information required in response to this Item 10 is incorporated herein by reference to our definitive proxy statement relating to our 2024 Annual Meeting of Stockholders to be filed with the SEC pursuant to Regulation 14A, not later than 120 days after the end of our fiscal year covered by this report.

#### **ITEM 11. EXECUTIVE COMPENSATION**

The information required in response to this Item 11 is incorporated herein by reference to our definitive proxy statement relating to our 2024 Annual Meeting of Stockholders to be filed with the SEC pursuant to Regulation 14A, not later than 120 days after the end of our fiscal year covered by this report.

#### **ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED SHAREHOLDER MATTERS**

The information required in response to this Item 12 is incorporated herein by reference to our definitive proxy statement relating to our 2024 Annual Meeting of Stockholders to be filed with the SEC pursuant to Regulation 14A, not later than 120 days after the end of our fiscal year covered by this report.

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

The information required in response to this Item 13 is incorporated herein by reference to our definitive proxy statement relating to our 2024 Annual Meeting of Stockholders to be filed with the SEC pursuant to Regulation 14A, not later than 120 days after the end of our fiscal year covered by this report.

#### **ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The information required in response to this Item 14 is incorporated herein by reference to our definitive proxy statement relating to our 2024 Annual Meeting of Stockholders to be filed with the SEC pursuant to Regulation 14A, not later than 120 days after the end of our fiscal year covered by this report.

**PART IV**

**ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

- (a) (1) Financial Statements: See Index to Consolidated Financial Statements on page F-1.
- (3) Exhibits: See Exhibit Index on pages 53 to 54.

**ITEM 16. FORM 10-K SUMMARY**

None.

## SIGNATURES

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

OCEAN POWER TECHNOLOGIES, INC.

Date: July 25, 2024

/s/ Philipp Stratmann  
By: Philipp Stratmann  
*President and Chief Executive Officer*

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

| <u>SIGNATURE</u>                                              | <u>TITLE</u>                                                                                                        | <u>DATE</u>   |
|---------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|---------------|
| <u>/s/ Philipp Stratmann</u><br>Philipp Stratmann             | President, Chief Executive Officer and Director<br>(Principal Executive Officer)                                    | July 25, 2024 |
| <u>/s/ Robert Powers</u><br>Robert Powers                     | Senior Vice President and Chief Financial Officer<br>(Principal Financial Officer and Principal Accounting Officer) | July 25, 2024 |
| <u>/s/ Terence J. Cryan</u><br>Terence J. Cryan               | Chairman of the Board and Director                                                                                  | July 25, 2024 |
| <u>/s/ Clyde W. Hewlett</u><br>Clyde W. Hewlett               | Director                                                                                                            | July 25, 2024 |
| <u>/s/ Diana G. Purcel</u><br>Diana G. Purcel                 | Director                                                                                                            | July 25, 2024 |
| <u>/s/ Peter E. Slaiby</u><br>Peter E. Slaiby                 | Director                                                                                                            | July 25, 2024 |
| <u>/s/ Natalie Lorenz-Anderson</u><br>Natalie Lorenz-Anderson | Director                                                                                                            | July 25, 2024 |

## Exhibits Index

### Description

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- 3.1 [Restated Certificate of Incorporation of the registrant \(incorporated by reference from Exhibit 3.1 to our Quarterly Report on Form 10-Q filed September 14, 2007\).](#)
- 3.2 [Certificate of Amendment of Certificate of Incorporation of Ocean Power Technologies, Inc. dated October 27, 2015 \(incorporated by reference from Exhibit 3.1 to Current Report on Form 8-K filed on October 28, 2015\).](#)
- 3.3 [Certificate of Amendment to Certificate of Incorporation of the Company, filed with the Secretary of State of the State of Delaware on October 21, 2016 \(incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on October 21, 2016\).](#)
- 3.4 [Certificate of Amendment to Certificate of Incorporation of the Company, filed with the Secretary of State of the State of Delaware on December 7, 2018 \(incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on December 7, 2018\).](#)
- 3.5 [Certificate of Amendment to Certificate of Incorporation of the Company, filed with the Secretary of State of the State of Delaware on March 8, 2019 \(incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on March 8, 2019\).](#)
- 3.6 [Certificate of Designations of Series A Preferred Stock of the Company, filed with the Secretary of State of the State of Delaware on June 30, 2023 \(incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on June 30, 2023\).](#)
- 3.7 [Amended and Restated Bylaws of the Company \(incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on July 5, 2024\).](#)
- 4.1 [Specimen certificate of Common Stock \(incorporated by reference to Exhibit 4.1 to the Registrant's Annual Report on Form 10-K filed on July 28, 2023\).](#)
- 4.2 [Form of Warrant to Purchase Common Stock \(incorporated by reference from Exhibit 4.1 to Current Report on Form 8-K/A filed on June 7, 2016\).](#)
- 4.3 [Description of Company Securities.++](#)
- 4.4 [Section 382 Tax Benefits Preservation Plan, dated as of June 29, 2023, by and between the Company and Computershare Trust Company, N.A., as Rights Agent \(incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on June 30, 2023\).](#)
- 10.1 [Amended and Restated 2006 Stock Incentive Plan \(incorporated by reference from Exhibit A to Proxy Statement filed August 28, 2013\).\\*](#)
- 10.2 [Form of Restricted Stock Agreement Unit \(incorporated by reference from Exhibit 10.1 to Form 10-Q filed March 14, 2011\).\\*](#)
- 10.3 [2015 Omnibus Incentive Plan\\* \(incorporated by reference to Annex A to Proxy Statement filed on September 3, 2015\).](#)
- 10.4 [Ocean Power Technologies, Inc. Employment Inducement Incentive Award Plan \(incorporated by reference to Exhibit 10.1 to Form 8-K filed with the SEC on January 19, 2018\).\\*](#)
- 10.5 [Form of Restricted Stock Unit Agreement for Employment Inducement Incentive Award Plan \(incorporated by reference to Exhibit 10.2 to Form 8-K filed with the SEC on January 19, 2018\).\\*](#)
- 10.6 [Contract between Eni S.p.A. and the Company dated March 14, 2018 \(incorporated by reference to Exhibit 10.1 to Form 8-K filed with the SEC on March 19, 2018\).+](#)
- 10.7 [Contract between Harbour Energy UK Limited and the Company dated June 27, 2018 \(incorporated by reference to Exhibit 10.27 to Form 10-K filed with the SEC on July 17, 2018\).+](#)
- 10.8 [Amendment to the Employment Agreement of George H. Kirby III \(incorporated by reference to Exhibit 10.2 to Form 8-K filed with the SEC on July 18, 2018\).\\*](#)
- 10.9 [Contract between U.S. Navy and the Company dated February 11, 2019 \(incorporated by reference to Exhibit 10.2 to Form 10-Q filed with the SEC on March 11, 2019\).](#)
- 10.10 [Contract amendment between Harbour Energy UK Limited and the Company dated June 24, 2019 \(incorporated by reference to Exhibit 10.1 to Form 8-K filed with the SEC on June 25, 2019\).+](#)
- 10.11 [Lease Agreement dated March 31, 2017 between Ocean Power Technologies, Inc. and PPH Industrial 28 Engelhard, LLC \(incorporated by reference from Exhibit 10.37 to the Company's Annual Report on Form 10-K filed with the SEC on July 22, 2019\).](#)
- 10.12 [Supply and Service Contract between the Company and Empresa Electrica Panguipulli S.A. dated September 19, 2019 \(incorporated by reference from Exhibit 10.1 to Current Report on Form 8-K filed on September 23, 2019\).+](#)



- 10.13 [Supply and Service Contract between the Company and Enel Green Power Chile LTDA dated September 19, 2019 \(incorporated by reference from Exhibit 10.2 to Current Report on Form 8-K filed on September 23, 2019\).](#) +
- 10.14 [Contract amendment between Eni s.P.a. and the Company dated February 28, 2020 \(incorporated by reference from Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on March 9, 2020\).](#)
- 10.15 [U.S. Small Business Administration Note dated May 3, 2020 of Ocean Power Technologies, Inc. in favor of Santander Bank, N.A. as the Lender \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on May 7, 2020\).](#)
- 10.16 [Loan Agreement dated May 3, 2020 between Santander Bank, N.A. and Ocean Power Technologies, Inc. \(incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on May 7, 2020\).](#)
- 10.17 [Common Stock Purchase Agreement, dated September 18, 2020, between Ocean Power Technologies, Inc. and Aspire Capital Fund, LLC \(incorporated by reference from Exhibit 10.1 to the Company's Current Report on Form 8-K filed on September 18, 2020\).](#)
- 10.18 [Subcontract between Ocean Power Technologies, Inc. and Adams Communication & Engineering Technology Inc. dated effective October 20, 2020 \(incorporated by reference from Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 27, 2020\).](#)
- 10.19 [Stock Purchase Agreement among Ocean Power Technologies, Inc. and the sellers named therein dated November 15, 2021 \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on November 16, 2021\).](#)
- 10.20 [Employment Letter between the Company and Robert P. Powers dated effective December 13, 2021\\* \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on December 13, 2021\).](#)
- 10.21 [Fifth Amendment to 2015 Omnibus Incentive Plan \(incorporated by reference to Annex A to Proxy Statement filed on October 15, 2021\).](#)
- 10.22 [First Amendment to the Employment Inducement Incentive Award Plan \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 11, 2022\).](#)
- 10.23 [Sixth Amendment to the 2015 Omnibus Incentive Plan \(incorporated by reference to Annex A to Proxy Statement filed on October 19, 2022\).](#)
- 10.24 [Form of Restricted Stock Unit Agreement for Non-Directors \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on March 13, 2023\).](#)
- 10.25 [Form of Restricted Stock Unit Agreement for Directors \(incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed on March 13, 2023\).](#)
- 10.26 [Form of Non-Qualified Stock Option Agreement \(incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q filed on March 13, 2023\).](#)
- 10.27 [Contract for Commercial Items between the Company and the National Oceanic and Atmospheric Administration dated September 1, 2023 \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on December 13, 2023\).](#)
- 10.28 [Contract for Commercial Items between the Company and the National Oceanic and Atmospheric Administration dated September 1, 2023 \(incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q filed on December 13, 2023\).](#)
- 10.29 [Contract for Commercial Items between the Company and the National Oceanic and Atmospheric Administration dated September 1, 2023 \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on December 13, 2023\).](#)
- 10.30 [Sales Agreement between the Company and A.G.P./Alliance Global Partners dated March 21, 2024 \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 21, 2024\).](#)
- 21.1 [Subsidiaries of the registrant ++](#)
- 23.1 [Consent of EisnerAmper LLP. ++](#)
- 31.1 [Certification of Chief Executive Officer ++](#)
- 31.2 [Certification of Chief Financial Officer ++](#)
- 32.1 [Certification of Chief Executive Officer pursuant to Section 906 of Sarbanes-Oxley Act of 2002\\*\\* ++](#)
- 32.2 [Certification of Chief Financial Officer pursuant to Section 906 of Sarbanes-Oxley Act of 2002\\*\\* ++](#)
- 101 The following financial information from Ocean Power Technologies, Inc.'s Annual Report on Form 10-K for the annual period ended April 30, 2024 and 2023, formatted in eXtensible Business Reporting Language (XBRL): (i) Consolidated Balance Sheets - as of April 30, 2024 and 2023, (ii) Consolidated Statements of Operations - for the years ended April 30, 2024 and 2023, (iii) Consolidated Statements of Comprehensive Loss - for the years ended April 30, 2024 and 2023, (iv) Consolidated Statements of Shareholders' Equity - for the years ended April 30, 2024 and 2023 (v) Consolidated Statements of Cash Flows - for the years ended April 30, 2024 and 2023, (vi) Notes to Consolidated Financial Statements.\*\*\*

+ Indicates that confidential treatment has been requested for this exhibit.

++ Filed herewith.

\* Management contract or compensatory plan or arrangement.

\*\* 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.

OCEAN POWER TECHNOLOGIES, INC., AND SUBSIDIARIES

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| <a href="#">Consolidated Balance Sheets, as of April 30, 2024 and 2023</a>                                  | F-4         |
| <a href="#">Consolidated Statements of Operations, for the fiscal years ended April 30, 2024 and 2023</a>   | F-5         |
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## **REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Shareholders and Board of Directors  
Ocean Power Technologies, Inc.:

### ***Opinion on the Financial Statements***

We have audited the accompanying consolidated balance sheets of Ocean Power Technologies, Inc. and Subsidiaries (the “Company”) as of April 30, 2024 and 2023, and the related consolidated statements of operations, comprehensive loss, shareholders’ equity, and cash flows for each of the years then ended, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the consolidated financial position of the Company as of April 30, 2024 and 2023, and the consolidated results of their operations and their cash flows for each of the years then ended, in conformity with accounting principles generally accepted in the United States of America.

### ***Going Concern***

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1(b) to the financial statements, the Company has recurring net losses and net cash flow used in operations that raise substantial doubt about its ability to continue as a going concern. Management’s plans in regard to these matters are also described in Note 1(b). The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

### ***Basis for Opinion***

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (“PCAOB”) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

### ***Critical Audit Matter***

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

## ***Revenue Recognition***

As described in Note 2 of the consolidated financial statements, a significant portion of the Company's revenue is generated pursuant to nonstandard written contractual arrangements to design, develop, and manufacture products, and to provide related technical and other services according to the specifications of the customers. Because of the uniqueness of the terms and conditions in the customer contracts, there is significant analysis, and at times significant judgments, that are made by management when evaluating the contracts for proper revenue recognition. The Company's performance obligations under these contractual agreements are satisfied over time. For performance obligations satisfied over time, revenue is generally recognized by measuring progress through costs incurred to date relative to total estimated costs at completion, which requires management to estimate both total expected project costs and expected gross margin, including evaluating customer change orders, to determine the appropriate amount of revenue to recognize, which can require significant management judgment.

We identified revenue recognition pertaining to customer contracts satisfied over time as a critical audit matter as there are significant judgments exercised by management evaluating their revenue contracts and in the estimate of the progress towards completion of its projects and determining the timing of revenue recognition. Given the high degree of management judgment involved in analyzing the terms and conditions of the Company's unique customer contracts and the various management estimates that are used in the revenue calculations, the audit effort required to evaluate management's judgments in determining revenue recognition for the Company's contracts was extensive and required a high degree of auditor judgment.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. We obtained an understanding of the relevant controls related to revenue recognition specific to management's analysis of customer contract terms and application of relevant accounting guidance as well as determination of significant assumptions used in computing revenue. We selected a sample of contracts with customers and performed the following audit procedures: Obtained the customer contract, related invoices, purchase orders, and management revenue recognition analysis for a sample of revenue transactions to evaluate if relevant contractual terms and transaction price were appropriately considered by management and conclusions on revenue recognition method were in accordance with the relevant accounting guidance; and evaluated management's estimations of total contract cost and contract profit by assessing actual costs to date against projections made throughout the course of the contract term.

We have served as the Company's auditor since 2020.

*/s/ EisnerAmper LLP*

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EISNERAMPER LLP

Iselin, New Jersey

July 25, 2024

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

|                                                                                                                                                                                       | April 30, 2024 | April 30, 2023 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|----------------|
| <b>ASSETS</b>                                                                                                                                                                         |                |                |
| Current assets:                                                                                                                                                                       |                |                |
| Cash and cash equivalents                                                                                                                                                             | \$ 3,151       | \$ 6,883       |
| Short-term investments                                                                                                                                                                | —              | 27,790         |
| Restricted cash, short-term                                                                                                                                                           | —              | 65             |
| Accounts receivable                                                                                                                                                                   | 796            | 745            |
| Contract assets                                                                                                                                                                       | 18             | 152            |
| Inventory                                                                                                                                                                             | 4,831          | 1,044          |
| Other current assets                                                                                                                                                                  | 1,747          | 994            |
| Total current assets                                                                                                                                                                  | \$ 10,543      | \$ 37,673      |
| Property and equipment, net                                                                                                                                                           | 3,443          | 1,280          |
| Intangibles, net                                                                                                                                                                      | 3,622          | 3,978          |
| Right-of-use assets, net                                                                                                                                                              | 2,405          | 1,751          |
| Restricted cash, long-term                                                                                                                                                            | 154            | 155            |
| Goodwill                                                                                                                                                                              | 8,537          | 8,537          |
| Total assets                                                                                                                                                                          | \$ 28,704      | \$ 53,374      |
| <b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>                                                                                                                                           |                |                |
| Current liabilities:                                                                                                                                                                  |                |                |
| Accounts payable                                                                                                                                                                      | \$ 3,366       | \$ 952         |
| Earn out payable                                                                                                                                                                      | 1,130          | 1,500          |
| Accrued expenses                                                                                                                                                                      | 1,787          | 2,346          |
| Contract liabilities                                                                                                                                                                  | 302            | 1,378          |
| Right-of-use liabilities, current portion                                                                                                                                             | 774            | 529            |
| Contingent liabilities, current portion                                                                                                                                               | —              | 1,202          |
| Total current liabilities                                                                                                                                                             | \$ 7,359       | \$ 7,907       |
| Deferred tax liability                                                                                                                                                                | 203            | 203            |
| Right-of-use liabilities, less current portion                                                                                                                                        | 1,798          | 1,311          |
| Total liabilities                                                                                                                                                                     | \$ 9,360       | \$ 9,421       |
| Commitments and contingencies (Note 15)                                                                                                                                               |                |                |
| Shareholders' Equity:                                                                                                                                                                 |                |                |
| Preferred stock, \$0.001 par value; authorized 5,000,000 shares, none issued or outstanding                                                                                           | \$ —           | \$ —           |
| Common stock, \$0.001 par value; authorized 100,000,000 shares, issued 61,352,731 and 56,304,642 shares, respectively, and outstanding 61,264,714 and 56,263,728 shares, respectively | 61             | 56             |
| Treasury stock, at cost; 88,017 and 40,914 shares, respectively                                                                                                                       | (369)          | (355)          |
| Additional paid-in capital                                                                                                                                                            | 327,276        | 324,393        |
| Accumulated deficit                                                                                                                                                                   | (307,579)      | (280,096)      |
| Accumulated other comprehensive loss                                                                                                                                                  | (45)           | (45)           |
| Total shareholders' equity                                                                                                                                                            | 19,344         | 43,953         |
| Total liabilities and shareholders' equity                                                                                                                                            | \$ 28,704      | \$ 53,374      |

See accompanying notes to consolidated financial statements.

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

|                                                                              | <b>Fiscal year ended April 30,</b> |             |
|------------------------------------------------------------------------------|------------------------------------|-------------|
|                                                                              | <b>2024</b>                        | <b>2023</b> |
| Revenue                                                                      | \$ 5,525                           | \$ 2,732    |
| Cost of revenue                                                              | 2,699                              | 2,496       |
| Gross profit                                                                 | 2,826                              | 236         |
| Loss/(Gain) from change in fair value of consideration                       | (72)                               | 1,112       |
| Operating expenses                                                           | 32,229                             | 28,340      |
| Total operating expenses                                                     | 32,157                             | 29,452      |
| Operating loss                                                               | \$ (29,331)                        | \$ (29,216) |
| Interest income, net                                                         | 800                                | 902         |
| Other income, employee retention credit                                      | —                                  | 1,251       |
| Other income, proceeds from insurance claim                                  | —                                  | 458         |
| Other income                                                                 | 2                                  | —           |
| Loss on disposition of assets (Note 7)                                       | (210)                              | —           |
| Foreign exchange gain                                                        | 2                                  | 1           |
| Loss before income taxes                                                     | \$ (28,737)                        | \$ (26,604) |
| Income tax benefit                                                           | 1,254                              | 278         |
| Net loss                                                                     | \$ (27,483)                        | \$ (26,326) |
| Basic and diluted net loss per share                                         | \$ (0.47)                          | \$ (0.47)   |
| Weighted average shares used to compute basic and diluted net loss per share | 59,031,736                         | 55,998,543  |

See accompanying notes to consolidated financial statements.

**OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Comprehensive Loss**  
**(in thousands)**

|                                         | <b>Fiscal year ended April 30,</b> |                    |
|-----------------------------------------|------------------------------------|--------------------|
|                                         | <b>2024</b>                        | <b>2023</b>        |
| Net loss                                | \$ (27,483)                        | \$ (26,326)        |
| Foreign currency translation adjustment | —                                  | —                  |
| Total comprehensive loss                | <u>\$ (27,483)</u>                 | <u>\$ (26,326)</u> |

See accompanying notes to consolidated financial statements.

**OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Shareholders' Equity**  
(in thousands, except share data)

|                                                                                 | Common Shares |        | Treasury Shares |          | Additional<br>Paid-In<br>Capital | Accumulated<br>Deficit | Accumulated<br>Other<br>Comprehensive<br>Loss | Total<br>Shareholders'<br>Equity |
|---------------------------------------------------------------------------------|---------------|--------|-----------------|----------|----------------------------------|------------------------|-----------------------------------------------|----------------------------------|
|                                                                                 | Shares        | Amount | Shares          | Amount   |                                  |                        |                                               |                                  |
| Balances at May 1, 2022                                                         | 55,905,213    | \$ 56  | (23,352)        | \$ (341) | \$ 322,932                       | \$ (253,770)           | \$ (46)                                       | \$ 68,831                        |
| Net loss                                                                        | —             | —      | —               | —        | —                                | (26,326)               | —                                             | (26,326)                         |
| Share based compensation                                                        | —             | —      | —               | —        | 1,461                            | —                      | —                                             | 1,461                            |
| Common stock issued upon vesting of restricted stock units                      | 399,429       | —      | —               | —        | —                                | —                      | —                                             | —                                |
| Shares withheld for tax withholdings                                            | —             | —      | (17,562)        | (14)     | —                                | —                      | —                                             | (14)                             |
| Other comprehensive gain/(loss)                                                 | —             | —      | —               | —        | —                                | —                      | 1                                             | 1                                |
| Balances at April 30, 2023                                                      | 56,304,642    | \$ 56  | (40,914)        | \$ (355) | \$ 324,393                       | \$ (280,096)           | \$ (45)                                       | \$ 43,953                        |
| Net loss                                                                        | —             | —      | —               | —        | —                                | (27,483)               | —                                             | (27,483)                         |
| Share-based compensation                                                        | —             | —      | —               | —        | 1,155                            | —                      | —                                             | 1,155                            |
| Common stock issued related to bonus and earnout payments                       | 2,403,846     | 3      | —               | —        | 1,247                            | —                      | —                                             | 1,250                            |
| Common stock issued upon vesting of restricted stock units                      | 787,498       | —      | —               | —        | —                                | —                      | —                                             | —                                |
| Issuance of common stock - Cantor At The Market offering, net of issuance costs | 55,604        | —      | —               | —        | 29                               | —                      | —                                             | 29                               |
| Issuance of common stock - AGP At The Market offering, net of issuance costs    | 1,801,141     | 2      | —               | —        | 452                              | —                      | —                                             | 454                              |
| Shares withheld for tax withholdings                                            | —             | —      | (47,103)        | (14)     | —                                | —                      | —                                             | (14)                             |
| Balances, April 30, 2024                                                        | 61,352,731    | \$ 61  | (88,017)        | \$ (369) | \$ 327,276                       | \$ (307,579)           | \$ (45)                                       | \$ 19,344                        |

See accompanying notes to consolidated financial statements



**OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES**  
**Consolidated Statements of Cash Flows**  
(in thousands)

|                                                                                               | <b>Fiscal year ended April 30,</b> |                    |
|-----------------------------------------------------------------------------------------------|------------------------------------|--------------------|
|                                                                                               | <b>2024</b>                        | <b>2023</b>        |
| <b>Cash flows from operating activities:</b>                                                  |                                    |                    |
| Net loss                                                                                      | \$ (27,483)                        | \$ (26,326)        |
| <b>Adjustments to reconcile net loss to net cash used in operating activities:</b>            |                                    |                    |
| Foreign exchange gain                                                                         | (2)                                | (1)                |
| Depreciation of fixed assets                                                                  | 420                                | 183                |
| Amortization of intangible assets                                                             | 148                                | 158                |
| Amortization of right-of-use assets                                                           | 593                                | 296                |
| (Accretion of discount)/amortization of premium on investments                                | (290)                              | 113                |
| Change in contingent consideration liability                                                  | (72)                               | 1,112              |
| Loss on disposal of assets                                                                    | 210                                | —                  |
| Stock based compensation                                                                      | 1,155                              | 1,461              |
| <b>Changes in operating assets and liabilities, net of acquisitions:</b>                      |                                    |                    |
| Accounts receivable                                                                           | (51)                               | (262)              |
| Contract assets                                                                               | 134                                | 234                |
| Inventory                                                                                     | (3,787)                            | (602)              |
| Other assets                                                                                  | (753)                              | (527)              |
| Accounts payable                                                                              | 2,414                              | 47                 |
| Accrued expenses                                                                              | (309)                              | 1,469              |
| Earn out payable                                                                              | (500)                              | —                  |
| Right-of-use liabilities                                                                      | (514)                              | (311)              |
| Contract liabilities                                                                          | (1,076)                            | 1,249              |
| Net cash used in operating activities                                                         | <u>\$ (29,763)</u>                 | <u>\$ (21,707)</u> |
| <b>Cash flows from investing activities:</b>                                                  |                                    |                    |
| Redemptions of short term investments                                                         | \$ 35,975                          | \$ 64,923          |
| Purchases of short term investments                                                           | (7,894)                            | (43,442)           |
| Purchases of property and equipment                                                           | (2,585)                            | (648)              |
| Leased WAM-Vs built and capitalized                                                           | —                                  | (371)              |
| Net cash provided by investing activities                                                     | <u>\$ 25,496</u>                   | <u>\$ 20,462</u>   |
| <b>Cash flows from financing activities:</b>                                                  |                                    |                    |
| Proceeds from issuance of common stock - Cantor At The Market offering, net of issuance costs | \$ 29                              | \$ —               |
| Proceeds from issuance of common stock - AGP At The Market offering, net of issuance costs    | 454                                | —                  |
| Cash paid for tax withholding related to shares withheld                                      | (14)                               | (14)               |
| Net cash provided by/(used in) financing activities                                           | <u>\$ 469</u>                      | <u>\$ (14)</u>     |
| Effect of exchange rate changes on cash, cash equivalents and restricted cash                 | \$ —                               | \$ —               |
| Net decrease in cash, cash equivalents and restricted cash                                    | <u>\$ (3,798)</u>                  | <u>\$ (1,259)</u>  |
| Cash, cash equivalents and restricted cash, beginning of year                                 | 7,103                              | 8,362              |
| Cash, cash equivalents and restricted cash, end of year                                       | <u>\$ 3,305</u>                    | <u>\$ 7,103</u>    |
| <b>Supplemental disclosure of noncash investing and financing activities:</b>                 |                                    |                    |
| Common stock issued related to bonus and earnout payments                                     | \$ 1,250                           | \$ —               |
| Operating right of use asset obtained in exchange for operating lease liability               | \$ 1,247                           | \$ 1,296           |

See accompanying notes to the consolidated financial statements

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

**(1) Background and Going Concern Uncertainty**

***(a) Background***

Ocean Power Technologies, Inc. (the “Company”) was founded in 1984 in New Jersey, commenced business operations in 1994 and re-incorporated in Delaware in 2007. The Company provides ocean data collection and reporting, marine power, offshore communications and Domain Awareness Systems (“MDA” or “MDAS”) products, integrated solutions, and consulting services. The Company’s solutions focus on three major service areas: Data as a Service (“DaaS”), which includes data collected by Wave Adaptive Modular Vessel (WAM-V®) autonomous vehicles or PowerBuoy® product lines; Robotics as a Service (“RaaS”), which provides a lower cost subscription model for customers to access use of WAM-V’s®; and Power as a Service (“PaaS”), which includes PowerBuoy® products. The Company offers products and services to a wide-range of customers, including those in government and offshore energy, oil and gas, construction, wind power and other industries. The Company is involved in the entire life cycle of product development, from product design through assembly, testing, deployment, maintenance and upgrades, while working closely with partners across the supply chain. The Company’s solutions are based on technologies that enable autonomous, zero or low carbon emitting, and cost effective data collection, analysis, transportation, cooperation with other assets such as aerial drones, and communication. The Company’s solutions are primarily suited to ocean and other offshore environments, and support generation of actionable intelligence on a standalone basis or working with other data sources. The Company then channels the information it collects, and other communications, through control equipment linked to edge computing and cloud hosting environments. The Company’s goal is to generate most revenue from the sale or lease of products and solutions. The Company expects to continue having net cash outflows until it can generate positive cash flow from the commercialization of products.

***(b) Going Concern Uncertainty***

For the fiscal year ended April 30, 2024, and the fiscal year ended April 30, 2023, the Company incurred net losses of approximately \$27.5 million and \$26.3 million, respectively, and used cash in operating activities of approximately \$29.8 million and \$21.7 million, respectively. In addition, the Company has continued to make investments towards building inventory, supporting order backlog and future growth.

The Company has incurred expenses of approximately \$3.9million for the fiscal year ended April 30, 2024, related to litigation with Paragon Technologies, Inc. (see Note 15) and preparation for its 2023 Annual Meeting of Stockholders which took place on February 28, 2024. These expenses are a direct result of the Paragon litigation and were not incurred in the prior year. These expenses could continue into the fiscal year 2025 as this litigation continues.

The Company’s future results of operations involve significant risks and uncertainties. Factors that could affect the Company’s future operating results and could cause actual results to vary materially from expectations include, but are not limited to, performance of its products, its ability to market and commercialize its products and new products that it may develop, access to capital, technology development, scalability of technology and production, ability to attract and retain key personnel, concentration of customers and suppliers, pending or threatened litigation (including recent litigation noted above), and deployment risks and integration of acquisitions.

On March 21, 2024, the Company entered into an At-the-Market Offering Agreement with AGP with an aggregate offering price of up to \$7,000,000 (the “2023 ATM Facility”). As of April 30, 2024, the Company had received proceeds of approximately \$0.5 million under the 2023 ATM Facility.

Subsequent to fiscal year end 2024 and through the date of filing management obtained additional capital financing of approximately \$6.2 million under the 2023 ATM Facility. The Company’s current cash balance may not be sufficient to fund its planned expenditures through twelve months from the filing date of the Form 10-K. These conditions raise substantial doubt about the Company’s ability to continue as a going concern. The ability to continue as a going concern is dependent upon the Company’s operations in the future and/or obtaining the necessary financing to meet its obligations and repay its liabilities arising from normal business operations when they become due. The accompanying consolidated financial statements have been prepared on a basis which assumes the Company is a going concern and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from any uncertainty related to the Company’s ability to continue as a going concern. Such adjustments could be material.

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

### ***(a) Basis of Consolidation***

The accompanying consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries, Marine Advanced Robotics Inc. (CA), referred to herein as MAR, 3dent Technologies LLC (3Dent), Oregon Wave Energy Partners I LLC (DE), ReedSport OPT WavePark, LLC (OR) and Ocean Power Technologies Ltd. in the United Kingdom. ReedSport OPT WavePark, LLC (OR) and Oregon Wave Energy Partners I, LLC (DE) were dissolved during the first quarter of fiscal 2024. 3dent was sold in November 2023 and the consolidated financial statements include 3dent's results of operations through the date of sale. 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 several estimates and assumptions relating to the reported amounts of assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the period. Significant items subject to such estimates and assumptions include, among other items, stock-based compensation based on actual and projected revenues, over time revenue recognition, valuation consideration related to business combinations, including contingent consideration based on actual and projected revenues, including discount rates and present values, and other assumptions and estimates used to evaluate the recoverability of long-lived assets, goodwill and other intangible assets. Actual results could differ from those estimates.

### ***(c) Business Combinations***

The Company accounts for business combinations in accordance with Financial Accounting and Standards Board ("FASB") Business Combinations (Topic 805). The Company allocates the fair value of consideration transferred in a business combination to the estimated fair value at the acquisition date of the tangible and intangible assets acquired as well as the liabilities assumed. Acquisition costs are expensed as incurred. Any excess consideration transferred is recorded as goodwill and in instances where the fair value of consideration transferred is less than the estimated fair value of tangible and intangible assets acquired less liabilities assumed, such amounts are recorded as a gain on the bargain purchase.

### ***(d) Revenue Recognition***

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

The nature of the Company's contracts may give rise to several types of variable consideration, including unpriced change orders, liquidated damages and penalties. Variable consideration can also arise from modifications to the scope of services. Variable consideration is included in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur once the uncertainty associated with the variable consideration is resolved. Estimates of variable consideration and determination of whether to include such amounts in the transaction price are based largely on the assessment of legal enforceability, performance, and any other information (historical, current, and forecasted) that is reasonably available to us. There was no variable consideration as of April 30, 2024 or 2023. The Company presents shipping and handling costs, that occur after control of the promised goods or services transfer to the customer, as fulfillment costs in costs of goods sold and regular shipping and handling activities charged to operating expenses.

The Company recognizes revenue when or as it satisfies a performance obligation by transferring a good or service to a customer, either (1) at a point in time or (2) over time. A good or service is transferred when or as the customer obtains control. The evaluation of whether control of each performance obligation is transferred at a point in time or over time is made at contract inception. Input measures such as costs incurred are utilized to assess progress against specific contractual performance obligations for the Company's services. The selection of the method to measure progress towards completion requires judgment and is based on the nature of the services to be provided. For the Company, the input method using costs or labor hours incurred best represents the measure of progress against the performance obligations incorporated within the contractual agreements. If estimated total costs on any contract project a loss, the Company charges the entire estimated loss to operations in the period the loss becomes known. The cumulative effect of revisions to revenue, estimated costs to complete contracts, including penalties, change orders, claims, anticipated losses, and others are recorded in the accounting period in which the events indicating a loss are known and the loss can be reasonably estimated. These loss projections are reassessed for each subsequent reporting period until the project is complete. Such revisions could occur at any time and the effects may be material. During the fiscal year ended April 30, 2024 the Company recognized approximately \$3.7 million in revenue related to performance obligations satisfied at a point in time and approximately \$1.9 million in revenue related to performance obligations satisfied over time.

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

The Company has two types of fixed-price contracts, firm fixed-price and cost-sharing. Under firm fixed-price contracts, the Company receives an agreed-upon amount for providing products and services specified in the contract, and a profit or loss is recognized depending on whether actual costs are more or less than the agreed-upon amount. Under cost-sharing contracts, the fixed amount agreed upon with the customer is only intended to fund a portion of the costs on a specific project. Under cost sharing contracts, an amount corresponding to the revenue is recorded in cost of revenue, resulting in gross profit on these contracts of zero. For the fiscal years ended April 30, 2024 and 2023, the majority of the Company's contracts were classified as firm fixed-price and the remainder were cost-sharing.

The Company's contract assets and liabilities primarily relate to the timing differences between cash received from a customer in connection with contractual rights to invoicing and the timing of revenue recognition following completion of performance obligations. The Company's accounts receivable balance is made up entirely of customer contract-related balances.

The Company's revenue also includes revenue from certain contracts which do not fall within the scope of ASC 606, but under the scope of ASC 842. At inception of a contract for those classified under ASC 842, the Company classifies leases as either operating or financing in accordance with the authoritative accounting guidance contained within ASC Topic 842, "Leases". If the direct financing or sales-type classification criteria are met, then the lease is accounted for as a finance lease. All others are treated as operating leases. The Company recognizes revenue from operating lease arrangements generally on a straight-line basis over the lease term, or as agreed upon in-use days are utilized, which is presented in Revenue in the Consolidated Statement of Operations. The Company also enters into lease arrangements for its PowerBuoys® and Wave Adaptive Modular Vessels ("WAM-V®") with certain customers. Revenue related to multiple-element arrangements is allocated to lease and non-lease elements based on their relative standalone selling prices or expected cost plus a margin approach. Lease elements generally include a PowerBuoy®, WAM-V®, and components, while non-lease elements, which the Company expects to become more prevalent, generally include engineering, monitoring and support services. In the lease arrangement, the customer may be provided with an option to extend the lease term or purchase the leased buoy or WAM-V® at some point during and/or at the end of the lease term.

As of April 30, 2024, the Company's remaining performance obligations, also called contracted backlog, totaled \$4.9 million.

The Company has elected to record taxes collected from customers on a net basis and does not include tax amounts in revenue or costs of revenue.

The below table represents the total revenue recognized under ASC 606 and ASC 842 fiscal years ended April 30, 2024 and 2023:

|                         | Fiscal year ended April 30, 2024 |                 |                 | Fiscal year ended April 30, 2023 |               |                 |
|-------------------------|----------------------------------|-----------------|-----------------|----------------------------------|---------------|-----------------|
|                         | ASC 606                          | ASC 842         | Total           | ASC 606                          | ASC 842       | Total           |
|                         | (in thousands)                   |                 |                 | (in thousands)                   |               |                 |
| <b>Product Line:</b>    |                                  |                 |                 |                                  |               |                 |
| WAM-V                   | \$ 1,912                         | \$ 1,392        | \$ 3,304        | \$ 919                           | \$ 667        | \$ 1,586        |
| Buoy                    | 1,739                            | —               | 1,739           | 269                              | —             | 269             |
| Services                | 482                              | —               | 482             | 877                              | —             | 877             |
| <b>Total</b>            | <b>\$ 4,133</b>                  | <b>\$ 1,392</b> | <b>\$ 5,525</b> | <b>\$ 2,065</b>                  | <b>\$ 667</b> | <b>\$ 2,732</b> |
| <b>Region:</b>          |                                  |                 |                 |                                  |               |                 |
| North and South America | \$ 4,101                         | \$ 1,177        | \$ 5,278        | \$ 1,722                         | \$ 667        | \$ 2,389        |
| Europe                  | 32                               | 215             | 247             | 90                               | -             | 90              |
| Asia and Australia      | —                                | —               | —               | 253                              | —             | 253             |
| <b>Total</b>            | <b>\$ 4,133</b>                  | <b>\$ 1,392</b> | <b>\$ 5,525</b> | <b>\$ 2,065</b>                  | <b>\$ 667</b> | <b>\$ 2,732</b> |

**(e) Cash and Cash Equivalents, Restricted Cash, Security Agreements and Investments**

*Cash and Cash Equivalents*

The Company considers all highly liquid investments with an original maturity of three months or less when purchased, to be cash equivalents. The Company invests excess cash in a money market account or in short term investments that are held-to-maturity. The Company had cash and cash equivalents of approximately \$3.3 million and \$7.1 million as of April 30, 2024 and 2023, respectively.

*Restricted Cash and Security Agreements*

The Company has a letter of credit agreement with Santander Bank, N.A. ("Santander"). Cash of \$154,000 is on deposit at Santander and serves as security for a letter of credit issued by Santander for the lease of warehouse/office space in Monroe Township, New Jersey.

In the prior year Santander also issued one letter of credit to subsidiaries of Enel Green Power ("EGP") pursuant to the Company's contracts with EGP. A letter of credit was issued in the amount of \$645,000 and was reduced to \$323,000 in August 2020. The letter of credit was further reduced by an additional \$258,000 in January of 2023, when the PB3 and its accompanying systems passed final acceptance testing. The remaining restricted amount of \$65,000 was released in January of 2024.

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

|                             | <u>April 30, 2024</u> | <u>April 30, 2023</u> |
|-----------------------------|-----------------------|-----------------------|
|                             | (in thousands)        |                       |
| Cash and cash equivalents   | \$ 3,151              | \$ 6,883              |
| Restricted cash- short term | —                     | 65                    |
| Restricted cash- long term  | 154                   | 155                   |
|                             | <u>\$ 3,305</u>       | <u>\$ 7,103</u>       |

#### *Short Term Investments*

As of April 30, 2024 and 2023, their carrying value was approximately zero and \$27.8 million, respectively. All short-term investments consist of corporate bonds, government agency bonds, or U.S. Treasury Notes and Bonds, are investment grade rated or better, and mature within 12 months. The Company has the ability and the intention to hold all investments to maturity, and as such are classified as held-to-maturity investments and carried at amortized cost. As of April 30, 2024, as all short term investments have matured.

The total accretion of discounts recognized for the years ended April 30, 2024 and 2023 is approximately \$290,000 and \$122,000, respectively. Additionally, there has been no impairment on these investments.

The following table summarizes the Company's short-term investments as of April 30, 2024 and 2023:

| <u>Category</u>              | <u>April 30, 2024</u>     |                                      |                     | <u>April 30, 2023</u>     |                                          |                     |
|------------------------------|---------------------------|--------------------------------------|---------------------|---------------------------|------------------------------------------|---------------------|
|                              | <u>Amortized<br/>Cost</u> | <u>Unrealized<br/>Gains (Losses)</u> | <u>Market Value</u> | <u>Amortized<br/>Cost</u> | <u>Unrealized<br/>Gains<br/>(Losses)</u> | <u>Market Value</u> |
|                              | (in thousands)            |                                      |                     |                           |                                          |                     |
| Corporate Bonds              | \$ —                      | \$ —                                 | \$ —                | \$ 14,776                 | \$ 100                                   | \$ 14,876           |
| Government Bonds & Notes     | —                         | —                                    | —                   | 9,188                     | 33                                       | 9,221               |
| Government Agency            | —                         | —                                    | —                   | 3,826                     | 25                                       | 3,851               |
| Total Short Term Investments | <u>\$ —</u>               | <u>\$ —</u>                          | <u>\$ —</u>         | <u>\$ 27,790</u>          | <u>\$ 158</u>                            | <u>\$ 27,948</u>    |

#### *(f) Inventory*

In accordance with Accounting Standards Codification 330 (ASC 330), inventory is stated at the lower of costs or net realizable value applicable to goods on hand. Items remain in inventory until they are shipped to the customer, at which time the costs are transferred on a FIFO basis to cost of revenue, or moved to leased assets as applicable, following the matching principle where costs and revenue are recognized in the same period. The Company has three classes of inventory; raw materials, work in process, and finished goods.

***(g) Accounts Receivable***

Accounts receivable are stated at the net amount expected to be collected. Amounts are usually due between 30 and 90 days after the invoice issuance. The Company is exposed to credit losses primarily on accounts receivable and contract assets related to sales to customers. If applicable, an allowance for credit losses is established to provide for the expected lifetime credit losses by evaluating factors such as customer creditworthiness, historical payment and loss experiences, current economic conditions (including geographic and political risk), and the age and status of outstanding receivables. Based on these factors, management has determined the allowance for credit losses was immaterial. Expected credit losses are written off in the period in which the financial asset is no longer collectible.

The Company grants credit to its customers, generally, without collateral, under normal payment terms (typically 30 to 90 days after invoicing). Generally, invoicing occurs after the services are performed or control of the product has transferred to the customer. Accounts receivable represent an unconditional right to consideration arising from the Company's performance under contracts with customers.

***(h) Property and Equipment, net***

Property and equipment is stated at cost, less accumulated depreciation and amortization. Depreciation and amortization is calculated using the straight-line method over the estimated useful lives (three to ten years) of the assets. Leasehold improvements are amortized using the straight-line method over the shorter of the estimated useful life of the asset or the remaining lease term. Expenses for maintenance and repairs are charged to operations as incurred. Property and equipment is also reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of the asset exceeds its estimated future cash flows, then an impairment charge is recognized in the amount by which the carrying amount of the asset exceeds the fair value of the asset.

| <b>Description</b>            | <b>Estimated useful life</b>                       |
|-------------------------------|----------------------------------------------------|
| Equipment                     | 5-7 years                                          |
| Computer equipment & software | 3 years                                            |
| Office furniture & fixtures   | 3-7 years                                          |
| Leasehold improvements        | Shorter of the estimated useful life or lease term |
| Leased Power Buoy assets      | 10 years                                           |
| Leased WAM-V assets           | 10 years                                           |

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

Transactions denominated in a foreign currency may result in realized and unrealized foreign exchange gains or losses from exchange rate fluctuations, which are included in "Foreign exchange (loss)/gain" in the accompanying Consolidated Statements of Operations.

***(j) Concentration of Credit Risk***

Financial instruments that potentially subject the Company to credit risk consist principally of trade accounts receivable, short-term investments and cash equivalents. The Company believes that its credit risk is limited because the Company's current contracts are with entities with a reliable payment history. The Company invests its excess cash in a money market fund and short-term held-to maturity investments and does not believe that it is exposed to any significant risks related to its cash accounts, money market fund, or held-to maturity investments.

As of the year ended April 30, 2024 and 2023, the Company had four and two customers whose revenue accounted for at least 10% of the Company's consolidated revenue, respectively. These customers accounted for approximately 52% and 32% of the Company's total revenue for the respective periods.

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

Basic and diluted net loss per share for all periods presented is computed by dividing net loss by the weighted average number of shares of common stock and common stock equivalents outstanding during the period. Due to the Company's net losses, potentially dilutive securities, consisting of options to purchase shares of common stock, warrants on common stock and unvested restricted stock units ("RSU") 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 unvested restricted stock units issued to employees and non-employee directors, totaling 5,859,072 and 7,777,026 for the years ended April 30, 2024 and 2023, respectively, were excluded from each of the computations as the effect would have been anti-dilutive due to the net loss for the period. Share purchase rights, which include a contingency, are not included in the calculation until the contingency is resolved.

***(l) Share-Based Compensation***

Costs resulting from all share-based payment transactions are recognized in the consolidated financial statements at their fair values. The aggregate share-based compensation expense recorded in the Consolidated Statements of Operations for the years ended April 30, 2024 and 2023 was approximately \$1.2 million and \$1.5 million, respectively. The Company's policy is to account for forfeitures of share-based compensation as they occur.

Additionally, upon vesting of an RSU granted to an employee, the employee is given the option to either pay the taxes themselves, or have enough shares of their RSU award withheld by the Company to cover the taxes incurred by the employee. In the event the employee elects to surrender shares to cover the tax implication, the Company maintains those shares in the Company's treasury stock account.

***(m) Intangibles, net***

Intangible assets acquired in a business combination are recognized separately from goodwill and are initially recognized at their fair value at the acquisition date (which is regarded as their cost). Intangible assets, including patents, are amortized over the estimated useful life of the asset on a basis that approximates the pattern of economic benefit. The patents, trade name and customer relationship intangibles are being amortized over 20, 12 and 10 years respectively, which is consistent with the estimated pattern of economic benefit of the assets. The trademark is not subject to amortization.

Intangible assets are reviewed for impairment if indicators of potential impairment exist. There was no indication of impairment of intangible assets for the fiscal years ended April 30, 2024 and April 30, 2023. However, in connection with the sale of 3Dent in November of 2023, the trade-name and customer relationships were both expensed fully during the year ended April 30, 2024 under Loss on disposition of assets on the Consolidated Statements of Operations.



***(n) Goodwill***

Goodwill is assessed for impairment using a qualitative or quantitative approach. The Company performs an annual impairment test of goodwill and further periodic tests to the extent indicators of impairment develop between annual impairment tests. There were no indications of potential impairment of goodwill identified for the year ended April 30, 2024 and 2023. Where the Company uses a qualitative analysis, it considers factors that include historical financial performance, macroeconomic and industry conditions, and the legal and regulatory environment. If the qualitative assessment indicates that it is more likely than not that an impairment exists, then a quantitative assessment is also performed. The quantitative assessment requires an analysis of several estimates including future cash flows or income consistent with management's strategic business plans, annual sales growth rates and the selection of assumptions underlying a discount rate (weighted average cost of capital) based on market data available at the time to determine fair value of the Company. If the fair value is less than the carrying amounts, an impairment charge for the difference is recorded. The Company acquired goodwill as part of its purchase of MAR. Management performed its annual qualitative assessment in fiscal year 2024 and 2023 and determined that it is more likely than not that no goodwill impairment existed as of April 30, 2024 and 2023.

***(o) Income Taxes***

Income taxes are accounted for under ACS 740 utilizing the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences and operating loss and tax credit carry forwards are expected to be recovered, settled or utilized. In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all the deferred tax assets will not be realized. If such event occurs, a valuation allowance is recorded. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained upon examination. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. The Company records interest related to unrecognized tax benefits in interest expense and penalties in selling, general, and administrative expenses, to the extent incurred. Refer to Note 14 for additional disclosure.

***(p) Accumulated Other Comprehensive Loss***

The functional currency for the Company's foreign operations is the applicable local currency. The translation from the applicable foreign currencies to U.S. dollars is performed for balance sheet accounts using the exchange rates in effect at the balance sheet date and for revenue and expense accounts using an average exchange rate during the period. The unrealized gains or losses resulting from such translation are included in Accumulated Other Comprehensive Loss within Shareholders' Equity. For the year ended April 30, 2024 and 2023, there were no amounts recorded to other comprehensive (income) loss due to limited foreign operations.

***(q) Warranty***

The Company does not include a right of return on its products other than rights related to standard warranty provisions that permit repair or replacement of defective goods. Warranty expense incurred to date has not been material.

***(r) Product development***

Costs related to research and development activities by the Company are expensed as incurred. The Company had approximately \$7.7 million and \$10.0 million in product development expense for the year ended April 30, 2024 and 2023, respectively.

**(s) Recently Issued Accounting Standards**

In December 2023, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures (“ASU 2023-09”), which improves the transparency of income tax disclosures by requiring companies to (1) disclose consistent categories and greater disaggregation of information in the effective rate reconciliation and (2) provide information on income taxes paid disaggregated by jurisdiction. ASU 2023-09 is effective for fiscal years beginning after December 15, 2024, although early adoption is permitted. The guidance should be applied on a prospective basis with the option to apply the standard retrospectively. We are currently evaluating the impact of adopting this ASU 2023-09 on our consolidated financial statements and disclosures.

In November 2023, the FASB issued ASU No. 2023-07, “Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures.” This ASU improves financial reporting by requiring disclosure of incremental segment information. The new guidance is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. We are currently evaluating the impact of adopting this ASU 2023-07 on our consolidated financial statements and disclosures.

**(t) Reclassifications**

Certain amounts may have been reclassified to conform to current period presentation. This reclassification had no impact on the previously reported net loss or comprehensive loss.

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

*Accounts Receivable*

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

|                      | Fiscal year ended April 30, |        |        |
|----------------------|-----------------------------|--------|--------|
|                      | 2024                        | 2023   | 2022   |
|                      | (in thousands)              |        |        |
| Accounts receivable  | \$ 796                      | \$ 745 | \$ 482 |
| Contract assets      | 18                          | 152    | 386    |
| Contract liabilities | 302                         | 1,378  | 129    |

*Contract Assets*

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

|                                                                              | Fiscal year ended April 30, |            |
|------------------------------------------------------------------------------|-----------------------------|------------|
|                                                                              | 2024                        | 2023       |
|                                                                              | (in thousands)              |            |
| Transferred to receivables from contract assets recognized during the period | \$ (1,879)                  | \$ (1,768) |
| Revenue recognized and not billed during the period                          | 1,745                       | 1,534      |
| Net change in contract assets                                                | \$ (134)                    | \$ (234)   |

Contract assets include unbilled amounts typically resulting from arrangements whereby the right to payment is conditional on completing additional tasks or services for a performance obligation. The decrease in contract assets from year end is primarily a result of consulting services projects for which revenue was recognized in the prior year yet billed in the current year. No impairments to contract assets were incurred during the fiscal years ended April 30, 2024 and 2023, respectively.

#### *Contract Liabilities*

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

|                                                              | <b>Fiscal year ended April 30,</b> |                 |
|--------------------------------------------------------------|------------------------------------|-----------------|
|                                                              | <b>2024</b>                        | <b>2023</b>     |
|                                                              | (in thousands)                     |                 |
| Revenue recognized                                           | \$ (2,424)                         | \$ (574)        |
| Payments collected for which revenue has not been recognized | 1,348                              | 1,823           |
| Net change in contract liabilities                           | <u>\$ (1,076)</u>                  | <u>\$ 1,249</u> |

Contract liabilities consist of amounts invoiced to and collected from customers in excess of revenue recognized. The decrease in contract liabilities from year end is primarily due to recognizing revenue on the DOE Phase II contract for which the Company was paid in prior periods.

#### **(4) Inventory**

The Company holds inventory related to the production of our products.

|                 | <b>April 30, 2024</b> | <b>April 30, 2023</b> |
|-----------------|-----------------------|-----------------------|
|                 | (in thousands)        |                       |
| Raw Materials   | \$ 4,298              | \$ 1,044              |
| Work in Process | 397                   | —                     |
| Finished Goods  | 136                   | —                     |
|                 | <u>\$ 4,831</u>       | <u>\$ 1,044</u>       |

The Company's raw materials balance represents the majority of the inventory as the Company orders parts in quantity to fill orders. Work in process and finished products typically represent smaller portions of inventory as the Company does not historically hold finished products with the exception of assets transitioning to the lease fleet or to be shipped to a customer. The Company typically ships finished products as they are completed.

## (5) Other Current Assets

Other current assets consist of the following at April 30, 2024 and 2023:

|                             | April 30, 2024  | April 30, 2023 |
|-----------------------------|-----------------|----------------|
|                             | (in thousands)  |                |
| Prepaid insurance           | \$ 202          | \$ 358         |
| Prepaid software & licenses | 224             | 190            |
| Prepaid sales & marketing   | 124             | 122            |
| Prepaid project costs       | 578             | 46             |
| Prepaid inventory materials | 414             | 58             |
| Prepaid expenses- other     | 205             | 220            |
|                             | <u>\$ 1,747</u> | <u>\$ 994</u>  |

## (6) Property and Equipment

The components of property and equipment as of April 30, 2024 and 2023 consisted of the following:

|                                | April 30, 2024  | April 30, 2023  |
|--------------------------------|-----------------|-----------------|
|                                | (in thousands)  |                 |
| Equipment                      | \$ 1,530        | \$ 783          |
| Computer equipment & software  | 790             | 700             |
| Office furniture & equipment   | 422             | 386             |
| Leasehold improvements         | 683             | 611             |
| Leased WAM-V's                 | 1,547           | 371             |
| Leased Buoys                   | 444             | —               |
|                                | <u>5,416</u>    | <u>2,851</u>    |
| Less: accumulated depreciation | (1,973)         | (1,571)         |
|                                | <u>\$ 3,443</u> | <u>\$ 1,280</u> |

Leased WAM-V's represent fixed assets that are associated with underlying operating leases with customers as discussed in revenue recognition section related to ASC 842.

Depreciation expense was approximately \$420,000 and \$183,000 for years ended April 30, 2024 and 2023, respectively.

## (7) Intangible Assets

The components of intangible assets, net as of April 30, 2024 and 2023 consisted of the following:

|                          | April 30, 2024  | April 30, 2023  |
|--------------------------|-----------------|-----------------|
|                          | (in thousands)  |                 |
| Patents                  | \$ 2,729        | \$ 2,729        |
| Trademarks               | 2,769           | 2,769           |
| Tradenname               | —               | 130             |
| Customer Relationships   | —               | 150             |
|                          | <u>5,498</u>    | <u>5,778</u>    |
| Accumulated amortization | (1,876)         | (1,800)         |
|                          | <u>\$ 3,622</u> | <u>\$ 3,978</u> |

Amortization expense was approximately \$148,000 and \$158,000 for the years ended April 30, 2024 and 2023, respectively. Trademarks are not subject to amortization.

Additionally, in connection with the sale of 3Dent in November of 2023, the trade-name and customer relationships were both expensed fully during the fiscal year ended April 30, 2024 under Loss on disposition of assets on the Consolidated Statements of Operations.

## (8) Goodwill

Goodwill in the amount of \$8.5 million was recognized in November 2021 related to the acquisition of MAR. There have been no additions to or impairment of goodwill during the years ended April 30, 2024 and 2023.

## (9) Leases

### *Lessor Information*

As of April 30, 2024 and 2023, the Company had five and three WAM-V's, respectively, leased to customers which have been classified as operating leases per accounting guidance contained within ASC Topic 842, "Leases", respectively. The remaining term on these operating leases is less than 2 years.

### *Lessee Information*

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

The Company has a lease for its facility located in Monroe Township, New Jersey that is used as warehouse/production space and the Company's principal offices and corporate headquarters. In February 2024, the Company extended the lease for its main headquarters in Monroe, NJ to April 30, 2026 and it was executed and recorded as an additional right of use asset and liability. The lease is classified as an operating lease and is included in right-of-use assets, right-of-use liabilities – current, and right-of-use liabilities- long-term on the Company's Consolidated Balance Sheets.

The Company also has a lease for office space located in Richmond, California. This lease commenced in April of 2023 and will continue for 62 months. The lease is classified as an operating lease and is included in right-of-use assets, right-of-use liabilities- current and right-of-use liabilities- long-term on the Company's Consolidated Balance Sheets.

Variable lease expenses, if any, are recorded as incurred. The operating lease expense in the Consolidated Statement of Operations was \$0.7 million and \$0.4 million for the fiscal year ended April 30, 2024 and 2023, respectively.

The components of lease expense in the Consolidated Statement of Operations for the fiscal year ended April 30, 2024 and 2023 was as follows:

|                         | <b>Fiscal year ended April 30,</b> |               |
|-------------------------|------------------------------------|---------------|
|                         | <b>2024</b>                        | <b>2023</b>   |
| Operating lease cost    | \$ 640                             | \$ 382        |
| Short-term lease cost   | 68                                 | 44            |
| <b>Total lease cost</b> | <b>\$ 708</b>                      | <b>\$ 426</b> |

Information related to the Company's right-of use assets and lease liabilities as of April 30, 2024 is as follows:

|                                                         | <b>April 30, 2024</b> |
|---------------------------------------------------------|-----------------------|
|                                                         | (in thousands)        |
| <b>Operating lease:</b>                                 |                       |
| Operating right-of-use assets, net                      | \$ 2,405              |
| Right-of-use liabilities- current                       | 774                   |
| Right-of-use liabilities- long term                     | 1,798                 |
| <b>Total lease liabilities</b>                          | <b>\$ 2,572</b>       |
| Weighted average remaining lease term- operating leases | 2.98 years            |
| Weighted average discount rate- operating leases        | 8.4%                  |

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

|                                            | <b>April 30, 2024</b> |
|--------------------------------------------|-----------------------|
|                                            | (in thousands)        |
| 2025                                       | \$ 1,410              |
| 2026                                       | 1,847                 |
| 2027                                       | 329                   |
| 2028                                       | 333                   |
| 2029                                       | 28                    |
| Thereafter                                 | -                     |
| <b>Total future minimum lease payments</b> | <b>3,947</b>          |
| Less imputed interest                      | (1,375)               |
| <b>Total</b>                               | <b>\$ 2,572</b>       |

## (10) Accrued Expenses

Accrued expenses consisted of the following at April 30, 2024 and 2023:

|                             | April 30, 2024  | April 30, 2023  |
|-----------------------------|-----------------|-----------------|
|                             | (in thousands)  |                 |
| Employee incentive payments | \$ 1,271        | \$ 1,948        |
| Accrued salary and benefits | 369             | 52              |
| Project costs               | —               | 181             |
| Other                       | 147             | 165             |
|                             | <u>\$ 1,787</u> | <u>\$ 2,346</u> |

## (11) Warrants

### *Equity Classified Warrants*

The underwritten public offering from April 2019 included the issuance of common stock warrants to purchase up to 4,927,680 shares of common stock that have an exercise price of \$3.85 per share and expire five years from the issuance date. As of April 30, 2024, common warrants to purchase 732,500 shares of the common stock had been exercised. The remaining warrants expired prior to April 30, 2024.

## (12) Share-Based Compensation Plans

In 2015, upon approval by the Company's shareholders, the Company's 2015 Omnibus Incentive Plan (the "2015 Plan") became effective. A total of 1,332,036 shares were authorized for issuance under the 2015 Omnibus Incentive Plan, including shares available for awards under the 2006 Stock Incentive Plan remaining at the time that plan terminated, or that were subject to awards under the 2006 Stock Incentive Plan that thereafter terminated by reason of expiration, forfeiture, cancellation or otherwise. If any award under the 2006 Stock Incentive Plan or 2015 Plan expires, is cancelled, terminates unexercised or is forfeited, those shares become again available for grant under the 2015 Plan. The 2015 Plan will terminate ten years after its effective date, in October 2025, but is subject to earlier termination as provided in the 2015 Plan. At subsequent shareholder meetings, including most recently in February 2024, the shareholders approved an aggregate increase to the 2015 Plan of 2,900,000 shares resulting in total shares authorized for issuance of 7,282,036 as of April 30, 2024.

On January 18, 2018, the Company's Board of Directors adopted the Company's Employment Inducement Incentive Award Plan (the "2018 Inducement Plan") pursuant to which the Company reserved 25,000 shares of common stock for issuance under the Inducement Plan in accordance with Rule 711(a) of the NYSE American Company Guide. On February 9, 2022, the 2018 Inducement Plan was amended to increase the authorized shares by 250,000 to 275,000.

## Stock Options

The Company estimates the fair value of each stock option award granted with service-based vesting requirements, using the Black-Scholes option pricing model, assuming no dividends, and using weighted average valuation assumptions. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant commensurate with the expected life of the award. The expected life (estimated period of time outstanding) of the stock options granted was estimated using the “simplified” method as permitted by the SEC’s Staff Accounting Bulletin No. 110, *Share-Based Payment*. Expected volatility is based on the Company’s historical volatility over the expected life of the stock option granted. There were zero and 601,089 shares granted for the periods ended April 30, 2024 and 2023, respectively.

|                          | <b>Fiscal year ended April 30,</b> |             |
|--------------------------|------------------------------------|-------------|
|                          | <b>2024</b>                        | <b>2023</b> |
| Risk-free interest rate  | N/A                                | 3.5%        |
| Expected dividend yield  | N/A                                | 0.0%        |
| Expected life (in years) | N/A                                | 5.5         |
| Expected volatility      | N/A                                | 109.0%      |

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

|                                  | <b>Shares<br/>Underlying<br/>Options</b> | <b>Weighted<br/>Average<br/>Exercise<br/>Price</b> | <b>Weighted<br/>Average<br/>Remaining<br/>Contractual<br/>Term<br/>(In Years)</b> |
|----------------------------------|------------------------------------------|----------------------------------------------------|-----------------------------------------------------------------------------------|
| Outstanding as of April 30, 2023 | 1,529,185                                | \$ 1.75                                            | 8.8                                                                               |
| Granted                          | —                                        | \$ —                                               |                                                                                   |
| Exercised                        | —                                        | \$ —                                               |                                                                                   |
| Cancelled/forfeited              | (794,369)                                | \$ 1.29                                            |                                                                                   |
| Expired                          | (273)                                    | \$ 341.08                                          |                                                                                   |
| Outstanding as of April 30, 2024 | <u>734,543</u>                           | \$ 2.12                                            | 7.6                                                                               |
| Exercisable as of April 30, 2024 | <u>462,150</u>                           | \$ 2.85                                            | 7.1                                                                               |

As of April 30, 2024, the total intrinsic value of outstanding and exercisable options was approximately zero. As of April 30, 2024, approximately 272,000 additional options were unvested, which had an intrinsic value of zero and a weighted average remaining contractual term of 8.5 years. There was approximately \$0.1 million and \$0.3 million of total recognized compensation cost related to stock options during each of the fiscal year ended April 30, 2024 and 2023, respectively. As of April 30, 2024, there was approximately \$0.2 million of total unrecognized compensation cost related to non-vested stock options granted under the plans. This cost is expected to be recognized over a weighted-average period of 1.4 years.

### Performance Stock Options

As of April 30, 2024, there were no performance stock units outstanding. As of April 30, 2023 there were 66,667 performance stock units outstanding which were all cancelled during the quarter ended July 31, 2023. There was approximately \$43,000 and \$108,000 of total recognized compensation cost related to performance stock options during each of the fiscal year ended April 30, 2024 and 2023, respectively. As of April 30, 2024, there was no unrecognized compensation cost related to non-vested stock options granted under the plans.

### Restricted Stock Units

Compensation expense for restricted stock units (“RSUs”) is generally recorded based on the market value on the date of grant and recognized ratably over the associated service and performance period. During the years ended April 30, 2024 and 2023, the Company granted 4,439,257 and 1,608,681 shares, respectively, subject to service-based, performance, and market condition vesting requirements.



A summary of unvested restricted stock units under our stock incentive plans is as follows:

|                                       | <b>Number<br/>of Shares</b> | <b>Weighted<br/>Average Price per<br/>Share</b> |
|---------------------------------------|-----------------------------|-------------------------------------------------|
| Issued and unvested at April 30, 2023 | 1,985,994                   | \$ 0.91                                         |
| Granted                               | 4,439,257                   | \$ 0.30                                         |
| Vested and issued                     | (787,498)                   | \$ 0.86                                         |
| Cancelled/forfeited                   | (513,224)                   | \$ 0.90                                         |
| Issued and unvested at April 30, 2024 | <u>5,124,529</u>            | <u>\$ 0.38</u>                                  |

There was approximately \$1.0 million and \$1.1 million of total recognized compensation cost related to restricted stock units for the years ended April 30, 2024 and 2023, respectively. As of April 30, 2024, there was \$1.4 million of 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 1.5 years.

### (13) 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, other assets, contract assets and liabilities, deposits, accounts payable, and accrued expenses. The carrying value is equal to their fair value due to the short term nature of these accounts.

Additionally, there was a Level 3 contingent liability related to earnout payable as part of the MAR acquisition in the amount of \$1.2 million as of April 30, 2023. The fair value of this contingent liability was remeasured to its fair value and reclassified to Earn Out Payable at the end of the second earn out period on April 30, 2024. The change in fair value upon remeasurement of approximately \$0.1 million and \$1.1 million was recognized in the consolidated statement of operations for the fiscal years ended April 30, 2024 and 2023, respectively.

Transfers into or out of any hierarchy level are recognized at the end of the reporting period in which the transfers occurred.

## (14) Income Taxes

Loss before income taxes for the years ended April 30, 2024 and 2023 consisted of the following components:

|                                | April 30, 2024     | April 30, 2023     |
|--------------------------------|--------------------|--------------------|
|                                | (in thousands)     |                    |
| Domestic                       | \$ (28,737)        | \$ (26,578)        |
| Foreign                        | -                  | (26)               |
| Total loss before income taxes | <u>\$ (28,737)</u> | <u>\$ (26,604)</u> |

The income tax benefit for the years ended April 30, 2024 and 2023 consisted of \$1.3 million and \$0.3 million, respectively, from the sale of New Jersey net operating losses and research and development credits.

### Tax Rate Reconciliation

The effective income tax rate differed from the percentages computed by applying the U.S. federal income tax rate for the periods ended April 30, 2024 and 2023 to loss before income taxes as a result of the following:

|                                                      | April 30, 2024 | April 30, 2023 |
|------------------------------------------------------|----------------|----------------|
| Computed expected tax benefit                        | (21.0)%        | (21.0)%        |
| Increase (reduction) in income taxes resulting from: |                |                |
| State income taxes, net of federal benefit           | (3.5)%         | 4.0%           |
| Federal research and development tax credits         | (1.1)%         | 1.9%           |
| Foreign rate differential                            | —%             | —%             |
| Other non-deductible expenses                        | 0.4%           | (1.1)%         |
| Proceeds of sale of New Jersey tax benefits          | (3.4)%         | (7.0)%         |
| Other                                                | 4.5%           | 1.3%           |
| Increase in valuation allowance                      | 19.8%          | 22.9%          |
| Income tax (benefit)                                 | <u>(4.3)%</u>  | <u>1.0%</u>    |

### Significant Components of Deferred Taxes

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

|                                                             | April 30, 2024   | April 30, 2023   |
|-------------------------------------------------------------|------------------|------------------|
|                                                             | (in thousands)   |                  |
| Deferred tax assets:                                        |                  |                  |
| Federal net operating loss carryforwards                    | \$ 48,745        | \$ 43,788        |
| Foreign net operating loss carryforwards                    | 2,059            | 2,059            |
| State operating loss carryforwards                          | 1,934            | 1,578            |
| Federal and New Jersey research and development tax credits | 5,404            | 5,143            |
| Stock compensation                                          | 470              | 662              |
| Accrued expenses                                            | 312              | 474              |
| Other                                                       | 2,578            | 1,977            |
| Net deferred tax assets before valuation allowance          | <u>\$ 61,502</u> | <u>\$ 55,681</u> |
| Valuation allowance                                         | <u>(60,322)</u>  | <u>(54,644)</u>  |
| Deferred tax assets                                         | <u>\$ 1,180</u>  | <u>\$ 1,037</u>  |
| Deferred tax liabilities:                                   |                  |                  |
| Intangibles                                                 | \$ 793           | \$ 792           |
| Lease liabilities                                           | 590              | 448              |
| Net deferred tax liabilities                                | <u>\$ (203)</u>  | <u>\$ (203)</u>  |

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences and carry forwards become deductible or are utilized. As of April 30, 2024 and 2023, based upon the level of historical taxable losses, valuation allowances of \$60.3 million and \$54.6 million, respectively, were recorded to fully offset deferred tax assets. The valuation allowance increased \$5.7 million during the year ended April 30, 2024 and increased \$7.0 million during the year ended 2023 respectively, due to continuing net operating losses.

As of April 30, 2024, the Company had net operating loss carry forwards for federal income tax purposes of approximately \$231.4 million, which begin to expire in fiscal 2024; \$97.9 million of the federal carryforward has no expiration, but the deductibility of such federal net operating losses may be limited to 80% of our taxable income in future years. The Company also had federal research and development tax credit carry forwards of approximately \$4.3 million as of April 30, 2024, which begins to expire in 2024. The Tax Reform Act of 1986 contains provisions that limit the utilization of net operating loss and tax credit carry forwards if there has been an ownership change, as defined. The Company has determined that as a result of multiple ownership changes, as described in Section 382 of the Internal Revenue Code, its ability to utilize these NOL's and research and development tax credit have been significantly limited.

In addition, as of April 30, 2024, the Company had state net operating loss carry forwards of approximately \$27.7 million which begin to expire in 2042, which also may be limited to utilization limitations. Further, as of April 30, 2024, the Company had foreign net operating loss carry forwards of approximately \$10.8 million. The ability to utilize these carry forwards may also be limited due to ownership changes.

#### *Income Tax Benefit*

The Company has sold New Jersey State net operating losses and research development credits under the New Jersey Economic Development Authority Tax Transfer programs, which has resulted in \$1.3 million and \$0.3 million of tax benefit related to the fiscal year ended April 30, 2024 and 2023, respectively, from the sale of New Jersey net operating losses and research and development credits. New Jersey-based technology or biotechnology companies with fewer than 225 US employees may be eligible to sell net operating losses and research and development tax credits to unaffiliated corporations, up to a maximum lifetime benefit of \$20.0 million per business.

#### *Uncertain Tax Positions*

The Company applies the guidance issued by the FASB for the accounting and reporting of uncertain tax positions. The guidance requires the Company to recognize in its consolidated financial statements the impact of a tax position if that position is more likely than not to be sustained upon examination, based on the technical merits of the position. The Company is currently undergoing an income tax audit in Spain for the period from 2011 to 2014, when the Company's Spanish branch was closed. At April 30, 2024 and 2023, 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 fiscal year, related to examinations or uncertain tax positions. Net operating loss and credit carry forwards since inception remain open to examination by taxing authorities and will continue to remain open for a period after utilization.

The Company does not have any interest or penalties accrued related to uncertain tax positions as it does not have any unrecognized tax benefits.

### **(15) Commitments and Contingencies**

#### *Spain Income Tax Audit*

The Company underwent an income tax audit in Spain for the period from 2011 to 2014, when its Spanish branch was closed. On July 30, 2018, the Spanish tax inspector concluded that although there was no tax owed in light of losses reported, the Company's Spanish branch owed penalties for failure to properly account for the income associated with the funding grant. During the year ended April 30, 2022, the Company received notice from the Spanish Central Economic and Administrative Tribunal ("Spanish Tax Administration") that it agreed with the inspector and ruled that the Company owes the full amount of the penalty in the amount of €279,870 or approximately \$331,000. On January 25, 2021, the Company paid the Spanish Tax Administration €279,870. Notwithstanding that payment, on April 30, 2022, the Company filed its appeal of the decision of the Central Court to the Spanish National Court. The Company expects results of the appeal to conclude during fiscal year 2025.

#### *Litigation with Paragon Technologies, Inc.*

On June 16, 2023, Paragon Technologies, Inc., a Delaware corporation that is an activist investor and a stockholder of the Company ("Paragon"), informed the Company that Paragon was planning a proxy contest against the Company and intended to nominate candidates for election to the Company Board of Directors (the "OPT Board") at the Company's 2023 Annual Meeting (the "2023 Annual Meeting"). Subsequently, Paragon disclosed its intention to replace a majority of the six-member OPT Board with initially five purported nominees, including three members of the Paragon Board of Directors, and, thereby, seek control of the Company. In furtherance of Paragon's threatened agenda, Paragon brought three litigation matters against the Company in the Delaware Court of Chancery.

- (a) (*Del. Code §220 Complaint*) On July 27, 2023, Paragon filed a complaint in the Court of Chancery of the State of Delaware against the Company seeking to compel the inspection of certain books and records of the Company pursuant to 8 Del. Code § 220. On January 31, 2024, the Court issued a ruling for the Company to deliver certain books and records to Paragon, and the books and records that were subject to the Court's final order were produced to Paragon on April 8, 2024. No additional activity has occurred.

(b) *(Breach of Fiduciary Duties Complaint)* On October 10, 2023, Paragon filed an additional complaint in the Court of Chancery of the State of Delaware against the Company, and the members of its Board of Directors, claiming certain breaches of their fiduciary duties. The complaint sought only injunctive relief against the Company, and not monetary damages, and therefore the financial exposure derived therein was limited to applicable legal fee and costs at that stage, which was material to FY' 24. On November 2, 2023, Paragon sought leave to amend its complaint to add additional claims. The Court granted this motion for leave to amend, provided that the Court would not delay the hearing on the matters raised in the initial complaint, which was set for November 28, 2023. This hearing on the initial complaint was held and on November 30, 2023, the Court ruled in favor of the Company and denied Paragon's motion for injunctive relief. The status of the in the amended complaint is still pending. On February 28, 2024, the Company successfully finalized its 2023 annual meeting of stockholders in spite of Paragon's repeated attempts to contest the meeting. On July 10, 2024, the Company requested Paragon's counsel to dismiss this litigation, given there has been no activity for 6 months. We are awaiting a response.

*(Del. Code §225 Complaint)* On April 11, 2024, Paragon filed an action in the Delaware Court of Chancery against the Company, and the members of its Board of Directors, challenging the results of the 2023 Annual Meeting (concluded on February 28, 2024), alleging that a quorum was not present for the meeting. On May 7, 2024, the Company filed its answer, including that the Final Report of the Inspector of Election (which Paragon selected) confirmed that a quorum was present. On June 20, 2024, Paragon filed a Motion to Dismiss the case "without prejudice." On June 28, 2024, the Company responded to Paragon's Motion to Dismiss, claiming that the case should be dismissed: (a) "with prejudice"; or (b) "without prejudice," but in such event Paragon should reimburse OPT's fees and costs for defending the case.

As clearly evidenced by the above, Paragon has filed three lawsuits against the OPT Board and the Company in an effort to seek control of the Company, without following appropriate governance standards and without offering fair value to the stockholders.

In addition, Sham Gad, the CEO of Paragon has also maintained in public that the nature of Paragon's proposed investment in the Company was "non-dilutive." To that point, on April 24, 2024, Paragon made the following "non-dilutive \$3MM preferred stock" offer to the Company: "...The preferred would have the option to be convertible to common stock, at \$0.05 a share, or 25% of the 30-day average trading price, whichever is higher...". After the Board correctly rejected the \$3MM preferred stock offer, on June 7, 2024, Paragon issued a press release that proclaimed its offer was non-dilutive. In fact, Paragon's offer was highly dilutive because the offer stipulated that the proposed OPT preferred stock to be issued to Paragon would be convertible to OPT common stock at a 75% discount to the fair market value of the common stock. The Paragon offer thus essentially amounted to a change in control of the Company at 25% of its fair market value.

In order to defend the best interests of the Company's shareholders against Paragon's lawsuits and public statements, the Company has spent approximately \$3.9 million in fees and costs.

#### *General Legal Matters*

From time to time, the Company is involved in legal and administrative proceedings and claims of various types. The Company records a liability in its consolidated financial statements for these matters when a loss is known or considered probable and the amount can be reasonably estimated. The Company reviews these estimates each accounting period as additional information is known and adjusts the loss provision when appropriate. If a matter is both probable to result in a liability and the amounts of loss can be reasonably estimated, the Company estimates and discloses the possible loss or range of loss to the extent necessary to make the consolidated financial statements not misleading. If the loss is not probable or cannot be reasonably estimated, a liability is not recorded in its consolidated financial statements.

## (16) Operating Segments and Geographic Information

The Company's business consists of one segment as the revenue associated with its different business lines are not material enough to justify segment reporting or to make it meaningful to investors, and our chief operating decision maker does not view the Company's operations on a segment basis. The Company operates on a worldwide basis with one operating company in the U.S. and one operating subsidiary in the UK. Revenue and expenses are generally attributed to the operating unit that bills the customers. Geographic information is as follows:

|                                 | Year Ended April 30, 2024 |        |                       |          |
|---------------------------------|---------------------------|--------|-----------------------|----------|
|                                 | North & South<br>America  | Europe | Asia and<br>Australia | Total    |
|                                 | (in thousands)            |        |                       |          |
| Revenue from external customers | \$ 5,278                  | \$ 247 | \$ —                  | \$ 5,525 |
| Operating (loss) income         | (29,548)                  | 217    | —                     | (29,331) |
| Right-of-use assets, net        | 2,405                     | —      | —                     | 2,405    |
| Long-lived assets               | 3,443                     | —      | —                     | 3,443    |
| Total assets                    | 28,704                    | —      | —                     | 28,704   |

|                                 | Year Ended April 30, 2023 |        |                       |          |
|---------------------------------|---------------------------|--------|-----------------------|----------|
|                                 | North & South<br>America  | Europe | Asia and<br>Australia | Total    |
|                                 | (in thousands)            |        |                       |          |
| Revenue from external customers | \$ 2,389                  | \$ 90  | \$ 253                | \$ 2,732 |
| Operating (loss) income         | (29,271)                  | 6      | 49                    | (29,216) |
| Right-of-use assets, net        | 1,751                     | —      | —                     | 1,751    |
| Long-lived assets               | 1,280                     | —      | —                     | 1,280    |
| Total assets                    | 53,374                    | —      | —                     | 53,374   |

## (17) Employee Benefits

### 401(k) Savings & Retirement Plan

The Company offers a 401(k) Savings & Retirement Plan to eligible employees meeting certain age and service requirements. This plan permits participants to contribute 100% of their salary, up to the maximum allowable by the Internal Revenue Service regulations. Participants are immediately vested in their voluntary contributions plus actual earnings or less actual losses thereon. Participants are eligible to participate in the Company match after one year of service and are fully vested in the Company match after two years of service.

The Company matches employee contributions dollar for dollar up to the first 3% and fifty cents on the dollar for each additional 1% up to 9% for a maximum match contribution of 6%. The aggregate employer 401(k) match expense recorded in the Consolidated Statements of Operations for the years ended April 30, 2024 and 2023 was approximately \$0.3 million and \$0.3 million, respectively.

The Company may also provide for a voluntary contribution to the plan which is approved by the Company's Board of Directors on an annual basis. All participants immediately vest on the date of distribution.

## DESCRIPTION OF SECURITIES

Our authorized capital stock consists of 100,000,000 shares of common stock, par value \$0.001 per share, and 5,000,000 shares of preferred stock, par value \$0.001 per share, 100,000 of which are designated as Series A Participating Preferred Stock which may be issued upon the exercise of the preferred stock purchase rights described below under “Section 382 Tax Benefits Preservation Plan”.

### Description of Common Stock

*Voting.* Holders of common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders and do not have cumulative voting rights. Accordingly, holders of a majority of the shares of common stock entitled to vote in any election of directors may elect all of the directors standing for election.

*Dividends.* Holders of common stock are entitled to receive proportionately any dividends that may be declared by our Board, subject to any preferential dividend rights of outstanding preferred stock.

*Liquidation and Distribution.* Upon our liquidation, dissolution or winding up, the holders of common stock are entitled to receive proportionately our net assets available after the payment of all debts and other liabilities and subject to the prior rights of any outstanding preferred stock. Holders of common stock have no preemptive, subscription, redemption or conversion rights. Our outstanding shares of common stock are, and the shares offered by us in this offering will be, when issued and paid for, fully paid and nonassessable. The rights, preferences and privileges of holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate and issue in the future.

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

Delaware law, our certificate of incorporation and our bylaws contain provisions that could have the effect of delaying, deferring or discouraging another party from acquiring control of us. These provisions, which are summarized below, are intended to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our Board.

### Removal of Directors

Our certificate of incorporation currently provides that directors may be removed only for cause and only by the affirmative vote of the holders of 75% of our shares of capital stock present in person or by proxy and entitled to vote. However, our Board of Directors approved an amendment to our bylaws that became effective on June 17, 2016, which permits our directors to be removed either for cause or without cause by our stockholders. At our annual meeting of stockholders for the year ended April 30, 2016 that was held on October 21, 2016 (the “2016 Annual Meeting”), we submitted a proposal to stockholders seeking stockholder approval to amend our certificate of incorporation to delete the reference to “for cause” in Section 6 of Article IX of the certificate of incorporation. This proposal to amend the certificate of incorporation did not receive the required affirmative vote of the holders of at least 75% of the outstanding shares of common stock entitled to vote at the meeting, so the proposal did not pass. However, we also submitted a proposal to stockholders at the 2016 Annual Meeting seeking approval to amend our certificate of incorporation to add a clause that specified that, to the fullest extent permitted by law, any provision in the Certificate of Incorporation that is contrary to a requirement of the Delaware General Corporate Law (the “DGCL”) shall be read in conformity with the applicable requirement of the DGCL. This second proposal only required the affirmative vote of the holders of a majority of the outstanding shares of common stock entitled to vote at the 2016 Annual Meeting, and it passed.

Our Board of Directors takes the position that under current Delaware law, the “only for cause” provision in the certificate of incorporation regarding removal of the company’s directors is not enforceable and is therefore not in conformity with the applicable requirement of the DGCL. Accordingly, we will comply with the provisions of our bylaws, as amended and as described above, relating to director removal and will not seek to enforce that provision of our certificate of incorporation relating to stockholder removal of directors only for cause, as presently in effect. Under our certificate of incorporation and bylaws, any vacancy on the Board, including a vacancy resulting from an enlargement of the Board, may be filled only by vote of a majority of our directors then in office.

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

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

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

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

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

### **Delaware Business Combination Statute**

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

### **Section 382 Tax Benefits Preservation Plan**

Our Board of Directors has approved the adoption of a tax benefits preservation plan in the form of a Section 382 Rights Agreement designed to protect and preserve our tax assets primarily associated with net operating loss carryforwards ("NOLs") that could potentially be utilized in certain circumstances to offset our future taxable income and reduce its federal income tax liability.

Section 382 of the Internal Revenue Code imposes limitations on the future use of a company's NOLs if it undergoes an "ownership change." Our ability to benefit from its tax assets would be substantially limited by Section 382 if an "ownership change" occurred. A company experiences an "ownership change" for tax purposes if the percentage of stock owned by one or a group of its 5% stockholders (as defined for tax purposes) increases by more than 50 percentage points over a rolling three-year period over the lowest percentage of stock of such corporation owned by such stockholders at any time during that period.

Our tax benefits preservation plan is similar to those adopted by numerous other public companies with significant NOLs. In order to protect our NOLs from being limited or permanently lost under Section 382, the tax benefits preservation plan is intended to reduce the likelihood of an unintended "ownership change" occurring through the buying and selling of our common stock. This is accomplished by deterring any person or group from acquiring beneficial ownership of 4.99% or more of our outstanding common stock without the approval of the Board. Our tax benefits preservation plan does not, however, block anyone from buying or selling OPT's common stock. Accordingly, there can be no assurance that the tax benefits preservation plan will prevent an "ownership change."

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Under the terms of the tax benefits preservation plan, OPT will distribute to its stockholders one preferred stock purchase right for each share of our common stock held as of the close of business on July 11, 2023. Any shares of common stock issued after the July 11, 2023 record date will be issued together with associated preferred stock purchase rights.

Under the tax benefits preservation plan, the rights will initially trade with our common stock. The rights will generally become exercisable only if a person (or any persons acting as a group) acquires beneficial ownership of 4.99% or more of our outstanding common stock, without the approval of the Board, after the first public announcement by us of the adoption of the tax benefits preservation plan. A person or group who acquires, without the approval of the Board, beneficial ownership of 4.99% or more of our outstanding common stock could be subject to significant dilution. If the preferred stock purchase rights become exercisable, all holders of rights, other than the person or group triggering the rights, will be entitled to purchase our common stock at a 50% discount. The Board also has the option to cause the exchange of one share of common stock for each preferred stock purchase right held. Preferred stock purchase rights held by the person or group triggering the rights will become null and void and will not be exercisable or transferable.

Stockholders who beneficially owned 4.99% or more of our outstanding common stock prior to the first public announcement by us of the adoption of the tax benefits preservation plan will not trigger any penalties under the tax benefits preservation plan so long as they do not acquire beneficial ownership of any additional shares of common stock (other than pursuant to a stock split, stock dividend, reclassification, or similar transaction effected by us) at a time when they still beneficially own 4.99% or more of such common stock. The Board also has the discretion to exempt any acquisition of our common stock from the provisions of the tax benefits preservation plan.

The preferred stock purchase rights and the tax benefits preservation plan will expire no later than June 29, 2026. The preferred stock purchase rights and the tax benefits preservation plan may also expire on an earlier date upon the occurrence of other events, including a determination by our Board that (i) the tax benefits preservation plan is no longer necessary for the preservation of our tax attributes, (ii) no tax attributes may be carried forward (with such expiration occurring as of the beginning of the applicable taxable year), or (iii) prior to the time any person or group acquires 4.99% or more of our common stock, that the tax benefits preservation plan and the preferred stock purchase rights are no longer in the best interests of us and our stockholders. The preferred stock purchase rights may also be redeemed, exchanged, or terminated prior to their expiration.

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

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

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

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

- for any breach of their duty of loyalty to us or our stockholders;
  - for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
  - for voting or assenting to unlawful payments of dividends or other distributions; or
  - for any transaction from which the director derived an improper personal benefit.
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Any amendment to or repeal of these provisions will not eliminate or reduce the effect of these provisions in respect of any act or failure to act, or any cause of action, suit or claim that would accrue or arise prior to any amendment or repeal or adoption of an inconsistent provision. If the Delaware General Corporation Law is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of our directors will be further limited to the greatest extent permitted by the Delaware General Corporation Law.

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

#### **Notice of Share Ownership**

Our bylaws contain a provision requiring any beneficial owner of three percent or more of our outstanding common stock to notify us of his or her stockholdings, as well as of any change in his or her beneficial ownership of one percent or more of our outstanding common stock. Our bylaws do not provide for any specific remedy in the event a stockholder does not comply with this provision. We do not intend to make any such information public, unless required by law or the rules of the SEC or the NYSE American.

#### **Authorized but Unissued Shares**

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

#### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A. Its address is 250 Royall Street, Canton, MA 02021-1011, and its telephone number is 1-800-662-7232.

Our common stock is listed on the NYSE American under the symbol "OPTT."

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**Subsidiary**

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**Jurisdiction of Incorporation**

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Ocean Power Technologies Ltd  
3Dent Technology, LLC  
Marine Advanced Robotics, Inc.

United Kingdom  
Texas  
California

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the Registration Statements of Ocean Power Technologies on Form S-3 (Nos. 333-275843 and 333-273044) and Form S-8 (Nos. 333-208522, 333-214316, 333-224436, 333-232755, 333-252372, 333-262684, 333-269344 and 333-277728) of our report dated July 25, 2024, on our audits of the financial statements as of April 30, 2024, and 2023 and for each of the years then ended which report is included in this Annual Report on Form 10-K to be filed on or about July 25, 2024. Our report includes an explanatory paragraph about the existence of substantial doubt concerning the Company's ability to continue as a going concern.

*/s/ EisnerAmper LLP*

EISNERAMPER LLP  
Iselin, NJ  
July 25, 2024

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## CERTIFICATIONS

I, Philipp Stratmann, certify that:

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

*/s/ Philipp Statman*

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Philipp Stratmann  
President and Chief Executive Officer

Dated: July 25, 2024

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## CERTIFICATIONS

I, Robert Powers, certify that:

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

/s/ Robert Powers

Robert Powers  
Senior Vice President and Chief Financial Officer

Dated: July 25, 2024

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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 Annual Report on Form 10-K of Ocean Power Technologies, Inc. (the "Company") for the year ended April 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Philipp Stratmann, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that:

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

*/s/ Philipp Stratmann*

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Philipp Stratmann  
President and Chief Executive Officer

Dated: July 15, 2024

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 Annual Report on Form 10-K of Ocean Power Technologies, Inc. (the "Company") for the year ended April 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Robert Powers, Senior Vice President, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that:

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

*/s/ Robert Powers*

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Robert Powers  
Senior Vice President and Chief Financial Officer

Dated: July 25, 2024

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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