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

Form 10-K

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

For the fiscal year ended April 30, 2019

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	**22-2535818**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*

28 ENGELHARD DRIVE, SUITE B
MONROE TOWNSHIP, NJ 08831
(Address of principal executive offices, including zip code)

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

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

Title of Each Class	**Name of Exchange on Which Registered**
Common Stock, par value $0.001	The Nasdaq Capital Market

Securities registered pursuant to Section 12(g) of the Act:
None

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

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 [X]

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 [X] 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 [X] No [ ]

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [X]

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 [X]

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

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.[ ]

The aggregate market value of the common stock of the registrant held by non-affiliates as of October 31, 2018, the last business day of the registrant's most recently completed second fiscal quarter, was $9.5 million based on the closing sale price of the registrant's common stock on that date as reported on the Nasdaq Capital Market.

The number of shares outstanding of the registrant’s common stock as of July 15, 2019 was 5,771,747.

OCEAN POWER TECHNOLOGIES, INC.
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PowerBuoy® 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 ends on April 30. References to fiscal 2019 are to the fiscal year ended April 30, 2019.

Special Note regarding Reverse Stock Split

At the special meeting of our stockholders on March 8, 2019, our stockholders approved a proposal to amend our Certificate of Incorporation to affect a reverse split of our common stock at a ratio to be determined by the Company's Board of Directors within a specific range. After the special meeting of stockholders, the Company's Board of Directors convened and decided to initiate the reverse split, chose a ratio, and directed management to take the necessary steps to effectuate the reverse split as soon as possible. Pursuant to the direction of the Board, the Company filed a Certificate of Amendment to our Certificate of Incorporation to affect a one-for-twenty reverse stock split of our common stock (the "Reverse Stock Split"). As of the close of markets on March 11, 2019, the effective date of the Reverse Stock Split, every twenty shares of issued and outstanding common stock were combined into one issued and outstanding share of common stock, without any change in the par value per share. Any fractional shares in connection with the Reverse Stock Split were rounded up to the nearest whole share and no cash payments were made to stockholders in lieu of fractional shares. The common stock began trading on a reverse stock split-adjusted basis on the Nasdaq Stock Market ("Nasdaq") on March 12, 2019. All share and per share data included in this annual report has been retroactively restated to reflect the Reverse Stock Split.

PART I

ITEM 1. *BUSINESS*

Overview

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

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

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

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

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

Since fiscal 2002, government agencies have accounted for a significant portion of our revenues. These revenues were largely for the support of our development efforts relating to our technology. Today our goal is to generate the majority of our revenue from the sale or lease of our products, and sales of services to support our business operations. As we continue to develop and commercialize our products, we expect to have a net loss of cash from operating activities unless and until we achieve positive cash flow from the commercialization of our products and services. During fiscal 2018 we continued work on projects with the U.S. Department of Defense ("DOD"), Mitsui Engineering and Shipbuilding Co., Ltd. ("MES"), and commenced work with Premier Oil ("PMO") and Eni S.p.A. ("Eni"). During fiscal 2019 we continued work with PMO and Eni and commenced work with Enel Green Power ("EGP"), the U.S. Navy Small Business Innovation Research ("U.S. SBIR") program, and a leading oil & gas operator.

We were incorporated under the laws of the State of New Jersey in April 1984 and began commercial operations in 1994. On April 23, 2007, we reincorporated in Delaware. Our principal executive offices are located at 28 Engelhard Drive, Suite B, Monroe Township, New Jersey 08831, and our telephone number is (609) 730-0400. Our website address is www.oceanpowertechnologies.com. We make available free of charge on our website our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and all amendments to those reports as soon as reasonably practicable after such material is filed electronically with the SEC. The information on our website is not a part of this Annual Report. Our common stock has been listed on Nasdaq since April 24, 2007, and since July 2015, our common stock has been listed on the Nasdaq Capital Market. 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.

Competitive Advantages

We are commercializing our PB3 PowerBuoy® by targeting customers principally in four markets that require reliable and persistent power sources in remote offshore locations (as discussed in further detail below). We believe that our wave energy products and services, 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 PB3 PowerBuoy® to address multiple offshore applications around the world. In particular, we are targeting customers with multiple applications within the oil and gas, defense and security, science and research, and communications markets.

- *Considerable life-cycle cost savings over current solutions for many applications.* Our PB3 PowerBuoy® is designed to operate over extended intervals between required servicing, compared to several current solutions which we found to require more servicing using offshore vessels. We believe that our PB3 PowerBuoy® reduces costs over multi-year operations compared with current solutions. These cost reductions are mostly due to reduced vessel and personnel servicing activities.

- *Real-time data communications.* Some current solutions with less available power than our PowerBuoy® may have limited communication capabilities or may be able to communicate data only over shorter periods due to power limitations. Some current solutions may only make data accessible upon physical retrieval of the sensor. Our PowerBuoy® can be equipped with a variety of communications equipment, such as 4G LTE, satellite (VSAT) and Wi-Fi, which enables the transmission of data on a more frequent 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.

- *Increased power and persistence compared to certain current solutions*. We have found that our PowerBuoy® may provide substantially increased power and persistence than certain existing battery and solar powered systems. We believe that this may allow additional sensors to be employed at the same site, a higher sensor data transmission rate to be achieved, extended operation and reduced downtime, and improved operational costs for the customer. Enabling these new capabilities may contribute to enhanced operations through real-time decision making and increased life-cycle cost savings.

- *Standard transportation and deployment.* Our PB3 PowerBuoy® does not require special handling or transportation, and instead uses conventional transportation and handling methods that are economical and readily available in standard marine operations. This may result in lower global transportation and deployment costs than current solutions. Our PB3 PowerBuoy® can be deployed using conventional vessels and conventional marine cranes and lifts.

- *Modular and scalable designs.* Our PB3 PowerBuoy® is designed with a modular ESS 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 our PowerBuoy® is scalable to higher power levels, and multiple PowerBuoys® may also be installed in an array in order to achieve higher levels of aggregate power, although we have not yet demonstrated a PowerBuoy® array.

- *Flexible electrical, mechanical and communication interfaces for sensors.* The PB3 PowerBuoy® can be equipped with payloads, either mounted on or within the PowerBuoy®, or tethered to the PowerBuoy®. The PB3 PowerBuoy® has mechanical and electrical interfaces which allow for simplified integration of payloads, creating flexibility for the end-user.

- *Environmentally benign and aesthetically non-intrusive system design.* We believe that our PB3 PowerBuoy® does not present significant risks to marine life, or emit significant levels of pollutants, and therefore has minimal environmental impact as compared to some other current solutions. We believe there is no significant audible impact and our system does not have a negative effect on marine life, as validated by the U.S. Navy and Department of Energy ("DOE").

- *Ocean and factory-tested technology.* Our PB3 PowerBuoy® is designed to be durable, with a three-year interval between required maintenance activities. The PB3 has survived hurricanes and tropical storms during harsh sea conditions. Since 1997 we have conducted ocean tests to demonstrate the viability of our technology. In 2011, we conducted multiple ocean tests of the predecessor PB3 PowerBuoy® under a contract with the U.S. Navy. More recently, we conducted multiple ocean tests of our current generation PB3 PowerBuoy®. Commercial versions of the PB3 have been successfully deployed for MES and Eni. The MES PB3 PowerBuoy® performed well in a challenging shallow-water, high-current environment, and achieved its performance and duration objectives. The Eni PB3 PowerBuoy® deployed in the Adriatic Sea has been in the water for over seven months (as of June 2019) and has generated over one megawatt-hour of energy. In 2015, we instituted factory-based PTO-accelerated life testing which simulates continuous operations under extremely harsh conditions. During the 2018 fiscal year, we also implemented additional features to the PB3 PowerBuoy® design to accommodate heavy top-side payloads and seafloor-based payloads. Further, we continue to focus on standardizing manufacturing and production testing procedures and to work closely with our supply base to ensure production repeatability.

- *Efficient design in harnessing wave energy.* We have designed and validated our PB3 PowerBuoy® for maximized power generation in average ocean wave conditions through optimized mechanical to electrical wave energy conversion. We have designed the onboard ESS to provide several days of continuous rated power during periods of low or no wave activity, depending on payload power consumption. The PB3 PowerBuoy® is equipped with a variety of communication capabilities including satellite, cellular, and Wi-Fi that are capable of transmitting payload data in real time (e.g., sensors or equipment that require power and communications capabilities), subject to the limits of the service provider.

- *Prior commercial relationships enabled the development of our technology.* Our prior and existing relationships with the U.S. Navy, DOE, U.S. Department of Homeland Security, MES, Eni and PMO have allowed us to develop our PB3 PowerBuoy® for a variety of needs in various industries. We believe these relationships have helped position us within the private sector in support of commercialization, which we believe enhances our market visibility and attractiveness to our prospective customers. For example, in 2011 our PowerBuoy® provided persistent power to an integrated radar and sonar system, significantly extending the U.S. Navy's surveillance range. We have also demonstrated persistent maritime vessel detection with the U.S. Department of Homeland Security by integrating a hydrophone onto our PowerBuoy® and demonstrating enhanced maritime traffic detection. In each instance, the resulting data have informed our next round of design iterations to improve critical operations and reliability.

Business Strategy

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

- *Sell and/or lease the PB3 PowerBuoy®*. We believe our PB3 PowerBuoy® is well-suited for many remote offshore applications. We have investigated potential market demand for both PowerBuoy® sales and leases within our selected markets, and we intend to sell and lease the PB3 PowerBuoy® to these markets. Additionally, we intend to provide services associated with product sales and leases such as maintenance, remote monitoring and diagnostic, application engineering, planning, training, and logistics support required for the PB3 PowerBuoy® life-cycle. We continue to increase our commercial capabilities through new hires in marketing, sales, and application support, and through engagement of expert market consultants in various geographies.

- *Expand product offerings by adding new complimentary products that are cost efficient and designed for shorter and faster deployments, which will create a system solutions approach for our customers.* We are currently developing two new complementary products to our PB3 PowerBuoy®, the hybrid PowerBuoy® and subsea battery solutions. These products build on our existing expertise in offshore power systems and are targeted for a near term deployment. The hybrid PowerBuoy® is to be highly complementary to the PB3 PowerBuoy® by providing the Company the opportunity to address a broader spectrum of customer deployment needs, including low-wave environments, with the potential for greater Company integration within each customer project. The hybrid PowerBuoy® is primarily intended for shorter term deployment applications such as eROV and AUV inspections and short-term maintenance, topside surveillance and communications, and subsea equipment and controls. The subsea battery solutions are expected to offer the possibility of creating a sea floor energy storage solution for remote offshore operations. These subsea battery systems will contain lithium ion batteries, which provide high power density to supply power that can enable subsea equipment, sensors, communications, AUVs and electric remotely operated vehicles (eROV) recharge. Ideal for many remote offshore customer applications, these subsea battery systems are anticipated to be high performance, cost-efficient, and quickly deployable.

- *Concentrate sales and marketing efforts in specific geographic markets.* We are currently focusing our marketing efforts on parts of North America, Europe, South America and Asia. We believe that each of these areas has sizable end market opportunities, political and economic stability, and high levels of industrialization and economic development.

- *Expand our relationships in key market areas through strategic partnerships and collaborations.* We believe that strategic partners are an important part of commercializing a new product. Partnerships and collaborations can be used to improve the development of overall integrated solutions, create new market channels, expand commercial know-how and geographic footprint, and bolster our product delivery capabilities. We believe that offering a turn-key solution, and not just power, is key to securing long term success.

- *Commercial collaborations.* We believe that an important element of our business strategy is to collaborate with other organizations to leverage our combined expertise, market presence and access, and core competences across key markets. We have formed such a relationship with several well-known groups, including Modus Seabed Intervention Ltd. (“Modus”), Saab Seaeye Ltd. (“Saab”), NEC Energy Solutions (“NEC”), Acteon Field Life Service Ltd. (“Acteon”), MES, PMO and Eni. We continue to seek other opportunities to collaborate with application experts from within our selected markets.

- *Outsourcing of fabrication, deployment and service support*. We outsource all fabrication, anchoring, mooring, cabling supply, and in most cases deployment of our PowerBuoy® to minimize our capital requirements as we scale our business. Our PTO is a proprietary subsystem and is assembled and tested at our facility. We believe this distributed manufacturing and assembly approach enables us to focus on our core competencies and ensure a cost-effective product by leveraging a larger more established supply base. We also continue to seek strategic partnerships with regard to servicing of our PB3 PowerBuoy®.

- *PB3 cost reduction and PowerBuoy® product development.* Our engineering efforts are focused on customer application development for PB3 sales, cost reduction of our PB3 PowerBuoy® and improving the energy output, reliability, maintenance interval and expected operating life of our PowerBuoy®. We continue to optimize manufacturability of our designs with a focus on cost competitiveness, and we believe we will be able to address new applications by developing new products that increase energy output.

In addition, we are developing complementary products, the hybrid PowerBuoy® and subsea battery solutions which leverage our existing expertise in offshore power systems while expanding our product line beyond our flagship PB3 PowerBuoy® offering.

Market Opportunities

The National Oceanographic and Atmospheric Administration (“NOAA”) Ocean Enterprise Report for 2016 estimated that the annual market for what NOAA describes as the “Ocean Enterprise” is $8.5 billion. The report addressed for-profit and not-for-profit businesses that support ocean measurement, observation and forecasting. Among the market sectors included in the report are oil and gas, defense and security, and science and research. We believe that this report addresses only a segment of the potential market opportunities that we are targeting.

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 cost savings and the digitization of operations. The industry encompasses more than 10,000 offshore sites, including exploration, production, reservoir management, and sites pending decommissioning based on information from the U.S. Bureau of Safety and Environmental Enforcement and industry organizations and publications. We believe that we have opportunities to implement one or more PB3 PowerBuoys® at a large number of these sites to provide power in applications that are not currently possible, or to displace current power solutions.

Defense and Security

We believe that our PB3 PowerBuoy® is uniquely positioned to be used to provide power and communications for multiple applications within the defense and security markets. The PB3's ability 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. An example 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. Other example applications include 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. According to a 2014 Frost and Sullivan report, market expenditures for global security reached $29.0 billion in 2012 and are projected to reach $56.5 billion in 2022. Maritime security expenditures were approximately 45% of the global security market.

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. According to NOAA's 2016 Ocean Enterprise report, the total U.S. available ocean observing market from 2017 through 2021 for ocean-based systems infrastructure is projected to be $2.0 billion.

Communications

We believe that opportunities also exist in other markets such as communications. The addition of near shore and offshore cellular and Wi-Fi platforms with reliable and persistent power could open new market opportunities for telecommunications carriers by displacing a portion of the maritime satellite communications market, while potentially decreasing communications costs for the marine and offshore oil and gas industries. According to an industry research paper titled "Prospects for Maritime Satellite Communications" in 2015 the global maritime satellite communications market had already reached close to 338,000 terminals, with $1.7 billion in revenue at the satellite communications service provider level. The report also noted that the value of the maritime satellite communications market is expected to continue to grow over the next decade, with a 10-year compound annual growth rate of 5% in terminals and revenue, primarily due to the increasing need for maritime data communications.

Implementation Strategy

We have made significant progress in redesigning and validating our commercial-ready PB3 PowerBuoy® for use in remote offshore applications. Since 2015, we have brought the PB3 from initial concept to a full-scale design. We have performed multiple prototype iterations. During this time, we have conducted a number of in-ocean tests in combination with our facility-based accelerated life testing to validate our commercial-ready PB3 PowerBuoy® and to prepare for low rate initial production. In 2017, we relocated our corporate headquarters to Monroe Township, New Jersey. We believe that this new facility will allow us to expand our manufacturing capabilities and to move toward higher volume PowerBuoy® production. In fiscal 2019 we made progress in marketing our PB3 PowerBuoy®, as evidenced by the volume of proposals submitted to customers and requests for proposals from customers. In addition, during fiscal 2019 we introduced two new products, the hybrid PowerBuoy® and subsea battery solutions with prototypes set for release in Fall 2019. We have made substantial progress in transitioning from R&D to a commercialization focus with SELL, BUILD, SHIP as our motto and we intend to build on our success by implementing processes and solutions that cover the entire life cycle, from demand generation to closing the contract, and from channel strategies to customer care.

Since 2015, we have had initial introductions or meetings with nearly 200 companies and organizations within our target markets. A large proportion of these engagements (approximately 75%) were U.S.-based, while the remaining engagements occurred in Europe, Australia, and parts of Asia including Japan. One-third of all engagements have transitioned from initial introductions to advanced, confidential discussions around specific customer applications. Many of these discussions occur at the executive, decision-making level, as well as the implementation level.

As previously noted, several of these customer application discussions have resulted in requests for proposals. Many proposal requests are for projects where our PB3 PowerBuoy® is part of a larger solution demonstration, and typically include the potential lease or sale of one or more PB3 PowerBuoys®, as well as required services and maintenance support. Demonstration projects are a necessary step toward broad solution deployment and revenues associated with specific applications. A proposal phase typically lasts from three months to more than one year. During the demonstration project specification, negotiation and evaluation period, we are often subject to the prospective customer’s vendor qualification process, which entails substantial due diligence of our company and capabilities and may include negotiation of standard terms and conditions. Many proposals contain provisions which would mandate the sale or lease of the PB3 PowerBuoy® upon successful conclusion of the demonstration project.

We believe this is an accurate depiction of the overall sales cycle for new technology in each of our target markets, including the PB3 PowerBuoy®. However, cycle times for each step of the sales cycle will vary depending on several customer factors, including, but not limited to, technical evaluation, project priorities, the funding approval process, and alignment of new technology integration with the customer’s broader operational strategy. We believe that the resulting evidence of potential demand, vis-à-vis specific application proposal requests, are indicative of significant progress in our commercialization strategy. We believe that we have the potential for growth as a result of our positioning for higher volume production of our PB3 PowerBuoy® and the initial indications of demand for our PB3 PowerBuoy® in multiple customer applications.

Product and Technologies

The following is a summary of the development and history of our current PowerBuoy® product and our technologies.

Wave Energy

The energy contained in ocean waves is a form of renewable energy that can be harnessed to generate electricity. The interaction between the wind and the ocean surface causes energy to be transferred from the wind to the water. At first, small waves occur on the ocean surface. As this process continues, the waves become larger and the distance between the top of the waves becomes longer. Wave heights, and the amount of kinetic wave energy, depends on wind speed, wind duration and the distance covered. The vertical water motion caused by the passage of the waves moves the float component of our PowerBuoy®, creating mechanical energy which our proprietary technologies convert into usable electricity.

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

- *Scalability within a small site area.* Due to the dense energy in ocean waves, we believe that multiple PowerBuoys® may be aggregated in an array that would occupy a reasonably small area to supply electricity to larger payloads. We believe the aggregation of a larger number of PowerBuoys® could offer end users a variety of advantages in availability, reliability and scalability. To date, we have not deployed an array of PowerBuoys® to test and validate our hypothesis, and we cannot assure that a PowerBuoy® array would generate the energy required to meet the needs of every prospective customer.

- *Predictability.* The generation of power from wave energy can be forecasted several days in advance. Available wave energy can be calculated with a high degree of accuracy based on satellite images and meteorological data, even when the wave field is hundreds of miles away and days from reaching a PowerBuoy®. Therefore, we believe end-users relying on PowerBuoys® for power may be able to proactively plan their logistics, payload scheduling and other operational activities based on such data and proactively, although actual testing has not yet been conducted.

- *Constant source of energy.* The annual occurrence of waves at certain specific sites can be relatively constant and defined with relatively high accuracy. Based on our studies and analyses of various sites of interest, we believe that we will be able to deploy our PowerBuoys® in locations where the waves could produce usable electricity for the majority of the year.

Methods for generating electricity from wave energy can be divided into two general categories: onshore systems and offshore systems. Our PowerBuoys® are the offshore type. Many offshore systems, including our PowerBuoy®, utilize a flotation device to harness wave energy. The heaving or pitching of the flotation device due to the force of the waves creates mechanical energy, which is converted into electricity by various technologies. Onshore and near shore systems are often located on a shore cliff or a breakwater, or a short distance at sea from the shore line, and typically must concentrate the wave energy before using it to drive an electrical generator. Although maintenance costs of onshore systems may be less than those associated with offshore systems, we believe there are a variety of disadvantages to the former. As waves approach the shore, their energy decreases, therefore, onshore and near shore wave power stations are not capable of exploiting the same amount of energy produced by waves in deeper water. In addition, suitable sites for onshore and near shore systems are limited and potential environmental and aesthetic issues may impede development of these systems due to wave power station size and proximity to communities.

Our principal product is our PB3 PowerBuoy®, which is designed to generate power for use independent of the power grid in remote offshore locations. It consists of a main hull structure loosely moored to the seabed and surrounded by a floating buoy-like device that can freely move up and down in response to the passage of the waves. The PTO device that includes an electrical generator, a power electronics system, our control system, and our ESS are sealed within the hull. As ocean waves pass the PowerBuoy®, the mechanical stroke action created by the rising and falling of the waves is converted into rotational mechanical energy by the PTO, which in turn, drives the electrical generator. The power electronics system then conditions the electrical output which is collected within an ESS. The operation of the PowerBuoy® is controlled by our customized, proprietary control system.

The control system uses sensors and an onboard computer to continuously monitor the PowerBuoy® subsystems as well as the characteristics of the waves which interact with the PowerBuoy®. The control system collects data from the sensors and the payloads and uses proprietary algorithms to electronically adjust the performance of the PowerBuoy®. We believe that this ability to optimize and manage the electric power output of the PowerBuoy® is a significant advantage of our technology.

In the event of large storm waves, the control system automatically locks the PowerBuoy® and electricity generation is suspended. However, the load center (either the on-board payload or one in the vicinity of the PowerBuoy®) may continue to receive power from the on-board ESS. When wave heights return to normal operating conditions, the control system automatically unlocks the PowerBuoy® and electricity generation and ESS replenishment recommences. This safety feature helps to prevent the PowerBuoy® from being damaged by storms.

In March 2016, we announced a rebranding of our PowerBuoy® systems as part of our commercialization efforts and to closely align our PowerBuoy® products with the perceived best practices of analogous industries based on power generation and on-board energy storage capabilities. Under our new naming conventions, our current PowerBuoy® is referred to as the "PB3," corresponding to "PowerBuoy® with a nominal name-plated capacity rating of three kilowatts." References to the "APB350" on our website, and in our SEC filings including this Annual Report refers to earlier prototype PowerBuoys® containing earlier generation PTOs and other earlier technologies.

The PB3 has undergone design iterations focused on improving its reliability and survivability in the anticipated operating ocean environment and will continue to undergo further enhancements through customary product life cycle management. The PB3-A1 was an initial prototype that has now undergone in-ocean and accelerated life testing, and we believe that the PB3 achieved a maturity level for use by early adopters in fiscal 2017. We continue the process of commercialization of our product and we cannot assure you that we will be successful in our efforts to do so. We believe that the PB3 will generate and store sufficient power to address some application requirements in our target markets. Our engineering efforts are focused, in part, on increasing the energy output and efficiency of our PowerBuoys® and, if we are able to do so, we believe the PowerBuoy® would then be useful for additional applications where cost savings and additional power are required by our potential customers. We continue to explore opportunities in these target markets, although we have not yet developed any integrated solutions and product offerings in these potential markets. We believe that by increasing the energy output of our PowerBuoys® we may be able to address larger segments of our target markets. By improving our design and manufacturing, we also seek to reduce the cost of our PowerBuoys® through further design iterations and manufacturing ramp-up. In so doing, we seek to improve customer value, displace more incumbent solutions, and become a viable power source for additional applications in our target market segments.

Deployments

We continue to receive important feedback from in-ocean trial deployments of our PowerBuoys®, as is customary in the marine industry for new vessels and products prior to final acceptance by their customers. If we are able to increase PowerBuoy® production, we anticipate that the need for in-ocean trials of our mature products will diminish. Deployment sites are selected based on minimum ocean depth, appropriate wave activity for power generation requirements of associated deployment payloads, and proximity to end-user operations. The PB3 can be transported over land to the deployment port using conventional transportation methods. Once at port, the PB3 can be lifted into the water or onboard a vessel using a readily available crane of appropriate capacity. The PB3 may then be towed to site using a standard vessel (if the location is within an appropriate distance from the port), or the PB3 may be carried aboard a vessel to its offshore location and craned into the water at site. The PB3 is then attached to the mooring system, which is installed during a separate operation, after which a brief commissioning process places the PB3 into operation. Recent deployments include off the coast of Kozushima Island, Japan for MES in April 2017 and in the Adriatic Sea for Eni in November 2018. The Company is planning to deploy in August 2019 a PB3 in the Central North Sea for PMO.

Product Insurance. We currently have a property loss and liability insurance policy underwritten by Lloyd's Underwriters that covers the deployment and storage of our PowerBuoys®.

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. In either case, an assessment of the potential environmental impact of the project would be conducted in addition to other requirements. 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 and Compliance. We are subject to various foreign, federal, state and local environmental protection and health and safety laws and regulations governing, among other things: the generation, storage, handling, use and transportation of hazardous materials; the emission and discharge of hazardous materials into the ground, air or water; and the health and safety of our employees. In addition, in the U.S., the construction and operation of PowerBuoys® offshore would require permits and approvals from the U.S. Coast Guard, the U.S. Army Corps of Engineers and other governmental authorities. These required permits and approvals evaluate, among other things, whether a project is in the public interest and ensure that the project would not create a hazard to navigation. Other foreign and international laws may require similar approvals. We provide you with additional information under "Regulation" below.

Research and Development

Our team has a broad range of experience in mechanical, electrical, and ocean engineering. We have engaged in extensive efforts to develop the PowerBuoy®, improve PowerBuoy® efficiency, reliability and power output, and improve manufacturability while reducing cost and complexity. Our recent efforts have been focused on optimizing our PowerBuoys® in order to balance customer cost (both capital and operating expenses) with power output of our PowerBuoys®. Such efforts include the development of scalable, higher efficiency, lower cost, higher reliability and less customized PTO systems, and the use of higher energy density and lower weight energy storage technologies. We continue to seek to increase the capabilities of our PowerBuoy® systems by designing flexible interfaces and rendering them sensor and payload agnostic.

We have also focused on the development and implementation of accelerated testing regimens and techniques known as accelerated life testing. Such methods accelerate failures in a laboratory environment, as compared to more lengthy and expensive full-scale ocean deployments during normal use and extreme conditions. This testing allows us to quantify the life characteristics of critical components and subsystems which would normally require several years of operation in ocean conditions to achieve similar levels of wear and tear. Accelerated life testing is used successfully in other industries such as automotive and aerospace and is a critical enabler for rapid product and technology development and maturation.

It is our intent to fund the majority of our future research and development expenses with sources of external funding, including cost sharing obligations under customer contracts. However, we cannot assure you that we will be successful in our efforts to secure additional contracts. If we are unable to obtain external funding, we may curtail our research and development expenses or reduce the scope of our operations as necessary to lower our operating costs.

In addition to improving and optimizing our PB3 PowerBuoy® we have spent considerable effort in developing two new complementary products, the hybrid PowerBuoy®, and subsea battery solutions. These products build on our existing expertise in offshore power systems and are targeted for first deployment in Fall 2019.

- *hybrid PowerBuoy®* - The Company is in the process of creating a hybrid PowerBuoy® that will be a smaller liquid-fueled surface buoy, compared to the wave power based PB3 PowerBuoy®, capable of providing reliable power in remote offshore locations. This product is to be highly complementary to the PB3 PowerBuoy® by providing the Company the opportunity to address a broader spectrum of customer deployment needs, with the potential for greater Company integration within each customer project. It is primarily intended for shorter term deployment applications such as eROV and AUV inspections and short-term maintenance, topside surveillance and communications, and subsea equipment and controls. The hybrid PowerBuoy® is anticipated to be a lightweight, quickly deployable and cost-effective solution. The design is also anticipated to have a high payload capacity for communications and surveillance, with the capability of being tethered to subsea payloads and battery packs or with a conventional anchor mooring system. The Company intends to design the hybrid PowerBuoy®, with a Stirling engine, to outperform traditional diesel buoys, which we believe to have more frequent service and refueling intervals. We believe the hybrid PowerBuoy® will be able to operate in an environmentally safer manner using more robust fuels, while operating over a wider temperature range than diesel buoys.

- *Subsea battery solutions* - The Company is in the process of creating a sea floor energy storage solution for remote offshore operations. These subsea battery systems will contain lithium ion batteries, which provide high power density, to supply power that can enable subsea equipment, sensors, communications, AUVs and electric remotely operated vehicles (eROV) recharge. The Company's PB3 PowerBuoy® is complimentary to subsea battery systems by providing a means for recharging during longer term deployments, or the subsea battery systems can be used independently for shorter term deployments. Ideal for many remote offshore customer applications, these subsea battery systems are anticipated to be high performance, cost-efficient, and quickly deployable. Given the Company's expertise in offshore energy storage systems from existing PB3 PowerBuoy® technology, the subsea battery solutions will provide an opportunity for the Company to differentiate through technical, cost and delivery leadership.

Customers

Commercial Activities

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

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

	Twelve months ended April 30,	
	2019	**2018**
Eni S.p.A.	54%	33%
Mitsui Engineering & Shipbuilding	0%	43%
Premier Oil UK Limited	33%	10%
Office of Naval Research	0%	14%
Other	13%	0%
	100%	100%

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

Current Customers

- In April 2019 we entered into an agreement with a leading oil and gas operator to conduct a detailed feasibility study of using the Company's technology to monitor subsea wells.

- In February 2019, we entered into a contract with the U.S. Navy to carry out the first phase of a project to design and develop a buoy mooring system which incorporates fiber optics for the transmission of subsea sensor data to airplanes, ships, and satellites.

- In August 2018 we entered into an agreement with EGP to evaluate a PB3 PowerBuoy® deployment along the coast of Chile through a detailed feasibility study of the PowerBuoy® as an offshore autonomous platform hosting oceanographic sensor systems.

- In June 2018, we entered into a contract with PMO for the lease (for at least three months and a maximum of twelve months) of a PB3 PowerBuoy® to be deployed in one of PMO's offshore fields in the North Sea.

- In March 2018, we entered into an agreement with Eni that provides for a minimum 24-month contract that includes an 18-month PB3 PowerBuoy® lease and associated project management.

- In September 2016, we entered into a contract with U.S. Department of Defense Office of Naval Research ("ONR") totaling approximately $0.2 million to carry out the first phase of a project which focuses on the initial concept design and development of a mass-on-spring PTO-based PowerBuoy® leveraging a number of OPT patents covering such a technology. If successful, this device is expected to be able to respond to the unique set of requirements expected in various military marine applications. We completed the Phase 2 BASE Effort work under the contract which focused on the initial concept design and development of a mass-on-spring PTO-based PowerBuoy®. The Company is waiting for ONR funding of Phase 2, Option 1 to be approved.

- We have worked with MES (from 2010 to current) to develop several PowerBuoy® projects in Japan. Historically, our agreements with MES have provided for MES to reimburse us for specific costs associated with research, development and deployment of our PowerBuoy® product. In March 2016, we entered into a letter of intent with MES to conduct funded pre-work tasks and to negotiate a definitive agreement that would allow for the lease of the PB3 PowerBuoy® for a project off the coast of Kozushima Island, Japan following a planned stage gate review. Stage-gate reviews are used in product development to gather key information needed to advance the project to the next gate or decision point. This process is a generally accepted industry practice and has been utilized by other customers such as the DOE. A final contract totaling nearly $1.0 million was negotiated and finalized with MES in May 2016 that included engineering and logistics support, and the lease of our PB3 PowerBuoy® for a 7-month period, its ocean deployment, associated data collection and monitoring of its performance. Upon the completion of the engineering pre-work and a successful stage gate review, the PB3 was shipped to Japan and was deployed off Kozushima Island from April to September 2017. The MES lease concluded in September 2017 and the PB3 was shipped back to New Jersey.

Partnerships

- In May 2019, we signed a memorandum of understanding with Modus, Ltd. for the purpose of developing and delivering commercial market solutions that offer a step-change in innovation and market value against conventional methodologies, specifically through development and marketing of a combined Hybrid Autonomous Underwater Vehicle (HAUV) charging station which will be able to utilize the PowerBuoy® system for topside charging and communications.

- In April 2019, we signed a memorandum of understanding with Acteon to develop, explore and exploit mutual opportunities in the global oil and gas and renewable markets.

- In January 2019, we entered into a Joint System Solution Development and Marketing Agreement with Saab. The agreement anticipates a preliminary focus on AUV and eROV charging and communications systems.

- In December 2018 we signed a letter of intent to enter into a non-exclusive long-term supply agreement with NEC Energy Solutions (“NEC ES”), a pioneer and global leader in utility scale energy storage. Under the terms of the supply agreement, NEC ES will be a supplier of lithium ion batteries for our subsea battery systems.

- In December 2016, we entered into a Joint Marketing Agreement with Sonalysts to explore and pursue mutual opportunities in defense and oil and gas applications. The agreement includes the exploration and assessment of the use of the PB3 as a platform to provide power and communications for these markets.

- In May 2016, we entered into a Memorandum of Agreement (“MOA”) with WCS to explore the use of our PowerBuoys® in conjunction with ocean life monitoring sensors to collect ocean mammal migration data. The MOA includes the exploration and assessment of the use of the PB3 as an integration platform to provide power and communications to sensors that monitor marine life migrations. An initial effort consisting of a battery powered sensor mounted to the PB3-A1 was deployed off of the coast of New Jersey which sought to establish a baseline acoustic survey. The deployment proceeded for approximately three months and met all project objectives.

- In 2016, we entered into a cooperative research and development agreement (“CRADA”) with the NDBC to conduct ocean demonstrations of its innovative Self-Contained Ocean Observing Payload (“SCOOP”) monitoring system integrated into our PB3-A1 PowerBuoy®. NDBC operates a large network of buoys and stations which provide critical meteorological and oceanic observations that are utilized by government, industry, and academia throughout the world. Under the CRADA, an initial ocean demonstration was to be conducted off the coast of New Jersey. We integrated the SCOOP onto our PB3 PowerBuoy® and in June 2016 we deployed the system off of the coast of New Jersey. Site-specific measurements of meteorological and ocean conditions, as well as system performance and maintenance data collection, were carried out. The SCOOP was powered by the PB3 and provided metocean data to OPT and to NDBC. The deployment proceeded for approximately three months and met all project objectives.

Historic Projects

Our relationships and projects during recent years include, but are not limited to, the following:

- *The U.S. Navy and Department of Homeland Security.*

  - In 2012, we executed a CRADA with the U.S. Department of Homeland Security to collaborate and demonstrate persistent maritime vessel detection. The vessel detection ocean demonstration in 2013 utilized the same PowerBuoy® under the LEAP contract with additional sensors. This additional deployment provided critical data which informed our next design iteration, and which incorporated major modifications to address critical operations and reliability improvements. This project concluded in 2013.

  - From 2009 to 2011, we ocean-tested our utility-scale PowerBuoy® at the U.S. Marine Corps Base, Hawaii at Kaneohe Bay. The PowerBuoy® was launched under our program with the U.S. Navy for ocean testing and demonstration of a prior iteration of our PowerBuoy®, including connection to the Oahu power grid.

  - In 2009 and 2010, we were awarded $2.4 million and $2.75 million, respectively, from the U.S. Navy to develop a Littoral Expeditionary Autonomous PowerBuoy® (“LEAP”) prototype. The LEAP contract was developed to enhance the U.S. Navy’s territorial protection capability by providing potential persistent power at sea for port maritime surveillance in the near coast, harbor, piers and offshore areas. During the LEAP contract, we designed, built and deployed in 2011 a PowerBuoy® structure incorporating a new PTO system. The system was deployed by a U.S. Coast Guard vessel and was ocean-tested approximately 20 miles off the coast of New Jersey. It was integrated with a Rutgers University-operated land-based radar network that provided ocean current mapping data for the National Oceanographic and Atmospheric Administration (“NOAA”) and U.S. Coast Guard Search and Rescue (“SAR”) operations. The ocean test of the LEAP vessel detection system demonstrated dual-use capability of the radar network and helped to verify our technology as a potential persistent power source for systems requiring remote power at sea. During the ocean testing under these contracts, our PowerBuoy® withstood the high storm waves of Hurricane Irene which occurred in August 2011.

  - From 2007 to 2013, we worked on two separate contracts to fabricate and deploy two autonomous PowerBuoys®, which were subsequently deemed obsolete, as an alternate power source for the U.S. Navy’s Deep Water Active Detection System (“DWADS”).

- *Lockheed Martin*. From 2004 to 2014, we had several project teaming agreements and license agreements with Lockheed Martin.

- *Australia.* In 2008, we announced a Joint Development Agreement with Leighton Contractors Pty. Ltd. (“Leighton”) for the development of wave power projects off the coast of Australia. In 2009, Leighton formed Victorian Wave Partners Pty Ltd (“VWP”), a special purpose company for the development of a wave power project off the coast of Victoria, Australia. In 2010, VWP and the Commonwealth of Australia entered into an Energy Demonstration Program Funding Deed (“Funding Deed”), wherein VWP was awarded an A$66.5 million (approximately US$62 million) grant for the wave power project. However, receipt of funds under the grant was subject to certain terms, including achievement of future significant external funding milestones. The grant was expected to be used towards the A$232 million proposed cost of building and deploying a wave power station off the coast of Australia (the “Project”). In March 2012, our Australian subsidiary Ocean Power Technologies (Australasia) Pty. Ltd acquired 100% ownership of VWP from Leighton. In January 2014, VWP signed a Deed of Variation with the Australian Renewable Energy Agency (“ARENA”) that amended the Funding Deed, and, in March 2014, received the initial portion of the grant from ARENA in the amount of approximately A$5.6 million (approximately US$5.2 million) (the “Initial Funding”). The Initial Funding was subject to claw-back provisions if certain contractual requirements, including performance criteria, were not satisfied. In light of the claw-back provisions, we determined to classify the Initial Funding as an advance payment, hold the funds as restricted cash and defer recognition of the funds as revenue. In July 2014, the VWP Board of Directors determined that the project contemplated by the Funding Deed was no longer commercially viable and terminated the Funding Deed. The Initial Funding was returned to ARENA. We do not currently have any projects in Australia.

- *Reedsport, Oregon Project.* We obtained a permit in 2007 from the Federal Regulatory Commission ("FERC") for a multi-stage wave power project off the coast of Reedsport, Oregon. In addition, we received two cost-sharing contracts with the DOE for approximately $4.4 million to construct and deploy a single PowerBuoy® off the coast of Reedsport. We subsequently obtained a license from FERC in August 2012 that authorized installation and operation of a 10-buoy grid connected wave energy array (the "License"). Due to the complexity of the FERC regulations for the single buoy, higher than anticipated project costs, unanticipated technical risks, and uncertainty surrounding permitting, we made the decision not to proceed with the project. Accordingly, we announced in March 2014 our surrender of the permit for one phase of the project and announced in April 2014 that we were taking the steps necessary to close out this project with the DOE. In May 2014, we filed an application to surrender the FERC permit for the remaining phases. In August 2014, in cooperation with the State of Oregon Department of State Lands, we removed anchoring and mooring equipment from the seabed off the coast of Oregon. In fiscal 2016, we dispositioned the PowerBuoy®. In late fiscal 2016 and early fiscal 2017, we disposed of the remaining anchoring and mooring equipment through a local entity and by June 2017 the project was closed out.

- *PowerBuoy® Development Projects.* In April 2010, we received a $1.5 million award from the DOE for a feasibility study of a PowerBuoy® with the ability to produce up to 500kW of power (referred to as the "PB500"). In fiscal 2011, we received additional awards totaling $4.7 million for the PB500 structure and PTO optimization study, $2.3 million from the U.K. Government's Technology Strategy Board and $2.4 million from the DOE. In fiscal 2014, upon completion of the concept design and associated trade studies that included detailed mechanical analyses, manufacturability and overall projected performance, the study concluded that a PB500 would not be technically feasible or economically viable. In March 2015, we successfully completed a stage gate review and a review of project deliverables with the DOE where advancements related to PTO design aspects such as reliability, cost take out, manufacturability and scalability were reviewed. Following a stage gate review, the project was successfully completed in fiscal 2016.

Manufacturing

We engage in two types of manufacturing activities: 1) the manufacturing of the high value-added PTO components for systems control, power generation and conversion, and energy storage for each PowerBuoy®; and 2) contracting with outside companies for the fabrication of the buoy structure, mooring system, and cabling.

Our core in-house manufacturing activity is the assembly, final systems integration and testing of the PTO and its components, which is conducted at our New Jersey facility. The power generation system consists of electro-mechanical components, and the control modules include the critical electrical and electronic systems that convert the mechanical energy into usable electricity. The sensors and control systems use sophisticated technology to optimize the performance of the PowerBuoy® in response to changing operating conditions and payload power demand. We maintain a portfolio of patents, including those that cover our power generation, power conversion and control technologies.

We purchase the remaining components and materials for each PowerBuoy® from various vendors. We provide specifications to each vendor, and they are responsible for performing quality analysis and quality control over the course of construction, subject to our review of the quality and test procedure results. After the vendor completes the testing of the buoy structure, it is transported to our facility for final integration of the PTO. After each vendor completes testing of the remaining components, they are transported ready-to-install to the project site. We do not believe that we are dependent on any single vendor for manufacturing the components of and materials for our PowerBuoy®, and we believe that there are many available manufacturers for our component parts if a particular manufacturing partner should become unavailable or expensive. However, we have only manufactured our PowerBuoys® in limited quantities for use in development and testing and have limited commercial manufacturing experience, and our work with our vendors has not included work on multiple orders on time-critical deadlines. Moreover, we do not have long-term contracts with our third-party manufacturers or vendors. In order to be successful in our efforts to commercialize our PowerBuoys®, we will need to secure stable relationships with a variety of manufacturers and vendors that can supply component parts and materials for our PowerBuoy® products.

In December 2017, we relocated our corporate headquarters and manufacturing operations from Pennington, New Jersey to Monroe, New Jersey. Our new facility offers approximately 56,000 square feet of manufacturing and office space, which is more than double the size of our prior facility. This larger space supports our increased operational needs, and also allows for our anticipated growth over the next several years. We believe this new facility will enable us to implement world class assembly and testing processes, emphasizing product quality and employee safety, while significantly improving our ability to increase product throughput. We believe that our decision to relocate our operations is integral to our overall business growth strategy.

Marketing and Sales

We continue to enhance our marketing capabilities across our target markets and we have begun actively marketing our PowerBuoys®. We currently use a direct sales force consisting of employees and industry expert consultants. Because our PowerBuoys® use technology which is not yet considered mature by our target markets, we expect that the customer decision process could require us to spend substantial time educating end-users and stakeholders, which may result in a lengthy sales cycle.

We attend and display our products at trade shows and conferences that represent our pursued markets. In May 2019, the Company was an exhibitor at the Offshore Technology Conference in Houston, Texas. In May 2019, the Company was an exhibitor at the U.S. Navy League's Sea-Air-Space Exposition in National Harbor, Maryland. In August 2018, the Company was an exhibitor at the Offshore North Sea 2018 Conference in Stavanger, Norway. In May 2018, we displayed our full-size PB3 PowerBuoy® at the Offshore Technology Conference in Houston, Texas. In April 2018, we highlighted our Anchorless PowerBuoy® at the Navy Forum for SBIR/STTR Transition in National Harbor, Maryland.

We market our PowerBuoys® to companies and entities requiring remote offshore power and communications; for example, oil and gas companies for potential applications such as remote sensing, trace heating, or autonomous site monitoring, power and communications for remotely operated vehicles or autonomous underwater vehicle charging stations. We also see opportunities for defense and security applications using active sensors such as high frequency radar and acoustic systems with significant processing and communications requirements.

Additionally, we continue to seek to enter into strategic relationships to develop application solutions with commercial and military sensor and equipment manufacturers, where we might grant licenses to manufacture, market or operate PowerBuoys® or PowerBuoy® subsystems.

Backlog

As of April 30, 2019, our backlog was $0.9 million. Our backlog can include both funded amounts, which are unfilled firm orders for our products and services for which funding has been both authorized and appropriated by the customer (U.S. Congress, in the case of U.S. Government agencies), and unfunded amounts, which are unfilled firm orders for which funding has not been appropriated. 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 percentage-of-completion method, and changes in estimates from time to time may have a significant effect on revenue and backlog. Our backlog is also typically subject to large variations from time to time due to the timing of new awards.

Competition

We expect to compete with other providers of in-ocean autonomous power sources, primarily consisting of subsea batteries, solar and fossil-fuel power sources, where many of the providers are substantially larger than OPT and may have access to greater financial resources. Incumbent sources of in-ocean 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 in-ocean power will depend on 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 on the on-going reliability of our product and customer perception of our company. Our ability to compete effectively may be adversely affected by our current need for additional financing and our future customers' concerns about our long-term viability.

We also may eventually compete against other renewable wave generated power providers. As of June 2018, there were more than nearly 260 companies, some with institutional funding, listed in the DOE's Marine and Hydrokinetic ("MHK") Technology Database. This DOE database provides up-to-date information on marine and hydrokinetic renewable energy technologies and companies, both in the U.S. and around the world. Many of these companies are located in the U.K., continental Europe, Japan, Israel, the U.S. and Australia, and many of those companies are pursuing the utility, grid-connected energy market. The MHK industry is both highly competitive and continually evolving as participants strive to differentiate themselves by promoting their specific technology focusing on cost and efficiency. The companies are subdivided by implementation: wave power, current power, tidal and ocean thermal energy conversion. Within wave power, the technologies are classified as point absorber, oscillating wave column, overtopping device, attenuator and oscillating wave surge converter. Our PowerBuoy® wave energy converter is classified as a point absorber.

The vast majority of the companies in the DOE's database are small, start-up type companies with a small number of employees and in early stage development that do not have our in-ocean validation experience. Only a few of these companies have conducted testing similar to us, such as accelerated life testing and extensive wave tank testing on reduced scale models of their devices. We believe our in-ocean experience is critical in 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. We believe our 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.

Our analysis of the DOE database indicates that approximately 20 wave energy technologies were selected for further evaluation by the DOE, primarily based on company financial capability, type of system and potential to compete in autonomous (non-grid connected) markets. Of these, there are three companies that we believe may have the technical capability and financial viability to compete in the offshore autonomous power market; however, their technologies are still in early stage development with limited ocean testing. We believe that none of these technologies are at the maturity level of our current PB3 PowerBuoy®, and because of this we believe that we continue to maintain a first mover advantage.

Intellectual Property

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

As of June 2019, we have been issued 66 U.S. patents, of which 47 are active and 18 have expired and 1 was abandoned. Outside of the U.S. we have been issued 237 patents across 13 countries with 37 of the active U.S. patents having at least one corresponding issued foreign patent. We have filed for 4 additional U.S. patents and none of the U.S. patents applications have corresponding foreign patent applications. Our patent portfolio includes patents and patent applications with claims directed to:

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

The expiration dates for our issued U.S. patents range from 2019 to 2037. We do not consider any single patent or patent application that we hold to be material to our business. The patent positions of companies like ours are generally uncertain and involve complex legal and factual questions. Our ability to maintain and solidify our proprietary position for our technology will depend on our success in continuing to obtain effective patent claims and enforcing those claims once granted. In addition, certain technologies that we developed with 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 PB-Vue ®, OPTMicrobuoy ®, CellBuoy ®, PowerTower ®, Making Waves in Power ®, Talk on Water ® and OPT ® marks in the United States. Trademark ownership is generally of indefinite duration when marks are properly maintained in commercial use.

Regulation

Our PowerBuoys® are subject to regulation in the U.S. and in foreign jurisdictions concerning, among other areas, site approval and environmental approval and compliance. In order to encourage the adoption of offshore power solutions, many governments offer subsidies and other financial incentives and have mandated renewable energy targets which some of our customers may be able to leverage. However, these subsidies, incentives and targets may not be applicable to our technology and therefore may not be available to our customers.

The renewable energy industry has also been subject to increasing regulation. As the renewable energy industry continues to evolve and as the wave energy industry continues to evolve, we anticipate that wave energy technology and our PowerBuoys® and their deployment will be subject to increased oversight and regulation in accordance with international, national and local regulations relating to safety, sites, and environmental protection.

Site Approval, Environmental Approval and Compliance

We present additional information regarding the regulatory requirements relating to our in-ocean deployments above, under "Product and Technologies - Deployments."

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 permit a customer to reduce its carbon emissions, which our potential customers may be able to publicize in their environmental stewardship reports.

Employees

As of April 30, 2019, we had 39 full-time employees. Of these employees, 38 are located in the United States and one is located in the United Kingdom. We believe that our future success will depend in part on our continued ability to attract, hire and retain qualified personnel. None of our employees are represented by a labor union, and we believe our employee relations are good.

ITEM 1A. *RISK FACTORS*

You should carefully consider the following risk factors together with the other information contained in this Annual Report on Form 10-K, and in prior reports pursuant to the Securities Exchange Act of 1934, as amended. If any of the following risks actually occur, they may materially harm our business and our financial condition and results of operations. In this event, the market price of our common stock could decline, and your investment could be lost.

Risks Related to Our Financial Condition

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

Our financial statements have been prepared assuming we will continue as a going concern. Due to the significant engineering and product development costs associated with our business and operations, we have experienced substantial and recurring losses from operations, which have contributed to an accumulated deficit of $209.8 million at April 30, 2019. At April 30, 2019, the Company had approximately $17.2 million in cash, cash equivalents and restricted cash on hand. The Company generated revenues of only $0.6 million and $0.5 million during the twelve months ended April 30, 2019 and 2018. Based on the Company’s cash, cash equivalents and restrictive cash balances as of April 30, 2019, the Company believes that it will be able to finance its capital requirements and operations into the quarter ending July 31, 2020.

We continue to experience operating losses and currently have four revenue producing contracts. During fiscal 2019, our net burn rate (cash used in operations less cash generated by operations) including product development spending was approximately $1.0 million per month.

We have been funding our business principally through sales of our securities, and we expect to continue to fund our business with sales of our securities and, to a limited extent, with our revenues until, if ever, we generate sufficient cash flow to internally fund our business. These factors, among others, raise substantial doubt about our ability to continue as a going concern. Our consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. We anticipate that our operating expenses will be approximately $14.4 million in fiscal 2020 including product development spending of more than $7.4 million. However, we may choose to reduce our operating expenses through personnel reductions, and reductions in our research and development and other operating costs during fiscal year 2020, if we are not successful in our efforts to sell enough products. We cannot assure our stockholders that we will be able to increase our revenues and cash flow to a level which would support our operations and provide sufficient funds to pay our obligations for the foreseeable future. Further, we cannot assure our stockholders that we will be able to secure additional financing or raise additional capital or, if we are successful in our efforts to raise additional capital, of the terms and conditions upon which any such financing would be extended. If we are unable to meet our obligations, we would be forced to cease operations, in which event investors would lose their entire investment in our company.

We 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 do not know whether we will be able to secure additional funding or, if secured, whether the terms will be favorable to us or our investors. Our ability to obtain additional funding will be subject to a number of factors, including market conditions, our operating performance, pending litigation and investor sentiment. These factors may make additional funding unavailability, or the timing, dollar amount, and terms and conditions of additional funding unattractive.

If we issue additional securities to raise capital, our existing stockholders could experience dilution or may be subordinated to any rights, preferences or privileges granted to the new security holders. In particular, any new securities issued could have rights senior to those associated with our common stock and could contain covenants that would 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, and we may be unable to continue our operations.

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 $12.2 million and $10.2 million in fiscal 2019 and 2018, respectively. As of April 30, 2019, we had an accumulated deficit of $209.8 million. To date, our activities have consisted primarily of activities related to the development and testing of our technologies and our PowerBuoy®. Thus, our losses to date have resulted primarily from costs incurred in our research and development programs and from our selling, general and administrative costs. As we continue to develop our proprietary technologies, we expect to continue to have a net use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services.

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

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

Our financial results may fluctuate as a result of a number of factors, many of which are outside of our control. For these reasons, comparing our financial results on a period-to-period basis may not be meaningful, and our past results should not be relied on as an indication of our future performance. Our future quarterly and annual expenses as a percentage of our revenues may be significantly different from those we have recorded in the past or which we expect for the future. Our financial results in some quarters may fall below expectations. Any of these events could cause our stock price to fall. Each of the risk factors listed in this "Risk Factors" section, including the following factors, may adversely affect our business, financial condition and results of operations:

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

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

Our reporting currency is the U.S. dollar, and we conduct our business and incur costs in the local currency of most countries in which we operate. As a result, we are subject to currency translation risk. A large percentage of our revenues may be generated outside the United States and denominated in foreign currencies in the future. Changes in exchange rates between foreign currencies and the U.S. dollar could affect our revenues and cost of revenues and could result in exchange losses. In addition, we incur currency transaction risk whenever one of our operating subsidiaries enters into either a purchase or sale transaction using a different currency from our reporting currency. We cannot accurately predict the impact of future exchange rate fluctuations on our results of operations. Currently, we do not engage in any exchange rate hedging activities and, as a result, any volatility in currency exchange rates may have an immediate adverse effect on our business, results of operations and financial condition.

Risks Related To Growth Of Our Business

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

Historically, a small number of customers have provided substantially all of our revenues and we expect that such concentration will continue for the foreseeable future. In fiscal 2019 commercial contracts accounted for 92% of our revenues and governmental contracts accounted for 8%. In fiscal 2018, revenues from commercial contacts accounted for 86% of our revenues and governmental contracts accounted for 14%. Because we currently have a small number of customers and contracts, problems with a single contract would adversely affect our business, financial condition and results of operations.

A customer's payment default, or the loss of a customer as a result of competition, creditworthiness, our failure to perform, our inability to negotiate extensions or replacements of contracts, or otherwise, would adversely affect our business, financial condition and results of operations. We cannot assure you that we will be successful in our efforts to secure additional commercial customers, or additional revenue-generating contracts.

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

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

- performance, reliability and cost-effectiveness of wave energy technology compared to conventional sources and products;
- fluctuations in economic and market conditions, such as increases or decreases in the prices of oil and other fossil fuels;
- the development of new and profitable applications requiring the type of remote electric power provided by our autonomous wave energy systems.

If wave energy technology does not gain broad commercial acceptance, it is unlikely that we will be able to commercialize our PowerBuoy® and our business will be materially harmed, in which case, we may curtail or cease operations.

If sufficient demand for our PowerBuoy® 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 technology achieves broad commercial acceptance, our PowerBuoys® may not prove to be a commercially viable technology for generating electricity from ocean waves. We have invested a significant portion of our time and financial resources since our inception in the development of our PowerBuoys® but have not yet achieved successful commercialization of our PowerBuoys®. As we seek to manufacture, market, sell and deploy our PowerBuoys® in greater quantities, we may encounter unforeseen hurdles that would limit the commercial viability of our PowerBuoys®, including unanticipated manufacturing, deployment, operating, maintenance and other costs. Our target customers and we may also encounter technical obstacles to deploying, operating and maintaining PowerBuoys®.

If demand for our PowerBuoys® or new products fails to develop sufficiently, it is unlikely that we will be able to grow our business or generate sufficient revenues to achieve and then sustain profitability. In addition, demand for PowerBuoys® in our presently targeted markets, including parts of North America, Europe, South America and Asia, may not develop or may develop to a lesser extent than we anticipate.

If we are not successful in commercializing our PowerBuoy® or new 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 senior management and other key product development, manufacturing, and sales and marketing employees. We have limited financial resources and 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 with the appointment of new executives may themselves prove to be disruptive. Periods of transition in senior management leadership are often difficult as the new executives gain detailed knowledge of our operations and due to cultural differences, that may result from changes in strategy and style. Without consistent and experienced leadership, customers, employees, creditors, stockholders and others may lose confidence in us.

To be successful, we need to retain key personnel. Qualified individuals, including engineers and project managers, are in high demand, and we may incur significant costs to attract and retain them. With the exception of our President and Chief Executive Officer, all of our officers and other 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 the services of key personnel, or do not hire or retain other personnel for key positions, our business, results of operations and stock price could be adversely affected.

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. Our current personnel, facilities, systems and internal procedures and controls may not be adequate to support future growth. 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 the 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, which may include areas such as Australia, Japan, and continental Europe, and which may result in additional organizational complexity.

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 throughput 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 the PowerBuoys® purchased from us. In addition, we may offer to lease PowerBuoys®, sell power generated by PowerBuoys® or sell data gathered by sensors on our PowerBuoys®. Even if customers purchase or lease our PowerBuoys®, they may not enter into service contracts with us. We may not be able to negotiate service, power sale 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 the PowerBuoys® could be impaired. Any one of these outcomes could have a material adverse effect on our business, financial condition and results of operations.

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

Our PowerBuoys® are designed for use offshore, but not all offshore areas worldwide have appropriate natural resources for our PowerBuoys® to harness wave energy. Seasonal and local variations, water depth and the effect of particular locations of islands and other geographical features may limit our ability to deploy our PowerBuoys® in certain coastal areas. If we are unable to identify and deploy PowerBuoys® at sufficient sites with appropriate natural resources to permit our PowerBuoys® to capture wave energy, our ability to grow our business could be adversely affected.

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

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

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

In addition, we rely on third parties, under our oversight, for the deployment and mooring of our PowerBuoys®. We have utilized several different deployment methods, including towing the PowerBuoy® to the deployment location and transporting the PowerBuoy® to the deployment location by barge or ocean workboat. If these third parties do not properly deploy our systems, cannot effectively deploy the PowerBuoy® 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 investments in joint ventures could be adversely affected by our lack of sole decision-making authority, our reliance on a co-venture's financial condition and disputes between us and our co-venture partners.

It is part of our strategy that we may co-invest with third parties through joint ventures or by acquiring non-controlling interests in special purpose entities. In these situations, we may not be in a position to exercise sole decision-making authority regarding the joint venture. Our co-ventures may have economic or other business interests or goals that may not be consistent with our own and may be in a position to take actions that are contrary to our policies or objectives. Additionally, investments in joint ventures involve risks that would not be present were a third party not involved, including the possibility that our co-ventures might become bankrupt or fail to fund their share of required capital contributions. Disputes between us and our co-venture partners may result in litigation or arbitration that would increase our expenses and prevent our officers and/or directors from focusing their time and effort on our business. In addition, we may not be able to identify appropriate strategic partners, or successfully negotiate, finance or operate any joint ventures or other collaborative projects to advance this aspect of our strategy. Consequently, both the entrance into a joint venture itself, or the failure to identify appropriate potential opportunities, could materially and adversely affect our business, financial condition and results of operations.

Our targeted markets are highly competitive. 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 revenues and achieve or maintain profitability.

In our targeted markets, which are highly competitive, we compete against incumbent power 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 PowerBuoy® is cost competitive to their existing alternative power 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 PowerBuoy®, 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 making improvements to traditional energy-producing methods or technologies, any of which could make our products less attractive or render them obsolete. If we are not successful in manufacturing systems that generate competitively priced power, we may not be able to respond effectively to competitive pressures from other renewable energy 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 products in multiple international markets. If we are unable to manage our international operations effectively, our business, financial condition and results of operations could be adversely affected.

We market and plan to market our products in multiple global regions, including parts of North America, Europe, South America and Asia, and we are therefore subject to risks associated with having international operations. Revenues from customers who are based outside of the U.S. accounted for 92% of our revenues in fiscal 2019 and 86% of our revenues in fiscal 2018. 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 PowerBuoys® and make us less competitive in some countries;
- fluctuations in exchange rates may affect demand for our PowerBuoys® and may adversely affect our profitability in U.S. dollars to the extent the price of our PowerBuoys® and cost of raw materials and labor are denominated in a foreign currency;
- difficulty with staffing and managing widespread operations;
- 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 PowerBuoys®;
- 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.

We anticipate that our contracts with our customers will generally include cancellation for convenience clauses that permit our customers to terminate the contract for their convenience; if a customer were to terminate its contract with us for convenience, this could materially adversely affect our business.

We anticipate that our contracts with our customers will be structured as capital equipment contracts or capital equipment leases, and could include a cancellation for convenience clause, which we believe is relatively standard in these types of contracts. Cancellation for convenience clauses allow the customer to cancel the contract or lease at their option without cause prior to defined points in time, generally subject to a reasonable notice period. If any of our current or future customers were to cancel their contracts with us for convenience, such cancellation could adversely affect our business.

Cyber-security breaches of our systems and information technology could adversely impact our ability to operate.

We utilize, develop, install and maintain a number of information technology systems both for us and for others. Various privacy and security laws require us to protect sensitive and confidential information from disclosure. In addition, we are bound by our client 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 clients, 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 clients and other business partners. While we endeavor to maintain industry-accepted security measures and technology to secure our computer systems and while we endeavor to ensure our cloud vendors that store our data maintain similar measures, these systems and the information stored on these systems may still be subject to threats. There can be no assurance that our efforts will prevent these threats. 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 clients, contractors or other vendors, could misappropriate confidential or proprietary information, improperly manipulate data, or cause damage or interruptions to systems. 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.

Risks Related to Product Development and Commercialization

Our engineering and product development costs are substantial and may increase in the future.

Our engineering and product development costs primarily relate to our efforts to increase the output, durability and commercial viability of our PowerBuoy®. Our engineering and product development costs were $5.0 million and $4.3 million in fiscal 2019 and 2018, respectively. It is our goal to fund the majority of our engineering and product development expenses, including cost sharing obligations under some of our customer contracts, over the next several years with sources of external funding, but we do not currently have any such committed sources of funding, and we may not be able to secure any such funding in the future. If we are unable to obtain external funding, our operations may be materially and adversely affected, and we may be required to curtail our engineering and product development expenses, among other consequences.

We have only manufactured a limited number of PowerBuoys® and to date we have not produced PowerBuoys® in any significant quantity or for commercial production. Our PowerBuoys® have been used for testing and development and may not have a sufficient operating history to confirm how they will perform over their estimated useful life.

We began developing and testing wave energy technology over 15 years ago. However, to date, we have only manufactured a limited number of PowerBuoys® for use in ocean testing and development. The longest continuous in-ocean deployment of our PowerBuoy® was from December 2009 to January 2012. As a result, our PowerBuoys® 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. We have conducted and plan to continue to conduct practical testing of our PowerBuoy®. If our PowerBuoy® is ultimately proven ineffective or unfeasible, we may not be able to engage in commercial production of our products or we may become liable to our customers for quantities we are obligated but are unable to produce. If our PowerBuoys® 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 numerous accident and safety risks and hazards, including extreme environmental hazards, 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 PowerBuoys®. These hazards and risks could result in personal injuries, loss of life, liberation of a PowerBuoy® from its mooring due to extreme environmental conditions and damage caused by its drifting, and other damages which may include damage to our properties, including our PowerBuoy®, and the properties of others and other consequential damages, and could 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. In addition, the risks inherent in our business are such that we cannot assure that we will be able to maintain adequate insurance in the future at reasonable rates.

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.

An important element of our business strategy is to enter into application development agreements and strategic alliances with companies committed to providing products and services which require in-ocean energy sources. Generally, these types of relationships obligate us 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 revenues 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 PowerBuoys®. 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 are able to find, negotiate and enter into 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 PowerBuoys® to these companies, their affiliates and customers in the future, or growth opportunities may not materialize. Any of which could adversely affect our business, financial condition and results of operations.

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

We plan to manufacture key components of our PowerBuoys®, including the PTO advanced control and generation systems, while outsourcing the manufacturing for other components of our PowerBuoys®, including the structure itself. However, we have only manufactured our PowerBuoys® in limited quantities for use in development and testing and have limited commercial manufacturing 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 throughput in a cost-effective and efficient manner, and to manage multiple vendors with several orders on 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, and we have limited funding available to retain such additional staff. 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 PowerBuoys®. 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.

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

Our agreements with customers will generally include guarantees with respect to the quality and performance of our PowerBuoys®. Because of the limited operating history of our PowerBuoys®, 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 PowerBuoys®, causing us to incur substantial expense to repair or replace defective systems in the future. We will bear the risk of claims long after we have sold our PowerBuoys® and recognized revenue. Moreover, any widespread product failures could adversely affect our business, financial condition and results of operations.

We have not yet deployed a wave power array of two or more PowerBuoys® in a single geographic location. If we are unable to successfully deploy a multiple-system wave power array, our capability to generate revenues may be limited, and we may be unable to achieve and then maintain profitability.

We have not yet deployed a wave power array of two or more PowerBuoys®. Whether we are able to do so is contingent upon, among other things, our ability to manufacture and produce multiple PowerBuoys® in a short period of time, receipt of required governmental permits, obtaining adequate financing, successful array design and implementation and, finally, successful deployment and connection of the PowerBuoys®.

We have not yet conducted ocean testing or otherwise installed in the ocean a multiple-system wave power array. In particular, unlike single-system wave power arrays, multiple-system wave power arrays may require the use of an underwater substation to connect the power transmission cables from, and collect the electricity generated by, each PowerBuoy® in the array. We have not yet deployed an underwater substation connected to multiple PowerBuoys®. In addition, unanticipated issues may arise with the logistics and mechanics of deploying and maintaining multiple PowerBuoys® at a single site and the additional equipment associated with these multiple system wave power arrays.

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

Our future success in our selected markets depends in part on our ability to achieve cost savings over existing and incumbent solutions. If we are unable to achieve cost savings relating to our PowerBuoy®, the commercial prospects for our PowerBuoy® may be adversely affected.

Our goal is to commercialize our PowerBuoy®. Our success in meeting this objective depends, in part, on our ability to provide energy to our prospective customers at a cost savings over existing and incumbent power solutions already being utilized by our customers and potential customers. We have experienced problems and delays in the development and deployment of our PowerBuoy® in the past and could experience similar delays or other difficulties in the future. If we are unable to demonstrate to our prospective customers that our PowerBuoy® is cost competitive with existing alternative power sources, or if it takes us longer to do so than we anticipate, we may be unable to continue our business, achieve commercialization of our PowerBuoy®, achieve a competitive position, satisfy our contractual obligations, or become profitable. In addition, if the costs associated with these development efforts exceed our projections, our results of operations will be materially and adversely affected.

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

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

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

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

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 infringers and we do not know what the cost to do so would be. Our pending and future patent applications may not issue as patents or, if issued, may not issue in a form that will be advantageous to us. Even if issued, patents may be challenged, narrowed, invalidated or circumvented, which could limit our ability to stop competitors from marketing similar products or limit the length of term of patent protection we may have for our products. Changes in either patent laws or in interpretations of patent laws in the 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. 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 United States.

Intellectual property rights protection continues to present significant challenges to foreign businesses in many countries around the world. The body of law is often relatively undeveloped compared to the commercial law in the United States 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 United States and abroad. From time to time, we receive correspondence from third parties offering to license patents to us. Correspondence of this nature might be used to establish that we received notice of certain patents in the event of subsequent patent infringement litigation. Third parties could bring claims against us that would cause us to incur substantial expenses and, if successfully asserted against us, could cause us to pay substantial damages. Further, if a patent 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 the third party and be required to pay license fees, royalties or both. These licenses may not be available on acceptable terms, or at all. Even if we were able to obtain a license, the rights may be 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 also may 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 could be possible we will not be able to implement our planned projects or business plan.

Offshore deployment of our PowerBuoy® is heavily regulated. Each of our deployments is subject to multiple permitting and approval requirements. We are dependent on state, federal and regional government agencies for such permits and approvals. Due to the unique nature of in-ocean power generation and the associated potential for environmental hazards of PowerBuoy® deployment, 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. Successful challenges by any parties opposed to our deployments could result in increased costs, or in the denial of necessary permits and approvals.

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

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

Effective internal controls are necessary for us to provide reasonable assurance with respect to our financial reports and to effectively prevent fraud. 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.

Our business could suffer as a result of the United Kingdom's decision to end its membership in the European Union.

The decision of the United Kingdom (U.K.) to exit from the European Union (E.U.) (generally referred to as "BREXIT") could cause disruptions to and create uncertainty surrounding our business, including affecting our relationships with existing and potential customers, suppliers and employees. The effects of BREXIT will depend on any agreements the U.K. makes to retain access to E.U. markets either during a transitional period or more permanently. The measures could potentially disrupt some of our target markets and jurisdictions in which we operate, and adversely change tax benefits or liabilities in these or other jurisdictions. In addition, BREXIT could lead to legal uncertainty and potentially divergent national laws and regulations as the U.K. determines which E.U. laws to replace or replicate. BREXIT also may create global economic uncertainty, which may cause our customers and potential customers to monitor their costs and reduce their budgets for our products and services. Any of these effects of BREXIT, among others, could materially adversely affect our business, business opportunities, results of operations, financial condition and cash flows.

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 are able to purchase, could have a material adverse effect on our financial condition and results of operations.

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

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

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

Risks Related to Litigation

We are the subject of pending litigation, which 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.

We are the subject of certain pending litigation. 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 adversely affect our company, our business and our liquidity. 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 professionals 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, these actions 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 coverages. 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 additional securities litigation, which is costly and time-consuming to defend.

In the past, companies that experience 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 14 "Commitments and Contingencies - Litigation" in the accompanying consolidated financial statements for the fiscal year ended April 30, 2019.

Risks Related to Our Common Stock

If we issue additional shares of our equity securities in the future, our stockholders 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 stockholder approval, up to 5,000,000 shares of preferred stock. In the future, in order 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 stockholders 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 stockholders.

In addition, we have a significant number of stock options and warrants outstanding. To the extent that outstanding stock options or warrants have been or may be exercised or other shares issued, current stockholders 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 stockholders 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. For the fiscal year ended April 30, 2019, the 52-week low and high prices for our common stock was $2.45 and $24.00, respectively. Also, the stock market in general has recently experienced 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:

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

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

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

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

The affirmative vote of the holders of at least 75% of our shares of capital stock entitled to vote is necessary to amend or repeal the above provisions of our certificate of incorporation. In addition, absent 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 stockholder, 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 stockholder, unless the business combination is approved in a prescribed manner. Accordingly, Section 203 may discourage, delay or prevent a change in control of our company.

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.

The trading market for our common stock is 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 one or more of these analysts cease coverage of our company or fail to publish reports on us 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. Moreover, if one or more of the analysts who cover our company downgrade our common stock or release a negative report, or if our operating results do not meet analyst expectations, the price of our common stock could 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. As a result, capital appreciation, if any, of our common stock will be the sole source of gain for our stockholders for the foreseeable future.

ITEM 1B. *UNRESOLVED STAFF COMMENTS*

Not applicable.

ITEM 2. *PROPERTIES*

Our corporate headquarters are currently located in Monroe Township, New Jersey, where we occupy approximately 56,000 square feet under a lease expiring on October 31, 2024. We use this facility for administration, research and development, as well as assembly and testing of the generators and control models for our PowerBuoy® systems.

ITEM 3. *LEGAL PROCEEDINGS*

Shareholder Litigation

The Company and certain of its current and former directors and officers were identified as defendants in a derivative lawsuit filed on March 18, 2015 in the United States District Court for the District of New Jersey captioned *Labare v. Dunleavy, et. al.*, Case No. 3:15-cv-01980-FLW-LHG. The derivative complaint alleged claims for breach of fiduciary duty, abuse of control, gross mismanagement and unjust enrichment relating to the now terminated agreement between Victorian Wave Partners Pty. Ltd. (VWP) and the Australian Renewable Energy Agency (ARENA) for the development of a wave power station. The derivative complaint sought unspecified monetary damages and other relief.

On July 10, 2015, a second derivative lawsuit, captioned *Rywolt v. Dunleavy, et al.*, Case No. 3:15-cv-05469, was filed by another shareholder against the same defendants in the United States District Court for the District of New Jersey alleging similar claims for breach of fiduciary duty, gross mismanagement, abuse of control, and unjust enrichment relating to the now terminated agreement between VWP and ARENA. The *Rywolt* complaint also sought unspecified monetary damages and other relief.

On April 21, 2016, a third derivative lawsuit, captioned *LaCalamito v. Dunleavy, et al.*, Case No. 3:16-cv-02249, was filed by another shareholder against certain current and former directors and officers of the Company in the United States District Court for the District of New Jersey alleging similar claims for breach of fiduciary duty relating to the now terminated agreement between VWP and ARENA. The *LaCalamito* complaint sought unspecified monetary damages and other relief.

On June 9, 2016, a fourth derivative lawsuit, captioned *Pucillo v. Dunleavy, et al.*, was filed by another shareholder against certain current and former directors and officers of the Company in the United States District Court for the District of New Jersey alleging similar claims for breach of fiduciary duty, unjust enrichment, and abuse of control relating to the now terminated agreement between VWP and ARENA. The *Pucillo* complaint sought unspecified monetary damages and other relief.

On October 25, 2016, the Court approved and entered a Stipulation and Order that, among other things, (i) consolidated the *LaBare*, *Rywolt*, *LaCalamito* and *Pucillo* derivative actions; (ii) identified plaintiff *Pucillo* as the lead plaintiff in the consolidated actions; and (iii) stayed the consolidated actions pending the November 14, 2016 settlement hearing in the now-settled securities class action and further order of the Court.

On October 23, 2017, the parties entered into a Stipulation and Agreement of Settlement to resolve the four consolidated derivative lawsuits. The settlement provided for, among other things, the Company to implement certain corporate governance changes, a $350,000 payment to the plaintiffs' attorneys for attorneys' fees and costs that will be made by the Company's insurance carrier, dismissal of the derivative lawsuits, and certain releases. On November 21, 2017, the plaintiffs filed an unopposed motion seeking preliminary approval of the settlement, which the Court granted on March 9, 2018. On May 14, 2018, the Court held a final settlement approval hearing at which the Court stated that it was approving the settlement. On June 13, 2018, the Court issued a Final Order and Judgment, approving the Stipulation and Agreement of Settlement. The Company had accrued $350,000 related to this matter as a probable and reasonably estimable loss contingency during the twelve months ended April 30, 2018. The Company also recorded a receivable of $350,000 from its insurance carrier with the offset to the Statement of Operations. The Company's insurance carrier made a payment of $350,000 to the plaintiffs' attorneys on May 3, 2018. As a result, the consolidated derivatives lawsuits are now completely resolved, the releases are operative, and the matter is closed.

Employment Arbitration

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

On August 28, 2018, counsel for Mr. Dunleavy filed a demand for arbitration, captioned *Charles F. Dunleavy v. Ocean Power Technologies, Inc.*, Case No. 01-18-0003-2374, before the American Arbitration Association in New Jersey. The demand names Ocean Power Technologies, Inc. as the respondent and alleges various claims and seeks declaratory relief and permanent injunction. The demand seeks damages in the amount of $5 million for compensatory and punitive damages, plus interest and attorneys' fees as well as certain equitable relief. On November 8, 2018, the Company through counsel responded to the demand for arbitration, denied all allegations, and asserted various affirmative defenses. On April 5, 2019, a three-member arbitration panel scheduled the discovery process to run from April 12, 2019 until November 9, 2019, set a pre-hearing case management conference for October 14, 2019, and set the hearing for December 9-13, 2019 in Princeton, New Jersey. As of April 30, 2019, the Company has not accrued any provision related to this matter since it cannot reasonably estimate the loss contingency.

Tide Runner Marine, Inc. Lawsuit

On June 13, 2018, Tide Runner Marine, Inc. ("Tide Runner") filed a lawsuit in the United States District Court for the District of New Jersey captioned *Tide Runner Marine, Inc. v. Ocean Power Technologies, Inc.*, Case No. 1:18-cv-10496. The complaint names the Company as defendant and alleges claims for breach of contract, unjust enrichment, conversion, and fraud, negligent and/or reckless misrepresentation all as associated with the removal of a Company mooring system off the coast of New Jersey that was completed in May 2017. The complaint seeks damages in the amount of $2,825,130 together with interest, costs, attorney's fees, punitive damages and such other relief as may be appropriate under the circumstances. On July 27, 2018, the Company filed an answer denying the claims in the complaint, asserted various affirmative defenses, and asserted a counter-claim for damages in the amount of $15,000 for Tide Runner's failure to pay the Company for certain portions of the mooring system that were recovered. On August 2, 2018, Tide Runner filed its answer to and denied the Company's counterclaim and asserted various affirmative defenses. During the initial scheduling conference held on September 13, 2018, the parties agreed to engage in mediation in an effort to resolve this matter and also agreed to include Tide Runner's subcontractor, Wittich Bros. Marine Inc. ("Wittich") in the mediation process. The parties participated in mediation on November 15, 2018 but were unable to reach an agreement. However, the parties agreed to continue the mediation process and on February 11, 2019 reached a settlement agreement. On February 22, 2019, the parties executed a Settlement Agreement and Release ("Settlement"). Under the Settlement, the Company will pay to Wittich (i) $50,000 within 10 days after the final execution of the Settlement and (ii) another $150,000 on or before May 1, 2019. Subsequently, the parties filed a stipulation of dismissal of both Tide Runner's complaint and the Company's counterclaim with prejudice and without costs and the Court granted the dismissal and terminated the case. The parties have also provided mutual releases for the matters in dispute in the litigation and will indemnify each other for future similar claims. As of April 30, 2019, the Company made the two required payments to Wittich.

Nasdaq Compliance

On August 9, 2018, the Company received written notification from Nasdaq indicating that the closing bid price of the Company's common stock had been below $1.00 per share for a period of 30 consecutive trading days, and as a result, the Company was not in compliance with the minimum bid price requirement for continued listing. Under the Nasdaq Listing Rules, the Company was provided with a grace period of 180 calendar days, or until February 5, 2019, in which to regain compliance with the minimum bid price rule. To regain compliance, the closing bid price of the Company's common stock must meet or exceed $1.00 per share for a minimum of ten consecutive business days during the grace period. If the Company did not regain compliance before February 5, 2019, Nasdaq stated that it would provide the Company with written notice that its securities are subject to delisting. At that time, the Company could appeal Nasdaq's determination to a Nasdaq Listing Qualifications Panel, which would stay any further delisting action by Nasdaq pending a final decision by the panel. Alternatively, the Company could have been eligible for an additional 180 calendar day grace period if it met the continued listing standards, with the exception of bid price, for the Nasdaq Capital Market, and if the Company stated its intent to affect a reverse split, if necessary, to cure such deficiency.

On February 11, 2019, the Company received another written notification from Nasdaq indicating that the Company had not regained compliance with the minimum bid price requirement and that the Company's stockholders' equity, as reported in the Company's Quarterly Report on Form 10-Q for the quarter ended October 31, 2018, did not qualify the Company for an additional 180 calendar day extension period for compliance. On February 19, 2019, the Company appealed Nasdaq's determination to a Hearings Panel (the "Panel"), pursuant to the procedures set forth in the Nasdaq Listing Rule 5800 Series. The appeal stayed the suspension of the Company's securities pending the Panel's decision, during which time the Company's common stock will continue to be listed on Nasdaq, and the Company's common stock will continue to trade under the symbol "OPTT".

On March 14, 2019, the Company received another written notification from Nasdaq indicating that the Company did not comply with the minimum stockholders' equity requirement for continued listing. The earlier-filed appeal of the minimum bid price requirement was sufficient to encompass the minimum stockholder's equity requirement, and the stay of suspension continued pending the Panel hearing and decision.

The Panel held its hearing on March 28, 2019. On April 4, 2019, the Panel issued the following two decisions: (i) the Panel concluded that the Company was in compliance with the minimum bid price rule; and (ii) the Panel granted the Company's request to cure its stockholder equity deficiency by conducting a public offering that was estimated to raise $10 million by no later than April 30, 2019. On April 24, 2019, the Company provided the Panel with an update following a public offering that raised approximately $15.7 million (after deducting underwriter fees, commissions and other offering expenses) and closed on April 8, 2019. The update included revised projections of stockholder equity based upon the actual amount of proceeds raised during the public offering, which in the Company's opinion was sufficient to cure the stockholder equity deficiency.

On May 20, 2019 the Company received a letter from Nasdaq confirming that the Company has regained compliance with the minimum shareholders' equity rule, as required by the Panel's decision dated April 4, 2019, and is in compliance with other applicable requirements as set forth in the decision and required for listing on Nasdaq. Accordingly, the Panel has determined to continue the listing of the Company's securities on Nasdaq and closed the matter.

FINRA Review

On April 4, 2019, FINRA notified the Company that it was conducting a routine review of the Company's stock associated with two public announcements and asked several questions regarding: (i) an April 3, 2019 announcement that the Company had won a contract with a leading oil and gas operator; and (ii) an April 4, 2019 announcement of the pricing of an underwritten public offering. The Company provided its response to the FINRA questions on Tuesday, April 9, 2019. As of July 22, 2019, FINRA has not provided any follow-up.

Spain Income Tax Audit

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

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*

Stockholders

Our common stock is listed on the Nasdaq Capital Market, under the symbol "OPTT." As of June 28, 2019, there were 142 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.

Dividend Policy

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

Transfer Agent Information

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

Purchases of Equity Securities by the Issuer

The following table details our share repurchases for the three months ended April 30, 2019:

Period	Total Number of Shares Purchased		Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plan
February 1 - February 28	-	$	-	-	-
March 1 - March 31	-	$	-	-	-
April 1 - April 30	-	$	-	-	-

Equity Compensation Plan Information

See "Part III, Item 12- Security Ownership of Certain Beneficial Owners, Management and Related Stockholder Matters- Equity Compensation Plan Information."

Unregistered Sales of Equity Securities and Use of Proceeds

There have been no unregistered sales of equity securities or purchases of equity securities that are required to be disclosed.

ITEM 6. ***SELECTED FINANCIAL DATA***

Not Applicable.

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 on Form 10-K. Some of the information contained in this discussion and analysis or set forth elsewhere in this Annual Report on Form 10-K, 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 2019 are to the fiscal year ended April 30, 2019.

Overview

We are commercializing proprietary systems that generate electricity predominantly by harnessing the renewable energy of ocean waves. Our PB3 PowerBuoy® systems use proprietary technologies to convert the mechanical energy created by the rising and falling of ocean waves into electricity. We currently have developed our PB3 PowerBuoy® product and are in process of developing two new complementary products, the hybrid PowerBuoy® and subsea battery solutions. Since fiscal 2002, government agencies have accounted for a significant portion of our revenues. These revenues were largely for the support of our product development efforts relating to our technology. Today our goal is to generate the majority of revenue from the sale of products and services, and sales and services to support our business operations. As we continue to develop and commercialize our products and services, we expect to have a net use of cash in operating activities unless or until we achieve positive cash flow from the commercialization of our products and services.

We are marketing our PowerBuoy®, which is designed to generate power for use independent of the power grid, to customers that require electricity in remote locations. We believe there are a variety of potential applications for our PowerBuoy®, within markets such as oil and gas, defense and security, science and research and communications, which we refer to collectively as autonomous application markets.

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

Product Development

The development of our technology has been funded by capital we raised, by development engineering contracts we received starting in fiscal 1995, including projects with the DOE, the U.S. Navy, the Department of Homeland Security, and revenue generating projects with MES, PMO and Eni. Please see Item 1 of this Annual Report- "Business - Customers" and "Business - Historic Projects" for more information.

Through these historic projects, we also continued development of our PowerBuoy® technologies. We are continuing to focus on marketing and developing our PowerBuoy® products and services for use in autonomous power applications.

During fiscal 2019, we continued to focus on the commercialization of our PowerBuoy® technology, while expanding the application of our PB3 product in autonomous application markets. In March 2018, we entered into an agreement with Eni that provides for a minimum 24-month contract that includes a lease and associated project management. In June 2018, we entered into a contract with PMO for the lease of a PB3 PowerBuoy® to be deployed in one of PMO's offshore fields in the North Sea. In August 2018, we entered into an agreement with EGP to evaluate a PB3 PowerBuoy® deployment along the coast of Chile through a detailed feasibility study as an offshore autonomous platform hosting oceanographic sensor systems. In February 2019, we entered into a contract with the U.S. Navy to carry out the first phase of a project to design and develop a buoy mooring system which incorporates fiber optics for the transmission of subsea sensor data to airplanes, ships, and satellites.

In November 2017 we completed the Phase I work under the contract with ONR which focused on the initial concept design and development of a mass-on-spring PTO-based PowerBuoy®. We are waiting for ONR funding to be approved for the next phase. Working closely with potential customers, we also continued to analyze and further develop new applications for the PowerBuoy® including subsea well monitoring for oil and gas, Autonomous Underwater Vehicle ("AUV") charging, and independent telecommunications platforms.

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

- The design, development and implementation of a versatile mooring interface that allows the PB3 to accommodate various types of mooring configurations depending on the specifics and the needs of the customer, eliminating the need for a redesign of the device.

- The design, development and implementation of a flexible power transmission system intended to support delivery of power and communication capabilities to customer payloads which are external to the PowerBuoy®, and which may reside in the water column or on the seabed.

- The design and development of a combined power and communications single point mooring solution that allows for quick deployment of the PowerBuoy®.

Additionally, and building upon our initial success in implementing an auto-ballast system in our commercial PB3, we further enhanced this feature to achieve faster and more cost effective PB3 deployments and retrievals.

As previously stated, the PB3 has achieved commercial status through a series of design iterations which focused on improving its reliability and survivability in the ocean environment. Though the PB3 will continue to undergo further enhancements through customary product life cycle management, we believe the PB3 has achieved a maturity level for immediate commercial use. We believe that the PB3 will generate and store sufficient power to address various application requirements in our target markets. Our product development and engineering efforts are focused, in part, on increasing the energy output and efficiency of our PowerBuoys® and, if we are able to do so, we believe the PowerBuoy® would be useful for additional applications where cost savings and additional power are required by our potential customers. We continue to explore opportunities in these target markets. We believe that by demonstrating the capability of our PowerBuoy® in oil & gas and telecommunications applications, we can advance our technology and gain further adoption from our target markets. We continue to improve design and manufacturing of the PB3 to enhance our ability to improve customer value, displace incumbent solutions, and become the preferred power source for new and existing applications in our target markets.

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

In November 2018, the Company announced several new product offerings including the hybrid PowerBuoy®, subsea battery solutions and support services.

- *hybrid PowerBuoy®* - The Company is in the process of creating a hybrid PowerBuoy® that will be a smaller liquid-fueled surface buoy, compared to the wave power based PB3 PowerBuoy®, capable of providing reliable power in remote offshore locations. This product is to be highly complementary to the PB3 PowerBuoy® by providing the Company the opportunity to address a broader spectrum of customer deployment needs, with the potential for greater Company integration within each customer project. It is primarily intended for shorter term deployment applications such as eROV and AUV inspections and short-term maintenance, topside surveillance and communications, and subsea equipment and controls. The hybrid PowerBuoy® is anticipated to be a lightweight, quickly deployable and cost-effective solution. The design is also anticipated to have a high payload capacity for communications and surveillance, with the capability of being tethered to subsea payloads and battery packs, or with a conventional anchor mooring system. The Company intends to design the hybrid PowerBuoy®, with a Stirling engine, to outperform traditional diesel buoys, which we believe to have more frequent service and refueling intervals. We believe the hybrid PowerBuoy® will be able to operate in an environmentally safer manner using more robust fuels, while operating over a wider temperature range than diesel buoys.

- *Subsea battery solutions* - The Company is in the process of creating a sea floor energy storage solution for remote offshore operations. These subsea battery systems will contain lithium ion batteries, which provide high power density, to supply power that can enable subsea equipment, sensors, communications and AUVs and electric remotely operated vehicles (eROV) recharge. The Company's PB3 PowerBuoy® is complimentary to subsea battery systems by providing a means for recharging during longer term deployments, or the subsea battery systems can be used independently for shorter term deployments. Ideal for many remote offshore customer applications, these subsea battery systems are anticipated to be high performance, cost-efficient, and quickly deployable. Given the Company's expertise in offshore energy storage systems from existing PB3 PowerBuoy® technology, the subsea battery solutions will provide an opportunity for the Company to differentiate through technical, cost and delivery leadership.

- *Support services* **–** The Company offers customers a comprehensive range of support services that meet their specific needs. These support services include innovation services, remote monitoring, extended service agreements, customization and pre-packaged payload options, engineering-design-testing services, mooring design, and marine services. These same support services will be extended to the new subsea battery solution and hybrid PowerBuoy® products.

Capital Raises

On June 2, 2016, we entered into a securities purchase agreement, which was amended on June 7, 2016 (as amended, the "Purchase Agreement") with certain institutional purchasers (the "Purchasers"). Pursuant to the terms of the Purchase Agreement, we sold an aggregate of 20,850 shares of common stock together with warrants to purchase up to an aggregate of 7,298 shares of common stock. Each share of common stock was sold together with a warrant to purchase 0.35 of a share of common stock at a combined purchase price of $92.00. The net proceeds from the offering to us were approximately $1.7 million, after deducting placement agent fees and estimated offering expenses payable by us, but excluding the proceeds, if any, from the exercise of the warrants issued in the offering. The warrants have an exercise price of $121.60 per share, will be exercisable on December 8, 2016, and will expire five years following the date of issuance. The Company paid the placement agents approximately $100,000 as placement agent fees in connection with the sale of securities in the offering. The Company also reimbursed the placement agents $35,000 for their out of pocket and legal expenses in connection with the offering.

On July 22, 2016, the Company entered into the Second Amendment to the Purchase Agreement (the "Second Amended Purchase Agreement") with certain purchasers (the "July Purchasers"). Pursuant to the terms of the Second Amended Purchase Agreement, the Company sold an aggregate of 29,750 shares of Common Stock together with warrants to purchase up to an aggregate of 8,925 shares of Common Stock. Each share of Common Stock was sold together with a warrant to purchase 0.30 of a share of Common Stock at a combined purchase price of $135.00. The net proceeds to the Company from the offering were approximately $3.6 million, after deducting placement agent fees and estimated offering expenses payable by the Company, but excluding the proceeds, if any, from the exercise of the warrants issued in the offering. The Warrants were exercisable immediately at an exercise price of $187.20 per share. The Warrants will expire on the fifth (5th) anniversary of the initial date of issuance.

On October 19, 2016, the Company sold 138,000 shares of common stock at a price of $55.00 per share, which includes the sale of 18,000 shares of the Company's common stock sold by the Company pursuant to the exercise, in full, of the over-allotment option by the underwriters in a public offering. The net proceeds to the Company from the offering were approximately $6.9 million, after deducting placement agent fees and offering expenses payable by the Company.

On May 2, 2017, the Company sold 309,638 shares of common stock at a price of $26.00 per share, which includes the sale of 40,388 shares of the Company's common stock sold by the Company pursuant to the exercise, in full, of the over-allotment option by the underwriters in a public offering. The net proceeds to the Company from the offering were approximately $7.2 million, after deducting placement agent fees and offering expenses payable by the Company.

On October 23, 2017, the Company sold 286,972 shares of common stock at a price of $28.40 per share in a best efforts public offering. The net proceeds to the Company from the offering were approximately $7.4 million, after deducting placement fees and offering expenses payable by the Company.

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

On January 7, 2019, the Company entered into an At the Market Offering Agreement ("2019 ATM Facility") with A.G.P./Alliance Global Partners ("AGP"), under which the Company may issue and sell to or through A.G.P./Alliance Global Partners, acting as agent and/or principal, shares of the Company's common stock having an aggregate offering price of up to $25 million. As of April 30, 2019, under the 2019 ATM Facility the Company had issued and sold 151,561 shares of its common stock with an aggregate market value of $958,229 at an average price of $6.32 per share and paid AGP a sales commission of approximately $33,469 related to those shares.

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

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

Backlog

As of April 30, 2019, our negotiated backlog was $0.9 million. As of April 30, 2018, our negotiated backlog was $0.7 million. Our backlog can include unfilled firm orders for our products and services from commercial and governmental customers. If any of our contracts were to be terminated, our backlog would be reduced by the expected value of the remaining terms of such contract.

The amount of contract backlog is not necessarily indicative of future revenue because modifications to, or terminations of present contracts and production delays can provide additional revenue or reduce anticipated revenue. A substantial portion of our revenue has been for the support of our product development efforts. These revenues are mostly recognized using the percentage-of-completion method, and changes in estimates from time to time may have a significant effect on revenue and backlog. Our backlog is also typically subject to large variations from time to time due to the timing of new awards.

Going Concern

Our financial statements have been prepared assuming we will continue as a going concern. We have experienced substantial and recurring losses from operations, which losses have caused an accumulated deficit of $209.8 million at April 30, 2019. Based on the Company's cash, cash equivalents and restricted cash balances as of April 30, 2019, the Company believes that it will be able to finance its capital requirements and operations into the quarter ending July 31, 2020. The report of our independent registered public accounting firm on our consolidated financial statements for the year ended April 30, 2019, contains an explanatory paragraph regarding our ability to continue as a going concern, based on, among other factors, that our ability to continue as a going concern is dependent upon our ability to raise additional external capital and increase revenues. These factors, among others, raise substantial doubt about our ability to continue as a going concern. Our consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty. We cannot assure you that we will be successful in our efforts to generate revenues, become profitable, raise additional outside capital or to continue as a going concern. If we are not successful in our efforts to raise additional capital sufficient to support our operations, we would be forced to cease operations, in which event investors would lose their entire investment in our company.

Critical Accounting Policies and Estimates

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

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

Legal contingencies

As discussed in Part I, Item 3 of this Annual Report under the heading "Legal Proceedings" and in Note 14, "Commitments and Contingencies," in Notes to the Consolidated Financial Statements, the Company is currently subject to various legal proceedings and claims. The Company records a contingent liability when it is probable that a loss has been incurred and the amount is reasonably estimable in accordance with ASC Topic 450, Contingencies: Loss Contingencies. There is a significant judgment required in both the probability determination and as to whether an exposure can be reasonably estimated since the outcome of legal proceedings and claims brought against the Company are subject to significant uncertainty. In management's opinion, any reasonable possible losses in addition to the amounts accrued for litigation, individually or in the aggregate, could possibly have a material adverse effect on its financial condition or operating results.

Revenue recognition

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

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

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

Warrant accounting

The Company accounts for warrants issued in connection with its public offerings in accordance with the guidance on "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity" in Topic 480 which provides that warrants meeting the classification of a liability award are recorded as a liability at its fair value. The warrant liabilities are subject to re-measurement at each balance sheet date using the Black-Scholes option pricing model. The Company recognizes any change in fair value in its consolidated statements of operations within "Gain due to the change in fair value of warrant liabilities". The Company will continue to adjust the carrying value of the warrants for changes in the estimated fair value until such time as these instruments are exercised or expire. At that time, the liabilities will be reclassified to "Additional paid-in capital", a component of "Stockholders' equity" on the Consolidated Balance Sheets. The common warrants issued in connection with the Company's public offerings in June and July 2016 met the criteria of a liability award and were classified to warrant liabilities. The pre-funded and common warrants issued in the Company's April 8, 2019 public offering did not meet the criteria required to be classified as a liability award and therefore were treated as an equity award.

Financial Operations Overview

Over the next several years, it is our goal to fund the majority of our product development efforts with sources from commercial relationships, including cost-sharing agreements. If we are unable to obtain commercial relationships or cost-sharing arrangements, we may be forced to curtail our development expenses and scope to reduce our overall expenses. We recently narrowed our development focus to the PB3 to drive toward commercialization of that product and to reduce our overall expenses.

The following table provides information regarding the breakdown of our revenues by customer for fiscal years 2019 and 2018:

	Twelve months ended April 30,	
	2019	2018
	(in thousands)	
Eni S.p.A.	$ 341	$ 171
Mitsui Engineering & Shipbuilding	-	218
Premier Oil UK Limited	206	51
Office of Naval Research	-	71
Other	85	-
	$ 632	$ 511

We currently focus our sales and marketing efforts on parts of North America, Europe, South America and Asia. The following table shows the percentage of our revenues by geographical location of our customers for fiscal 2019 and 2018:

	Twelve months ended April 30,	
Customer Location	**2019**	**2018**
Asia	0%	43%
Europe	92%	43%
United States	8%	14%
	100%	100%

Foreign exchange loss

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

We maintain cash accounts that are denominated in British pounds sterling, Euros and Australian dollars. These foreign denominated accounts had a balance of $0.7 million as of April 30, 2019 and $1.0 million as of April 30, 2018, compared to our total cash, cash equivalents, and restricted cash balances of $17.2 million as of April 30, 2019 and $12.3 million as of April 30, 2018. These foreign currency balances are translated at each month end to our functional currency, the US dollar, and any resulting gain or loss is recognized in our results of operations.

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

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

Results of Operations

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

Fiscal Years Ended April 30, 2019 and 2018

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the years ended April 30, 2019 and 2018:

	Twelve months ended April 30,		% change 2019 period to 2018 period
	2019	2018	
	(in thousands)		
Revenues	$ 632	$ 511	24%
Cost of revenues	1,303	763	71%
Gross loss	(671)	(252)	
Operating expenses:			
Engineering and product development costs	4,984	4,320	15%
Selling, general and administrative costs	7,616	6,988	9%
Total operating expenses	12,600	11,308	
Operating loss	(13,271)	(11,560)	
Gain due to the change in fair value of warrant liabilities	195	122	60%
Interest income, net	35	83	-58%
Other income	-	4	-100%
Foreign exchange gain/(loss)	(55)	75	-173%
Loss before income taxes	(13,096)	(11,276)	16%
Income tax benefit	850	1,119	-24%
Net loss	$ (12,246)	$ (10,157)	21%

Revenues

Revenues for the fiscal years ended April 30, 2019 and 2018 were approximately $0.6 million and $0.5 million, respectively. The increase of approximately $0.1 million or 24% over 2018 was attributable to more new contracts signed and started at the end of fiscal year 2018 and beginning of fiscal year 2019 relating to Eni, PMO, EGP, and the U.S. Navy SBIR grant. The MES and ONR contracts were completed in the first half of fiscal 2018.

Cost of revenues

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

Cost of revenues for the fiscal years ended April 30, 2019 and 2018 were approximately $1.3 million and $0.8 million, respectively. The increase of approximately $0.5 million, or 71%, over 2018 mostly due to higher upfront spending and material costs on the new customer contracts in fiscal 2019 as compared to the same period in the fiscal 2018. During fiscal 2018, all of projects were completed in the first half of the year and spending on the new customer contracts commenced in the fourth quarter, 2018.

Engineering and product development costs

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

Engineering and product development costs during the fiscal year ended April 30, 2019 were $5.0 million as compared to $4.3 million for fiscal year 2018. The increase of $0.7 million, or 15%, is due to higher spending on new products being developed, PB3 PowerBuoy® builds for future customer contracts, and higher personnel costs as compared to the same period in fiscal 2018.

Selling, general and administrative costs

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

Selling, general and administrative costs during the fiscal year months ended April 30, 2019 were $7.6 million as compared to $7.0 for fiscal year 2018. The increase of $0.6 million, or 9%, is primarily attributable to higher investor relations costs of $0.4 million, higher professional fees of $0.2 million and higher sales and marketing of $0.1 million partly offset by lower spending of $0.1 million in employee related costs.

Gain due to the change in fair value of warrant liabilities

The change in fair value of warrant liabilities during the fiscal year ended April 30, 2019 was an unrealized gain of $195,000 versus an unrealized gain of $122,000 for the fiscal months ended April 30, 2018. The change between periods is mainly due to a lower stock price for the twelve months ended April 30, 2019.

Interest income, net

Interest income, net consists of interest received on cash and cash equivalents, investments in money market accounts and interest expense paid on certain obligations to third parties. Total cash, cash equivalents, and restricted cash were $17.2 million as of April 30, 2019, compared to $12.3 million as of April 30, 2018.

Interest income, net during the fiscal year 2019 was approximately $35,000 compared to $83,000 for fiscal 2018. The decrease in interest income year over year is due to a lower average cash balance in fiscal year 2019.

Foreign exchange gain/(loss)

Foreign exchange loss was approximately $55,000 for fiscal year 2019 as compared to a foreign exchange gain of $75,000 for fiscal year 2018. The difference was attributable primarily to the relative change in value of the British pound sterling, Euro and Australian dollar compared to the U.S. dollar during the two periods.

Income tax benefit

During the fiscal years ended April 30, 2019 and 2018, the Company sold New Jersey State net operating losses and research and development credits in the amount of $9.1 million and $11.5 million, respectively, resulting in the recognition of income tax benefits of $0.9 million and $1.1 million, respectively. The Company has a full valuation allowance against its deferred tax assets.

Liquidity and Capital Resources

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

Net cash used in operating activities

Net cash flows used in operating activities during the fiscal year ended April 30, 2019 were $12.1 million, an increase of $1.4 million, when compared to $10.7 million during the fiscal year ended April 30, 2018. The change was the result of an increase in net loss of $2.1 million and payment of deferred credits of $0.6 million partly offset by the net change in operating assets and liabilities of $1.3 million.

Net cash used in investing activities

Net cash used in investing activities was approximately $29,000 for fiscal year 2019 versus net cash used by investing activities of approximately $658,000 for fiscal year 2018. The change was primarily the result of the Company's decreased spending on equipment and leasehold improvements relating to its new facility in Monroe, New Jersey.

Net cash provided by financing activities

Net cash provided by financing activities was approximately $17.2 million in fiscal year 2019, and net cash provided by financing activities was approximately $14.6 million for fiscal 2018. The increase in net cash provided in fiscal year 2019 compared to fiscal year 2018 was due primarily to the Company receiving more proceeds from sales of its common stock in fiscal year 2019.

Effect of exchange rates on cash and cash equivalents

The effect of exchange rates on cash and cash equivalents was a reduction of approximately $80,000 in fiscal year 2019, a decrease of $168,000 from fiscal year 2018, respectively. The effect of exchange rates on cash and cash equivalents results primarily from gains or losses on consolidation of foreign subsidiaries and foreign denominated cash and cash equivalents.

Liquidity Outlook

Our financial statements have been prepared assuming we will continue as a going concern. We have experienced substantial and recurring losses from operations, which losses have caused an accumulated deficit of $209.8 million at April 30, 2019. We generated revenues of only $0.6 million in fiscal year 2019, and $0.5 million in fiscal year 2018. Based on the Company’s cash, cash equivalents and restricted cash balances as of April 30, 2019, the Company believes that it will be able to finance its capital requirements and operations into the quarter ending July 31, 2020. These conditions raise substantial doubt about our ability to continue as a going concern.

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

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

Our business is capital intensive, and, to date, we have been funding our business principally through sales of our securities, and we expect to continue to fund our business with sales of our securities and, to a limited extent, with our revenues until, if ever, we generate sufficient cash flow to internally fund our business. This is largely a result of the high engineering and product development costs associated with our product development. We anticipate that our operating expenses will be approximately $14.4 million in fiscal year 2020 including product development spending of more than $7.4 million. We may choose to reduce our operating expenses through personnel reductions, and reductions in our research and development and other operating costs during the fiscal year 2020, if we are not successful in our efforts to raise additional capital. We cannot assure you that we will be able to increase our revenues and cash flow to a level which would support our operations and provide sufficient funds to pay our obligations for the foreseeable future. Further, we cannot assure you that we will be able to secure additional financing or raise additional capital or, if we are successful in our efforts to raise additional capital, of the terms and conditions upon which any such financing would be extended. If we are unable to raise additional capital when needed or generate positive cash flow, it is unlikely that we will be able to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Off-Balance Sheet Arrangements

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

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update (ASU) No. 2014-09, "*Revenue from Contracts with Customers (Topic 606).*" ASU 2014-09 outlines a new, single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. This new revenue recognition model provides a five-step analysis in determining when and how revenue is recognized. The new model will require revenue recognition to depict the transfer of promised goods or services to customers in an amount that reflects the consideration a company expects to receive in exchange for those goods or services. The FASB subsequently issued additional clarifying standards to address issues arising from implementation of the new revenue standard, including a one-year deferral of the effective date for the new revenue standard. Public companies should now apply the guidance in ASU 2014-09 to annual reporting periods beginning after December 15, 2017 and interim periods within those annual periods. Earlier application is permitted only as of annual reporting periods beginning after December 15, 2016, including interim periods within that annual period. Companies may use either a full retrospective or a modified retrospective approach to adopt ASU 2014-09. Under the full retrospective method, the standard would be applied to each prior reporting period presented and the cumulative effect of applying the standard would be recognized at the earliest period shown. Under the modified retrospective method, the cumulative effect of applying the standard would be recognized at the date of application. Effective May 1, 2018, the Company adopted the requirements of ASU 2014-09 using the modified retrospective method. As a practical expedient, the Company adopted the new standard only for existing contracts as of May 1, 2018, the date of adoption. Any contracts that had expired prior to May 1, 2018 were not evaluated against the new standard. The Company adopted ASU 2014-09 and the adoption did not have a material impact on the Company's consolidated financial position, results of operations or cash flows.

In February 2016, the FASB issued ASU No. 2016-02, *"Leases (Topic 842)"* which amends the existing guidance on accounting for leases. Topic 842 was further clarified and amended within ASU 2017-13, ASU 2018-01, ASU 2018-10, ASU 2018-11 and ASU 2018-20. The new standard establishes a right-of-use (ROU) model that requires a lessee to record a ROU asset and a lease liability on the balance sheet for all leases with terms greater than twelve months or leases that contain a purchase option that is reasonably certain to be exercised. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. ASU 2016-02 is effective for annual periods beginning after December 15, 2018, including interim periods within those annual periods, with early adoption permitted. The company will adopt Topic 842 during the first quarter of 2019 using the modified retrospective method. The new guidance will be applied to leases that exist or are entered into on or after May 1, 2019 without adjusting comparative periods in the financial statements. The Company expects to utilize the package of practical expedients in ASC 842-10-65-1(f) that, upon adoption of Topic 842, allows entities to (1) not reassess whether any expired or existing contracts are or contain leases, (2) retain the classification of leases (e.g., operating or finance lease) existing as of the date of adoption and (3) not reassess initial direct costs for any existing leases. Based on the most recent assessment of existing leases, the Company expects to record a right-of-use asset and a lease liability in the range of $1.0 to $2.0 million that will be included on the balance sheet as of May 1, 2019. The Company does not expect the adoption of Topic 842 to have a material impact on the company's results of operations or cash flows.

In August 2016, the FASB issued ASU 2016-15, *"Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments"* providing additional guidance on eight specific cash flow classification issues. The goal of the ASU is to reduce diversity in practice of classifying certain items. The amendments in the ASU are effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years and early adoption is permitted. The Company adopted the standard on May 1, 2018 and determined the standard had no impact on its financial position, results of operations or cash flows.

In May 2017, the FASB issued ASU 2017-09, "*Compensation — Stock Compensation (ASC Topic 718): Scope of Modification Accounting,"* which clarifies when changes to the terms or conditions of a share-based payment award must be accounted for as a modification. Entities should apply the modification accounting guidance if the value, vesting conditions or classification of the award changes. The amendments in the ASU are effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years and early adoption is permitted. The Company adopted the standard on May 1, 2018 and determined the standard no impact on its financial position, results of operations or cash flows.

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

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

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

Disclosure controls and procedures are our controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 (the” Exchange Act”) is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

As of the end of the period covered by this Annual Report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Exchange Act Rule 13a-15(b). Based upon that evaluation, as of April 30, 2019, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective.

Internal Control over Financial Reporting

The annual report of management on the Company’s internal control over financial reporting is provided under “Reports of Management” on page F-2, which is incorporated herein by reference as if fully set forth herein. As described therein, management concluded that the Company’s internal control over financial reporting was effective as of April 30, 2019.

Changes in Internal Control over Financial Reporting

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the quarter ended April 30, 2019 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. *OTHER INFORMATION*

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Directors

All of the directors bring to our Board of Directors executive leadership experience from their service as executives and/or directors of our Company and/or other entities. The biography of each director contains information regarding the person's service as a director, business experience, director positions held currently or at any time during the last five years, and the experiences, qualifications, attributes and skills that caused the Nominating and Corporate Governance Committee and our Board of Directors to determine that the person should serve as a director, given our business and structure.

Name	Age	Position(s) with the Company	Served as Director From
Terence J. Cryan	56	Chairman of the Board	2012
Dean J. Glover	53	Vice Chairman of the Board and Independent Director	2014
George H. Kirby III	49	Chief Executive Officer and Director	2015
Steven M. Fludder	59	Independent Director	2016
Robert K. Winters	51	Independent Director	2016
Kristine S. Moore	58	Independent Director	2018

Terence J. Cryan has been a member of our Board of Directors since October 2012 and Chairman of the board since June 2014. Prior to joining our Board, Mr. Cryan was a member of our Board of Advisors. Mr. Cryan was our lead independent director from October 2013 to June 2014 when he became Chairman of the Board. Since August 2017, Mr. Cryan has served as the Chairman of the Board of Westwater Resources, Inc. Mr. Cryan has served on the boards of directors of a number of other publicly traded companies including Uranium Resources, Inc. from 2006 to 2016; Global Power Equipment Group Inc. from 2008 to 2017; Superior Drilling Products from May 2014 to 2016; Gryphon Gold Corporation from 2009 to 2012; and The Providence Service Corporation from 2009 to 2011. Mr. Cryan previously served as President and Chief Executive Officer of Medical Acoustics, LLC from 2007 through 2010. From September 2012 until April 2013, Mr. Cryan also served as interim President and CEO of Uranium Resources, Inc., and was elected as Chairman of the Board of Directors of Uranium Resources, Inc. in June 2014 and served until March 2016. Mr. Cryan served as President and CEO of Global Power Equipment Group Inc., from March 2015 until July 2017. Mr. Cryan co-founded in 2001 Concert Energy Partners, LLC, an investment and private equity firm based in New York with a focus on the traditional and alternative energy, power and natural resources industries, and served as Managing Director until 2015. Between 1990 and 2001, Mr. Cryan was a Senior Managing Director in the investment banking department at Bear Stearns & Co. Inc. in New York City and a Managing Director at Paine Webber/Kidder Peabody in both New York City and London. Mr. Cryan earned his Bachelor of Arts degree from Tufts University in 1983 and a Master of Science degree in Economics from The London School of Economics in 1984. In December 2014, Terence Cryan was named a Board Leadership Fellow by the National Association of Corporate Directors. We believe Mr. Cryan's qualifications to sit on our Board of Directors include his significant experience in financial matters, his prior board and executive experience at other companies, his broad energy industry background and his extensive expertise in financings, mergers and acquisitions.

Dean J. Glover became a member of our Board of Directors in October 2014, replacing a director who retired, and was elected Vice Chairman of our Board of Directors in July 2016. Since March 2018, Mr. Glover has served as a member of the Board of Directors of ConXtech. Mr. Glover is currently the CEO of Techniks Tool Group. Prior to Techniks Tool Group from October 2014 until 2017, Mr. Glover served as MIRATECH President & CEO. Prior to this, he was Senior Vice President and President of the Products Division of Global Power Equipment Group Inc. Mr. Glover joined Global Power in December 2005 as Chief Operating Officer of Braden Manufacturing. Prior to joining Global Power, Mr. Glover led the global supply chain and manufacturing for Diebold Inc. Prior to this Mr. Glover spent 13 years with General Electric (NYSE: GE) in various managerial and technical roles and is a certified Six Sigma Master Black belt. Mr. Glover currently serves as a director of Oklahoma Scholastic Organization, a non-profit organization. Mr. Glover holds a Bachelor's degree in Mechanical Engineering from the University of Nebraska and an M.B.A. from the Kellogg Graduate School of Management, Northwestern University. Mr. Glover has extensive international experience having lived in various international locations for most of his career. Mr. Glover has over 25 years of commercial and technical experience in industry. We believe Mr. Glover's qualifications to sit on our Board of Directors include his significant managerial, commercial and technical experience in the energy technology industry.

George H. Kirby III has served as our President, Chief Executive Office and a member of our Board of Directors since January 20, 2015. Prior to this, Mr. Kirby was Senior Vice President at AECOM Technology Corporation (NYSE: ACM) a leading provider of engineering, procurement and construction ("EPC") services. In this role, he led their Energy Business Line for the north U.S. region providing services for utilities, power transmission and generation developers, and large industrial energy efficiency end-users. Prior to AECOM, he joined SAIC Energy, Environment, & Infrastructure (NYSE: SAIC) in January 2012 a global leader in solutions for national security, healthcare and engineering, as Managing Director for their Asset Transactions group providing power generation investors and developers with technical and market consulting and advisory services and was promoted to Vice President in 2013 providing EPC services to Investor Owned Utilities. In 2009, he joined American Superconductor (Nasdaq: AMSC) as Director of Global Sales and was promoted to Managing Director of the Americas and Australia in 2011. From 2000 to 2009, Mr. Kirby held significant leadership roles at General Electric in both GE Energy and GE Capital (NYSE: GE) in product development, global sales, quality and project finance. In June 2016, Mr. Kirby was elected to the Board of Trustees of the Sea Research Foundation, a non-profit organization in Mystic, Connecticut. Mr. Kirby previously served as a director of Blade Dynamics, LLC from April to December 2011, and Schooner, Inc. from June to October 2012. Mr. Kirby earned a Bachelor of Science degree in Aerospace Engineering from Syracuse University in 1992 and an M.B.A. from Smeal College of Business at Pennsylvania State University in 2008. We believe Mr. Kirby's significant leadership experience in energy industries qualifies him to serve on our Board of Directors.

Steven M. Fludder became a member of the Board of Directors on May 5, 2016. Mr. Fludder brings more than 30 years of global executive leadership in energy and infrastructure markets. Since November 2017, Mr. Fludder has served as the Chief Executive Officer for NEC Energy Solutions. Prior to joining NEC Energy Solutions, Mr. Fludder was the Chief Executive Officer with alpha-En, a publicly traded innovative clean technology company focused on enabling next generation battery technologies by developing high purity lithium products. Prior to alpha-En, Mr. Fludder was Chief Executive of AECOM's global Energy and Water practice. Prior to AECOM, he was Senior Executive Vice President, Division General Manager and Samsung group officer where he was head of worldwide sales and marketing for Samsung Engineering, a global engineering, procurement and construction (EPC) firm serving a broad range of energy industries including power, oil & gas, petrochemicals, and metallurgy. He was subsequently President of Samsung Techwin Power Systems Division. Prior to Samsung, Mr. Fludder served as a Vice President and General Electric corporate officer where he led GE's companywide environmental business initiative "ecomagination". Earlier in his career at GE, Mr. Fludder held executive leadership roles in the Water, Energy Services, Energy China, and Aircraft Engines divisions. He has significant experience scaling and growing energy related technology businesses through start-ups, acquisitions and turnarounds. Mr. Fludder holds a Master's degree in Mechanical Engineering from the Massachusetts Institute of Technology, a bachelor's degree in Mechanical Engineering from Columbia University, and a second Bachelor of Science degree from Providence College. We believe Mr. Fludder's qualifications to serve on our Board of Directors include his wide experience in both the energy and infrastructure markets, as well a variety of other industry segments related to our business.

Robert K. Winters became a member of the Board of Directors on May 5, 2016. Robert Winters has been with Alpha IR Group since September 2015, and currently serves as Senior Managing Director. He established and is running the NYC office for Chicago-based firm, which specializes in providing strategic counsel to small- and mid-cap U.S. companies across a broad range of industries. Prior to this, he was a partner and portfolio manager at Zesiger Capital Group, LLC for 14 years; Zesiger Capital Group, LLC is an investment advisor based in NYC, catering to both large institutional clients and high net-worth individuals. Zesiger's investment strategy during Mr. Winters' tenure was to take concentrated, long-term investment positions in small-and mid-cap stocks in the U.S., as well as in select emerging and frontier markets. Additionally, Mr. Winters managed fixed income investments on behalf of clients at Zesiger, as well as private investments; Mr. Winters sat on the boards of several private portfolio companies during his time at Zesiger. Prior to his work at Zesiger Capital Group, LLC, Mr. Winters worked as a Managing Director and Senior Natural Resource analyst for almost 10 years at Bear, Stearns & Co., Inc., where he focused on energy, metals and mining. Mr. Winters began his finance career at CS First Boston following his work as an international trade analyst with Kilpatrick & Cody in Washington, D.C. Mr. Winters served as a director of LRM Industries International from 2009 until 2014 Mr. Winters graduated from Georgetown University in 1990 with a dual major in International Relations and History. We believe Mr. Winter's qualifications to serve on our Board of Directors include his extensive finance experience, as well his experience with small-cap and mid-cap public companies.

Kristine S. Moore became a member of the Board of Directors on September 10, 2018. From December 2015 through April 2018, Ms. Moore served as non-executive director at Achilles Ltd., a global private-equity held company based in London. Prior to Achilles, Ltd. from 2001 to 2015, Ms. Moore was with Royal Dutch Shell ("Shell"), an international energy company. During this time, Ms. Moore held various positions at Shell; during 2015 Ms. Moore was Vice President of Contracting and Procurement; from 2011 to 2014, Vice President of Contracting and Procurement Operations and Group Materials Management; from 2007 to 2010, Vice President of Global Functions Sourcing; and from 2001 to 2007, Ms. Moore held various managerial positions. Prior to Shell, Ms. Moore from 2000 to 2001 served as Vice President of Marketing and Sales for Quaris, Inc. Ms. Moore began her career at International Business Machines where she held various positions. Ms. Moore is a graduate of Rice University with a Bachelor of Science in Civil Engineering. We believe Ms. Moore's qualifications to serve on our Board of Directors include her extensive experience in the oil and gas markets, as well as her business background in sales, marketing, and supply chain management.

Executive Officers

We have one executive officer who is not also a director:

Name	Age	Position with Ocean Power Technologies, Inc.
Matthew T. Shafer	48	Vice President, Chief Financial Officer and Treasurer

Matthew T. Shafer joined the Company in September 2016 as Chief Financial Officer and Treasurer of the Company. Mr. Shafer previously served as a Vice President of Finance and Corporate Controller for CMF Associates from May 2015 to September 2016, where he led teams in providing finance solutions for small and middle-market high-growth organizations. Prior to that, beginning in 2013 he served as a Business Unit Chief Financial Officer at Valeant Pharmaceuticals International (NYSE: VRX), a large global publicly traded company that develops, manufactures, markets and sells specialty pharmaceuticals and medical devices. He held this Finance Leadership role for the Valeant Dentistry, Generics and Neurology business units, and had worked closely with commercial operations and corporate level teams on numerous product launches, sales force expansions, mergers and acquisitions, financial systems integrations, and internal controls. Mr. Shafer has a foundation in Public Accounting working at Arthur Andersen LLP at the beginning of his career, holds a Bachelor of Science in Accounting from The Stillman School of Business at Seton Hall University, an MBA in Finance from Rutgers Business School in New Brunswick, N.J. and is a Certified Public Accountant.

Corporate Governance

Our Board of Directors believes that good corporate governance is important to ensure that the Company is managed for the long-term benefit of our stockholders. This section describes key corporate governance guidelines and practices that our Board has adopted. Complete copies of our corporate governance guidelines, committee charters and code of business conduct and ethics are available on the corporate governance section of our website, *www.oceanpowertechnologies.com*. Alternatively, you can request a copy of any of these documents by writing to our Secretary at 28 Engelhard Drive, Monroe Township, NJ 08831.

Corporate Governance Guidelines

Our Board has adopted corporate governance guidelines to assist in the exercise of its duties and responsibilities and to serve the best interests of the Company and our stockholders. These guidelines, which provide a framework for the conduct of the Board's business, provide that:

- the Board's principal responsibility is to oversee the management of the Company;
- a majority of the members of the Board shall be independent directors;
- the non-employee directors shall meet regularly in executive session;
- directors have full and free access to management and, as necessary and appropriate, independent advisors; and
- at least annually, the Board and its committees will conduct a self-evaluation to determine whether they are functioning effectively.

Audit Committee

The members of our Audit Committee are Dean J. Glover, Steven M. Fludder and Robert K. Winters. Mr. Glover is the chair of the Audit Committee. The Board of Directors has determined that Mr. Glover is an "audit committee financial expert" within the meaning of the regulations of the Securities and Exchange Commission (the "SEC"). The Audit Committee met 4 times in fiscal 2019. Our Board has also determined that all Audit Committee members meet the independence requirements contemplated by Rule 5605(c) of the Nasdaq Stock Market and Rule 10A-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Our Audit Committee assists our Board of Directors in its oversight of the integrity of our consolidated financial statements, our independent registered public accounting firm's qualifications, independence and performance.

Our Audit Committee's responsibilities include: appointing, approving the compensation of, and assessing the independence of, our independent registered public accounting firm; overseeing the work of our independent registered public accounting firm, including through the receipt and consideration of reports from our independent registered public accounting firm; reviewing and discussing with management and our independent registered public accounting firm our annual and quarterly consolidated financial statements and related disclosures; monitoring our internal control over financial reporting, disclosure controls and procedures and code of business conduct and ethics; establishing procedures for the receipt and retention of accounting related complaints and concerns; meeting independently with our independent registered public accounting firm and management; and preparing the Audit Committee report required by SEC regulations.

Material Changes in Director Nominations Process

There have not been any material changes to the procedures by which shareholders may recommend nominees to our Board.

Code of Ethics

We have adopted a Code of Business Conduct and Ethics that applies to our employees, officers (including our principal executive officer and principal financial officer) and directors. The Code of Business Conduct and Ethics is posted on our website at *www.oceanpowertechnologies.com* and can also be obtained free of charge by sending a request to our Secretary at 28 Engelhard Drive, Suite B, Monroe Township, NJ 08831. Any changes to or waivers under the Code of Business Conduct and Ethics as it relates to our chief executive officer, chief financial officer, controller or persons performing similar functions must be approved by our Board of Directors and will be disclosed in a Current Report on Form 8-K within four business days of the change or waiver.

Section 16(a) Beneficial Ownership Reporting Compliance

Pursuant to Section 16(a) of the Exchange Act and the rules issued thereunder, our executive officers and directors are required to file with the SEC reports of ownership and changes in ownership of Common Stock. Copies of such reports are required to be furnished to us. Based solely on a review of the copies of such reports furnished to us, or written representations that no other reports were required, we believe that the Form 3 for Ms. Moore was not filed in fiscal 2019 in a timely manner.

ITEM 11. EXECUTIVE COMPENSATION

DIRECTOR COMPENSATION

For Board service year 2019, the Board of Directors approved, for each non-employee director, an annual payment of $45,000 and a choice of either (a) an option worth $50,000, based on the Black-Scholes formula, to purchase shares of Common Stock or (b) Common Stock worth $50,000, with such option award or stock award to vest, if at all, at the next annual meeting of stockholders. For fiscal year 2019 each of the Directors chose to take a stock option of 2,500 shares. Directors serving a portion of a year receive a pro-rata grant. Each non-employee director also receives a per annum supplement ranging from $2,000 to $9,600 for each committee that they chair. In addition, the Chairman of the Board annually receives an additional $38,000.

We reimburse each non-employee director for out-of-pocket expenses incurred in connection with attending our Board and Board committee meetings. Compensation for our directors, including cash and equity compensation, is determined, and remains subject to adjustment, by our Board of Directors.

The following table summarizes compensation paid to each of our non-employee directors who served during fiscal year 2019.

Name (1)	Fees Earned or Paid in Cash ($) (2)	Stock Awards ($)	Option Awards ($) (3)	Total ($)
Terence J. Cryan	85,000	-	17,870	102,870
Dean J. Glover	54,600	-	17,870	72,470
Steven M. Fludder	53,000	-	17,870	70,870
Robert K. Winters	45,000	-	17,870	62,870
Kristine S. Moore	24,946	-	17,870	42,816

(1) George H. Kirby III, the Company's President and Chief Executive Officer is not included in this table as he is an employee of the Company and thus receives no compensation for his services as a Director. The compensation received by Mr. Kirby as an employee of the Company is shown in the Summary Compensation Table on page 58.

(2) Fees earned or paid in cash reflect annual retainer and committee meeting fees.

(3) Stock options granted to directors vest fully on the date of the first annual shareholders meeting following the grant date. The amounts in the "Option Awards" column reflect the aggregate grant date fair value of stock options granted during the year computed in accordance with the provisions of Accounting Standards Codification (ASC) No. 718, "*Compensation- Stock Compensation*." The assumptions used in calculating these amounts are incorporated by reference to Note 2 to the financial statements in this Annual Report.

The following table summarizes grants during fiscal year 2019.

Name	Stock Awards	Option Awards	Total
Terence J. Cryan (1)	-	2,500	2,500
Dean J. Glover (1)	-	2,500	2,500
Steven M. Fludder (1)	-	2,500	2,500
Robert K. Winters (1)	-	2,500	2,500
Kristine S. Moore (1)	-	2,500	2,500

(1) During fiscal year 2019 each board member was granted stock options exercisable for 2,500 shares of common stock for Board service during the year ending October 31, 2019.

EXECUTIVE COMPENSATION

Overview of Executive Compensation

Our Compensation Committee is responsible for overseeing the compensation of all of our executive officers. In this capacity, the Compensation Committee designs, implements, reviews and approves all compensation for our named executive officers. The goal of the Compensation Committee is to ensure that our compensation programs are aligned with our business goals and objectives and that the total compensation paid to each of our named executive officers is fair, reasonable and competitive.

Compensation Objectives and Philosophy

Our compensation programs are designed to attract and retain qualified and talented executives, motivating them to achieve our business goals and rewarding them for superior short- and long-term performance. In particular, our compensation programs are intended to reward the achievement of specified predetermined quantitative and qualitative goals and to align our executives' interests with those of our stockholders in order to attain the ultimate objective of increasing stockholder value.

Elements of Total Compensation and Relationship to Performance

Key elements of these programs include:

- base salary compensation designed to reward annual achievements, with consideration given to the executive's qualifications, scope of responsibility, leadership abilities and management experience and effectiveness;
- cash bonus awards designed to align executive compensation with business objectives and performance; and
- equity-based incentive compensation, primarily in the form of stock options and restricted stock, the value of which is dependent upon the performance of our Common Stock, and which is subject to multi-year vesting that requires continued service and/or the attainment of certain performance goals.

Determining and Setting Executive Compensation

Our management develops our compensation plans by utilizing publicly available compensation and on-line survey data for a broad selection of national and regional companies, which we believe are generally comparable to the Company in terms of public ownership, organizational structure, size and stage of development, and against which we believe we may compete for executive talent. The results of these analyses are reviewed with and approved by the Compensation Committee annually. We believe that these compensation practices provide us with appropriate compensation guidelines. The Compensation Committee generally targets compensation for our executives near the median range of compensation paid to similarly situated executives in comparable companies covered by the on-line survey data. Other considerations, including market factors, the unique nature of our business and the experience level of an executive, may dictate variations to this general target.

Our business is characterized by a long product development cycle, including a lengthy engineering and product-testing period and regulatory approval and licensing. Because of this, many of the traditional benchmarking metrics, such as product sales, revenues and profits are inappropriate for our Company. Instead, the specific factors the Compensation Committee considers when determining our named executive officers' compensation include:

- key product development initiatives;
- technology advancements;
- achievement of regulatory and other commercial milestones;
- establishment and maintenance of key strategic relationships;
- implementation of appropriate financing strategies; and
- financial and operating performance.

Summary Compensation Table

The following table sets forth the compensation paid or accrued during the fiscal years ended April 30, 2019 and April 30, 2018 to our named executive officers.

Name and Principal Position	Year	Salary ($) (1)	Bonus ($) (2)	Stock Awards ($) (3)	Option Awards ($)	All Other Compensation ($)	Total ($)
George H. Kirby III	2019	391,140	173,138	-	71,480	84,104(4)	719,862
President and Chief Executive Officer	2018	381,600	276,565	70,000	-	51,710(4)	779,875
Matthew T. Shafer	2019	253,125	73,406	-	41,101	9,434(5)	377,066
Vice President, Chief Financial Officer and Treasurer	2018	236,042	118,750	20,418	-	4,450(5)	379,660
Christopher Phebus (6)	2019	158,649	-	-	-	37,590(7)	196,239
Vice President, Engineering	2018	79,784	37,406	108,000	-	17,815(7)	243,005
Dr. Mike M. Mekhiche (8)	2019	-	-	-	-	-	-
Former Executive Vice President, Engineering and Operations	2018	91,814	-	-	-	33,712(9)	125,526

(1) Salary represents actual salary earned during each fiscal year. The amounts in this column may be different from the amounts listed below under description of employment agreements, due to increases in salary levels and payments for unused vacation during each fiscal year.

(2) This amount represents bonuses earned by the named executive officers in fiscal year 2019 and 2018.

(3) The amounts in the "Stock Awards" column reflect the aggregate grant date fair value of stock options granted during the year computed in accordance with the provisions of Accounting Standards Codification (ASC) No. 718, "*Compensation- Stock Compensation*." The assumptions used in calculating these amounts are incorporated by reference to Note 2 to the financial statements in this Annual Report.

(4) For fiscal year 2019 the amount of $84,104 includes $48,024 for relocation expenses, $27,079 payout for unused vacation and $9,000 relates to the Company's matching contributions to the 401(K) Plan. For fiscal year 2018 the amount of $51,710 includes $42,710 for relocation expenses and $9,000 relates to the Company's matching contributions to the 401(K) Plan. In accordance with his employment agreement Mr. Kirby is eligible for reimbursement of relocation expenses.

(5) For fiscal year 2019 the amount of $9,434 includes $3,636 payout for unused vacation and $5,797 relates to the Company's matching contributions to the 401(K) Plan. For fiscal year 2019 the amount of $4,450 relates to the Company's matching contributions to the 401(K) Plan.

(6) Mr. Phebus joined the Company on January 15, 2018 to serve as the Company's Vice President of Engineering. Mr. Phebus resigned from his position as Vice President of Engineering effective November 30, 2018.

(7) For fiscal 2019 the amount $37,590 includes $32,185 for relocation expenses and $5,405 for unused vacation payout. For fiscal year 2018 the amount of $17,815 is relocation expenses in accordance with Mr. Phebus' employment agreement.

(8) Dr. Mekhiche resigned from his position as Executive Vice President, Engineering and Operations effective August 8, 2017.

(9) For fiscal year 2018 the amount of $33,712 includes $31,612 payout for unused vacation and $2,100 relates to the Company's matching contributions to the 401(K) Plan. For fiscal year 2017 the amount of $20,086 includes $12,886 payout for unused vacation and $7,200 relates to the Company's matching contributions to the 401(K) Plan.

Employment Agreements

George H. Kirby III - President, Chief Executive Officer and Director

Under an agreement entered into on December 29, 2014, Mr. Kirby was entitled to an initial annual base salary of $360,000 subject to adjustment upon annual review by our Board of Directors, was subsequently increased to $381,600 on May 1, 2016 and to $391,140 on May 1, 2018. Mr. Kirby is also eligible to earn discretionary incentive bonuses and incentive compensation. The Company also reimbursed Mr. Kirby for his eligible relocation costs.

Upon the termination of his employment other than for cause, other than as a result of a change of control, or if he terminates his employment for good reason (as such terms are defined in his employment agreement), Mr. Kirby has the right to receive severance payments. If such termination occurs, Mr. Kirby will receive twelve months of his base salary then in effect. Pursuant to this agreement, Mr. Kirby is prohibited from competing with us and soliciting our customers, prospective customers or employees during the term of his employment and for a period of one year after the termination or expiration of his employment.

Matthew T. Shafer - Vice President, Chief Financial Officer and Treasurer

On August 23, 2016, and in connection with his hiring by the Company, Mr. Shafer entered into an employment agreement with the Company, to be effective on September 7, 2016 (the “Shafer Employment Agreement”). Under the Shafer Employment Agreement, Mr. Shafer was entitled to an initial annual base salary of $220,000 subject to adjustment upon annual review by the Company’s Board of Directors, was subsequently increased to $250,000 on October 18, 2017 and to $253,125 on May 1, 2018. Mr. Shafer is also eligible to earn discretionary incentive bonuses and incentive compensation. He is also entitled to participate in all Company employee benefit plans.

Upon the termination of his employment other than for cause, or if he terminates his employment for good reason (as such terms are defined in the Shafer Employment Agreement), Mr. Shafer has the right to receive severance payments. If such termination occurs before the end of six months of service, he receives no severance. If such termination occurs after completing six months of service, Mr. Shafer will receive six months of his base salary. Pursuant to this agreement, Mr. Shafer is also subject to covenants regarding confidentiality, non-competition and non-solicitation during and after the term of his employment.

Stock Option and Other Compensation Plans

2006 Stock Incentive Plan

Our 2006 Stock Incentive Plan was adopted by our Board of Directors on December 7, 2006, was approved by our stockholders on January 12, 2007 and became effective on April 24, 2007. The 2006 Stock Incentive Plan provides for the grant of incentive stock options, non-statutory stock options, restricted stock awards and other stock-unit awards. On October 2, 2009, an amendment to the 2006 Stock Incentive Plan was approved, increasing the aggregate number of shares authorized for issuance by 42,500 shares to 82,661 shares. In 2010, our Board of Directors approved amending and restating the 2006 Stock Incentive Plan to make certain adjustments, including imposing minimum performance periods for performance awards and minimum vesting periods for time-based awards, a requirement that we obtain stockholder approval prior to certain option and stock appreciation right repricing actions, and limiting the situations in which vesting periods may be waived or accelerated. This amendment and restatement did not require the approval of our stockholders. On October 2, 2013, a further amendment to the 2006 Stock Incentive Plan was approved by our stockholders, increasing the aggregate number of shares authorized for issuance by an additional 40,000 shares to 122,661.

Our employees, officers, directors, consultants and advisors are eligible to receive awards under our 2006 Stock Incentive Plan; however, incentive stock options may only be granted to our employees. The maximum number of shares of Common Stock with respect to which awards may be granted to any participant under our 2006 Stock Incentive Plan is 10,000 per calendar year.

Our 2006 Stock Incentive Plan was administered by our Board of Directors. Pursuant to the terms of our 2006 Stock Incentive Plan, and to the extent permitted by law, our Board of Directors could delegate authority to one or more committees or subcommittees of the Board of Directors or to our officers. Our Board of Directors or any committee to whom the Board of Directors delegates authority selected the recipients of awards and determined:

- the number of shares of Common Stock covered by options and the dates upon which the options become exercisable;
- the exercise price of options; provided, however, that the exercise price shall not be less than 100% of the fair market value of the underlying Common Stock on the date the option is granted;
- the duration of the options; and
- the number of shares of Common Stock subject to any restricted stock or other stock-unit awards and the terms and conditions of such awards, including conditions for repurchase, issue price and repurchase price.

If our Board of Directors delegated authority to an officer, the officer had the power to make awards to all of our employees, except to executive officers. Our Board of Directors fixed the terms of the awards to be granted by such officer, including the exercise price of such awards, and the maximum number of shares subject to awards that such officer could make.

If a merger or other reorganization event occurred, our Board of Directors could provide that all of our outstanding options are to be assumed or substituted by the successor corporation. Our Board of Directors could also provide that, in the event the succeeding corporation did not agree to assume, or substitute for, outstanding options, then all unexercised options would become exercisable in full prior to the completion of the event and that these options would terminate immediately prior to the completion of the merger or other reorganization event if not previously exercised. Our Board of Directors could also provide for cashing out the value of any outstanding options.

No awards could be granted under our 2006 Stock Incentive Plan after December 6, 2016, but the vesting and effectiveness of awards granted before that date could extend beyond that date. Our Board of Directors could amend, suspend or terminate our 2006 Stock Incentive Plan at any time, except that stockholder approval would be required for any revision that would materially increase the number of shares reserved for issuance, expand the types of awards available under the plan, materially modify plan eligibility requirements, extend the term of the plan or materially modify the method of determining the exercise price of options granted under the plan, or otherwise as required to comply with applicable law or stock market requirements.

As of April 30, 2019, options to purchase 701 shares of our Common Stock at a weighted average exercise price of $566.62 were outstanding under our 2006 Stock Incentive Plan.

As of April 30, 2019, we had granted 5,701 shares of restricted Common Stock under our 2006 Stock Incentive Plan, of which zero remain outstanding as of April 30, 2019.

Once the 2015 Omnibus Incentive Plan (discussed below) was approved by the stockholders on October 22, 2015, no further stock options or other awards were awarded under the 2006 Stock Incentive Plan and it was terminated.

2015 Omnibus Incentive Plan

On August 17, 2015, the Board of Directors approved, subject to the receipt of stockholder approval, the Ocean Power Technologies, Inc. 2015 Omnibus Incentive Plan (the “2015 Plan”). On October 22, 2015, the stockholders approved the 2015 Plan and the 2006 Stock Incentive Plan was terminated. Effective August 17, 2016, our Board approved and adopted an amendment to the 2015 Plan, subject to stockholder approval, to increase the number of shares available for grant under the 2015 Plan from 12,036 to 32,036 in order to assure that adequate shares will be available for future grants. On October 21, 2016, the stockholders approved the amendment to the 2015 Plan. Effective September 28, 2018, our Board approved and adopted an amendment to the 2015 Plan, subject to stockholder approval, to increase the number of shares available for grant under the 2015 Plan from 32,036 to 132,036 in order to assure that adequate shares will be available for future grants. On December 7, 2018, the stockholders approved the amendment to the 2015 Plan.

Description of 2015 Plan

The following is a summary of the material provisions of the 2015 Plan, as amended, and is qualified in its entirety by reference to the complete text of the 2015 Plan, a copy of which is filed as Annex A to our Proxy Statement on Schedule 14A filed with the SEC on September 3, 2015.

Administration

The 2015 Plan is administered by a committee of the Board, which consists of not fewer than two directors of the Company designated by the Board, each of whom is a “non-employee director” within the meaning of Rule 16b-3 promulgated under the Exchange Act, an “outside director” within the meaning of Section 162(m) of the Internal Revenue Code as amended (as now in effect or later amended and any successor thereto, the “Code”) and, for so long as our Common Stock is listed on the Nasdaq, an “independent director” within the meaning of the Nasdaq rules. Among other things, the committee administering the 2015 Plan has full power and authority to take all actions and to make all determinations required or provided for under the 2015 Plan, any award under the 2015 Plan or any award agreement under the 2015 Plan, not inconsistent with the specific terms and conditions of the 2015 Plan, which the committee deems to be necessary or appropriate to the administration of the 2015 Plan. The committee administering the 2015 Plan, may amend, modify or supplement the terms of any outstanding award, provided that no amendment, modification or supplement of the terms of any outstanding award shall impair a grantee’s rights under an award without the consent of the grantee. The committee administering the 2015 Plan is also authorized to construe the award agreements and may prescribe rules relating to the 2015 Plan. Notwithstanding the foregoing, our full Board will conduct the general administration of the 2015 Plan with respect to all awards granted to our non-employee directors. In addition, in its sole discretion, our Board may at any time and from time to time exercise any and all rights and duties of the committee under the 2015 Plan except with respect to matters which are required to be determined in the sole discretion of the committee under Rule 16b-3 of the Exchange Act or Section 162(m) of the Code, or any regulations or rules issued thereunder.

Grant of Awards; Shares Available for Awards; Award Limits; Eligible Grantees

The 2015 Plan provides for the grant of stock options, SARs, restricted stock awards, stock unit awards and unrestricted stock awards, dividend equivalent rights, performance share awards or other performance-based awards, other equity-based awards or cash to eligible employees, officers and non-employee directors of the Company or any affiliate of the Company, or any consultant or adviser to the Company or an affiliate who is currently providing services to the Company or an affiliate, or to any other individual whose participation in the 2015 Plan is determined to be in the best interests of the Company by the committee administering the 2015 Plan. We have reserved a total of 10,000 shares of Common Stock for issuance as or under awards to be made under the 2015 Plan, plus (y) 2,036, which was the number of shares of Common Stock available for issuance under our 2006 Stock Incentive Plan as of the effective date of the 2015 Plan, plus (z) the number of shares of our Common Stock related to awards under the 2006 Stock Incentive Plan as of the effective date of the 2015 Plan which thereafter terminate by expiration, forfeiture, cancellation, or otherwise without the issuance of such shares. With the amendment to the Plan approved by the stockholders on October 21, 2016, the number of shares of Common Stock increased from 12,036 to 32,036. If any award expires, is cancelled, or terminates unexercised or is forfeited, the number of shares subject thereto is again available for grant under the 2015 Plan. The maximum number of shares of stock that can be granted under the 2015 Plan pursuant to incentive stock option awards is currently ten thousand (10,000). The maximum number of shares of stock subject to awards that can be granted under the 2015 Plan in any one calendar year to any person, other than a non-employee director, is three thousand seven hundred fifty (3,750). The maximum fair market value of shares of stock that may be granted under the 2015 Plan in any one calendar year to any non-employee director is ten thousand dollars ($10,000). The limitation on the amount of shares of stock issuable under the 2015 Plan is subject to adjustment in the event of certain changes in our capital stock, such as recapitalizations, reclassifications, stock splits, reverse stock splits, spin-offs, combinations of our stock, exchanges of our stock and other increases or decreases in our stock without receipt of consideration.

As of April 30, 2019, options to purchase 64,871 shares of our Common Stock at a weighted average exercise price of $15.19 were outstanding under our 2015 Omnibus Incentive Plan.

As of April 30, 2019, we had granted 17,350 shares of Restricted Common Stock under our 2015 Omnibus Incentive Plan. 10,248 shares vested and 2,596 shares were cancelled, with 4,506 shares remaining outstanding.

The 2015 Plan will terminate automatically on October 22, 2025, which is ten years after the date on which stockholders approve the 2015 Plan. As of April 30, 2019, there are 58,555 shares available for grant under the 2015 Omnibus Incentive Plan.

2018 Employment Inducement Incentive Award Plan

On January 18, 2018, the Board adopted the Ocean Power Technologies, Inc. Employment Inducement Incentive Award Plan (the “Inducement Plan”) and, subject to the adjustment provisions of the Inducement Plan, reserved 25,000 shares of the Company’s common stock for issuance pursuant to equity awards granted under the Inducement Plan.

The Inducement Plan was adopted without stockholder approval pursuant to Rule 5635(c)(4) and Rule 5635(c)(3) of the Nasdaq Listing Rules. The Inducement Plan provides for the grant of equity-based awards, including restricted stock units, restricted stock, performance shares and performance units, and its terms are substantially similar to the Company’s 2015 Omnibus Incentive Plan, including with respect to treatment of equity awards in the event of a “change in control” as defined under the Inducement Plan, but with such other terms and conditions intended to comply with the Nasdaq inducement award exception.

In accordance with Rule 5635(c)(4) and Rule 5635(c)(3) of the Nasdaq Listing Rules, awards under the Inducement Plan may only be made to individuals not previously employees or non-employee directors of the Company (or following such individuals' bona fide period of non-employment with the Company), as an inducement material to the individuals' entry into employment with the Company. An award is any right to receive the Company's common stock pursuant to the 2018 Inducement Plan, consisting of a performance share award, restricted stock award, a restricted stock unit award or a stock payment award. No Awards may be granted or awarded during any period of suspension or after termination of the Plan, and in no event may any Award be granted under the Plan after the tenth (10th) anniversary of the date of its adoption. Any Awards that are outstanding on the Expiration Date, or the date of termination of the Plan (if earlier), shall remain in force according to the terms of the Plan and the applicable Award Agreement. As of April 30, 2019, there were no shares outstanding and 25,000 shares available for grant under the 2018 Inducement Plan.

2018 Outstanding Equity Awards at Fiscal Year End Table

The following table contains certain information regarding equity awards held by the named executive officers as of April 30, 2019:

	Option Awards				Stock Awards	
Name and Principal Position	Numbers of Shares Underlying Unexercised Options (#) Exercisable	Numbers of Shares Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested ($)
George H. Kirby III	-	10,000	$ 8.20	12/7/2028(1)	2,500(2)	6,950
Matthew T. Shafer	-	5,750	$ 8.20	12/7/2028(3)	258(4)	717
					729(5)	2,027

(1) Options granted December 7, 2018 relating to an aggregate of 10,000 shares, of which 100% vest on the anniversary of the grant date or on the date of the annual shareholder meeting.

(2) Represent shares of restricted stock granted on May 19, 2017 relating to an aggregate of 2,500 shares which vest after a two- year period based on service requirements.

(3) Options granted December 7, 2018 relating to an aggregate of 5,750 shares, of which 100% vest on the anniversary of the grant date or on the date of the annual shareholder meeting.

(4) Represent shares of restricted stock granted on October 21, 2016 relating to an aggregate of 773 shares which vest over a three- year period based on service requirements; 258 shares vested on Sept 17, 2017 and 257 shares vested on Sept 17, 2018.

(5) Represent shares of restricted stock granted on May 19, 2017 relating to an aggregate of 2,500 shares which vest after a two- year period based on service requirements.

Potential Payments upon Termination of Employment or Change in Control

The following information sets forth the terms of potential payments to each of our named executive officers in the event of a termination of employment. We do not include information for Mr. Phebus or Mr. Mekhiche since they are no longer employed by the Company and their departures did not trigger any payments.

Termination by Company without Cause; Termination by Executive for Good Reason. Our employment agreement with Mr. Kirby provides for severance pay within 30 days in the event that employment is terminated by the Company, other than for cause, upon Mr. Kirby's disability or by the executive with good reason, in the amount of twelve months of base salary. Mr. Kirby would also be entitled to receive any other payments owed such as a short-term bonus, long-term compensation, benefits and expenses reimbursements to the degree such payments are owed for service provided up to the date of termination. Finally, the expiration date of any other options held by Mr. Kirby would be extended to a date 90 days after the date of termination of employment (but not longer than the original term of such options).

Our employment agreement with Mr. Shafer provides, upon the termination of his employment other than for cause, or if Mr. Shafer terminates his employment for good reason, that Mr. Shafer has the right to receive severance payments. If such termination occurs before the end of six months of service, Mr. Shafer will receive no severance. If such termination occurs after completing six months of service, Mr. Shafer will receive six months of his base salary.

Termination by Company for Cause; Termination by Executive without Good Reason. Under our employment contracts with Mr. Kirby upon termination for cause or at the executive's election without good reason, the executive is entitled to the base salary and benefits due and owing to the executive as of the date of termination. The employment agreement with Mr. Shafer does not contain provisions regarding severance in the event of a termination by the Company with or without cause or termination by the executive without good reason.

Change in Control. Our employment agreement with Mr. Kirby provides for severance pay equal to two (2) years of base salary if a change of control occurs and Mr. Kirby is terminated by the Company or Mr. Kirby terminates the agreement, each occurring within 90 days of the change of control. Mr. Kirby would also be entitled to receive any other payments owed such as a short-term bonus, long-term compensation, benefits and expenses reimbursements to the degree such payments are owed for service provided up to the date of termination. Finally, the expiration date of any other options held by Mr. Kirby would be extended to a date 90 days after the date of termination (but not longer than the original term of such options). In addition, to the extent that Mr. Kirby has not previously vested in rights and interests held by Mr. Kirby under the Company's stock and other equity plans (including stock options, restricted stock, RSU's, performance units or performance shares), such rights and interest would become fully vested.

The employment agreement for Mr. Shafer does not contain change of control provisions; therefore, payments for cash severance and continued healthcare benefits are the same as for termination without cause. The restricted stock agreement provides for accelerated stock vesting upon a change in control.

Termination upon Failure to Renew by the Company. In the event that our employment agreement with Mr. Kirby terminates the end of the term and is not renewed as a result of a decision by the Company not to renew, prior to a decision by Mr. Kirby not to renew, the Company will pay Mr. Kirby a severance payment in the amount of one (1) year base salary in a lump sum within 30 days after the termination date.

The employment agreement for Mr. Shafer does not contain similar provisions.

Qualifying retirement. Under our restricted stock agreements with the named executive officers, upon a Qualifying Retirement 50% of unvested restricted shares will vest immediately. A "Qualifying Retirement" means retirement by the recipient after satisfaction of the conditions in either clause (A) or clause (B): (A) the recipient has both (1) attained the age of 55 and (2) completed at least ten years of employment with the Company; or (B) the sum of the recipient's age plus the number of years he or she has been employed by the Company equals or exceeds 75 years.

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

The following table sets forth certain information regarding the beneficial ownership of Common Stock as of July 15, 2019 by (a) each person known by us to be the beneficial owner of more than 5% of the outstanding shares of Common Stock, (b) each executive officer (c) each director, and (d) all executive officers and directors as a group.

The Percentage of Common Stock outstanding is based on 5,771,747 shares of our Common Stock outstanding as of July 15, 2019. For purposes of the table below, and in accordance with the rules of the SEC, we deem shares of Common Stock subject to options that are currently exercisable or exercisable within sixty days of July 15, 2019 to be outstanding and to be beneficially owned by the person holding the options for the purpose of computing the percentage ownership of that person, but we do not treat them as outstanding for the purpose of computing the percentage ownership of any other person. Except as otherwise noted, each of the persons or entities in this table has sole voting and investing power with respect to all of the shares of Common Stock beneficially owned by such person, subject to community property laws, where applicable. The street address of each beneficial owner shown in the table below is c/o Ocean Power Technologies, Inc., 28 Engelhard Drive, Suite B, Monroe Township, NJ 08831.

Name of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned
Terence J. Cryan (1)	4,712	*
George H. Kirby III (2)	6,936	*
Matthew T. Shafer (3)	865	*
Steven M. Fludder (4)	4,173	*
Dean J. Glover (5)	9,287	*
Robert K. Winters (6)	3,573	*
Kristine S. Moore (7)	-	*
All directors and executive officers as a group (7 individuals)	29,546	*

* Represents a beneficial ownership of less the one percent of our outstanding common stock

(1) Beneficial ownership includes 361 shares of our common stock and 4,351 shares issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 15, 2019.

(2) Beneficial ownership includes 6,936 shares of our common stock.

(3) Beneficial ownership includes 865 shares of our common stock.

(4) Beneficial ownership includes 600 shares of our common stock and 3,573 shares issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 15, 2019.

(5) Beneficial ownership includes 5,248 shares of our common stock and 4,039 shares issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 15, 2019.

(6) Beneficial ownership includes 3,573 shares issuable upon the exercise of options that are currently exercisable or exercisable within sixty days of July 15, 2019.

(7) Ms. Moore joined the Board on September 10, 2018 and does not have any ownership of our common stock or options that are currently exercisable or exercisable within sixty days of July 15, 2019.

Equity Compensation Plan Information

The following table sets forth the indicated information as of April 30, 2019 with respect to our equity compensation plans:

Plan category	Number of Shares to be Issued Upon Exercise of Outstanding Options and Restricted Stock	Weighted-Average Exercise Price of Outstanding Options	Number of Shares Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Shares Reflected in First Column
Equity compensation plans approved by shareholders			
Stock Options	65,572	$ 21.08	58,555(1)
Restricted Stock	4,506	N/A	-
Equity compensation plans not approved by shareholders			
Stock Options	-	-	-
Restricted Stock	-	-	25,000(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 2006 Stock Incentive Plan and 2015 Omnibus Incentive Plan which were approved by our stockholders. Once the 2015 Omnibus Incentive Plan was approved by the stockholders 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.

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

Board Determination of Independence

Under applicable Nasdaq rules, a director will only qualify as an "independent director" if they are not an executive officer or employee of the Company, and, in the opinion of our Board of Directors, that person does not have a relationship which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

Our Board has determined that all of our current directors are "independent directors" within the meaning of the applicable listing standards of the Nasdaq, except for George H. Kirby III who is our President and Chief Executive Officer.

Certain Relationship and Related Person Transaction

Review and Approval of Related Person Transactions

The Audit Committee is charged with the responsibility of reviewing and approving all related person transactions (as defined in SEC regulations), and periodically reassessing any related person transaction entered into by the Company to ensure continued appropriateness. This responsibility is set forth in our Audit Committee charter. A related party transaction will only be approved if the members of the Audit Committee determine that the transaction is in the best interests of the Company. If a director is involved in the transaction, he or she will recuse himself or herself from all decisions regarding the transaction.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Fees of Independent Registered Public Accounting Firm

The following table summarizes the fees of KPMG LLP, our independent registered public accounting firm, billed to us for each of the last two fiscal years.

	Fiscal Year 2019	Fiscal Year 2018
Audit Fees (1)	$ 376,095	$ 322,000
Audit- Related Fees	-	-
Tax Fees (2)	11,438	19,000
All Other Fees (3)	1,780	1,780
Total Fees	$ 389,313	$ 342,780

(1) Audit Fees consist of fees for the audit and quarterly reviews of our consolidated financial statements and other professional services provided in connection with the statutory and regulatory filings or engagements. Fiscal year 2019 and 2018 audit fees include fees for comfort letters and consents of $128,500 and $72,500, respectively, related to several equity offerings. Fiscal 2019 and 2018 include $2,595 and $4,500 for out of pocket fees, respectively.

(2) Tax Fees include fees for the tax return preparation assistance and review.

(3) All Other Fees for fiscal 2019 and 2018 includes subscription fee for KPMG's accounting research tool.

Pre-Approval Policies and Procedures

The Audit Committee's policy is that all audit services and all non-audit services to be provided to us by our independent registered public accounting firm must be approved in advance by our Audit Committee. The Audit Committee's approval procedures include the review and approval of a description of the services that documents the fees for all audit services and non-audit services, primarily tax advice and tax return preparation and review.

All audit services and all non-audit services in fiscal years 2019 and 2018 were pre-approved by the Audit Committee. The Audit Committee has determined that the provision of the non-audit services for which these fees were rendered is compatible with maintaining the independent auditor's independence.

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 71 to 72.

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 22, 2019

By: */s/ George H. Kirby III*
George H. Kirby III
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:

SIGNATURE	TITLE	DATE
/s/ George H. Kirby III George H. Kirby III	President, Chief Executive Officer and Director (Principal Executive Officer)	July 22, 2019
/s/ Matthew T. Shafer Matthew T. Shafer	Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)	July 22, 2019
/s/ Terence J. Cryan Terence J. Cryan	Chairman of the Board and Director	July 22, 2019
/s/ Dean J. Glover Dean J. Glover	Vice Chairman of the Board and Director	July 22, 2019
/s/ Steven M. Fludder Steven M. Fludder	Director	July 22, 2019
/s/ Robert K. Winters Robert K. Winters	Director	July 22, 2019
/s/ Kristine S. Moore Kristine S. Moore	Director	July 22, 2019

Exhibits Index

Exhibit Number	Description
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	Amended and Restated Bylaws of the registrant (incorporated by reference from Exhibit 3.2 to the Current Report on Form 8-K filed June 23, 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 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).
3.5	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).
4.1	Specimen certificate of Common Stock (incorporated by reference from Exhibit 4.1 to Form S-1/A filed March 19, 2007).
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).
10.1	Option Agreement for Purchase of Emissions Credits, dated November 24, 2000 between Ocean Power Technologies, Inc. and its affiliates and Woodside Sustainable Energy Solutions Pty. Ltd. (incorporated by reference from Exhibit 10.4 to Form S-1 filed November 13, 2006).
10.2	Amended and Restated 2006 Stock Incentive Plan (incorporated by reference from Exhibit A to Proxy Statement filed August 28, 2013).*
10.3	Agreement for Renewable Energy Economic Development Grants, dated November 3, 2003, between State of New Jersey Board of Public Utilities and Ocean Power Technologies, Inc. (incorporated by reference from Exhibit 10.18 to Form S-1/A filed March 19, 2007).
10.4	Form of Restricted Stock Agreement (incorporated by reference from Exhibit 10.1 to Form 10-Q filed March 14, 2011).*
10.5	Amended Option Agreement for Purchase of Emissions Credits, dated December 4, 2012, between Ocean Power Technologies, Inc. and its affiliates and Metasource Pty Ltd (formerly known as Woodside Sustainable Energy Solutions Pty Ltd) (incorporated by reference from Exhibit 10.23 to Form 10-K filed July 12, 2013).
10.6	Employment Agreement, dated December 29, 2014, between George H. Kirby and Ocean Power Technologies, Inc. (incorporated by reference from Exhibit 10.1 to Form 10-Q filed March 11, 2015).*
10.7	Placement Agency Agreement dated June 2, 2016, by and among Ocean Power Technologies, Inc., Roth Capital Partners, LLC and Rodman & Renshaw, a unit of H.C. Wainwright & Co., LLC (incorporated by reference to Exhibit 99.2 to Current Report on Form 8-K filed on June 2, 2016).
10.8	Form of Securities Purchase Agreement dated June 2, 2016 (incorporated by reference to Exhibit 99.3 to Current Report on Form 8-K filed on June 2, 2016).
10.9	Form of Amendment No. 1 to Securities Purchase Agreement, dated June 7, 2016 (incorporated by reference to Exhibit 99.4 to the Current Report on Form 8-K/A filed on June 7, 2016).
10.10	2015 Omnibus Incentive Plan* (incorporated by reference to Annex A to Proxy Statement filed on September 3, 2015).
10.11	Stipulation and Agreement of Class Settlement dated as of May 5, 2016 (incorporated by reference to Exhibit 10.1 to Current Report on Form 8-K filed on May 11, 2016).
10.12	Agreement by and between Ocean Power Technologies, Inc. and Mitsui Engineering & Shipbuilding Co., Ltd dated May 31, 2016 (incorporated by reference from Exhibit 10.1 to Current Report on Form 8-K/A filed on June 6, 2016).

10.13	Form of the Securities Purchase Agreement, dated June 2, 2016 (incorporated by reference to Exhibit 99.3 to the Current Report on Form 8-K filed on June 2, 2016).
10.14	Form of Amendment No. 1 to Securities Purchase Agreement, dated June 7, 2016 (incorporated by reference to Exhibit 99.4 to the Current Report on Form 8-K/A filed on June 7, 2016)
10.15	Form of Amendment No. 2, dated as of July 21, 2016, to the Securities Purchase Agreement, dated as of June 2, 2016, by and among Ocean Power Technologies, Inc. and the investor's signatory thereto, and (incorporated by reference from Exhibit 99.2 to the Current Report on Form 8-K filed July 21, 2016).
10.16	Form of Placement Agency Agreement, dated July 22, 2016, between the Company and the Placement Agent (incorporated by reference from Exhibit 1.1 to the Current Report on Form 8-K filed July 22, 2016).
10.17	Form of Subscription Agreement, dated July 22, 2016 between the Company and the Purchasers thereto (incorporated by reference from Exhibit 10.1 to the Current Report on Form 8-K filed July 22, 2016).
10.18	Employment Letter between the Company and Matthew Shafer dated August 23, 2016, (incorporated by reference from Exhibit 10.1 to the Current Report on Form 8-K filed August 29, 2016).
10.19	Letter Agreement between the Company and Mark A. Featherstone dated August 25, 2016, (incorporated by reference from Exhibit 10.3 to the Current Report on Form 8-K filed August 29, 2016).
10.20	Employment Letter between the Company and Mike Mekhiche dated September 12, 2016, (incorporated by reference from Exhibit 10.4 to the Current Report on Form 8-K filed August 29, 2016).
10.21	Letter Agreement between the Company and Mike Mekhiche dated June 19, 2014, (incorporated by reference from Exhibit 10.5 to the Current Report on Form 8-K filed August 29, 2016).
10.22	Agreement by and between the Company and the U.S. Office of Naval Research dated September 13, 2016 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on September 14, 2016).
10.23	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).*
10.24	Form of Restricted Stock 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).*
10.25	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). +
10.26	Contract between Premier Oil 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).+
10.27	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). *
10.28	Common Stock Purchase Agreement with Aspire Capital Fund, LLC (incorporated by reference to Exhibit 10.1 to Form 8-K filed with the SEC on August 13, 2018).
10.29	Registration Rights Agreement with Aspire Capital Fund, LLC (incorporated by reference to Exhibit 4.1 to Form 8-K filed with the SEC on August 13, 2018).
10.30	Sales Agreement between the Company and A.G.P./Alliance Global Partners (incorporated by reference to Exhibit 10.1 to Form 8-K filed with the SEC on January 7, 2019).
10.31	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).
10.32	Form of Warrant Agency Agreement by and between the Company and Computershare Trust Company, N.A. collectively as warrant agent (incorporated by reference to Exhibit 4.7 to Amendment No.2 to the Company's Registration Statement on Form S-1 (file No. 333-230199, filed with the SEC on April 3, 2019.
10.33	Form of Common Warrant ((incorporated by reference to Exhibit 4.2 to Form 8-K filed with the SEC on April 5, 2019).
10.34	Form of Pre-Funded Warrant ((incorporated by reference to Exhibit 4.3 to Form 8-K filed with the SEC on April 5, 2019).
10.35	Warrant Agency Agreement between Ocean Power Technologies, Inc. and Computershare Trust Company, N.A. dated April 8, 2019 (incorporated by reference to Exhibit 4.1 to Form 8-K filed with the SEC on April 8, 2019.
10.36	Contract amendment between Premier Oil 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).+
10.37	Lease Agreement dated March 31, 2017 between Ocean Power Technologies, Inc. and PPH Industrial 28 Engelhard, LLC.
21.1	Subsidiaries of the registrant
23.1	Consent of KPMG LLP
31.1	Certification of Chief Executive Officer
31.2	Certification of Chief Financial Officer
32.1	Certification of Chief Executive Officer pursuant to Section 906 of Sarbanes-Oxley Act of 2002**
32.2	Certification of Chief Financial Officer pursuant to Section 906 of Sarbanes-Oxley Act of 2002**
101	The following financial information from Ocean Power Technologies, Inc.'s Annual Report on Form 10-K for the annual period ended April 30, 2019, formatted in eXtensible Business Reporting Language (XBRL): (i) Consolidated Balance Sheets - as of April 30, 2019 and 2018, (ii) Consolidated Statements of Operations - for the years ended April 30, 2019 and 2018, (iii) Consolidated Statements of Comprehensive Loss - for the years ended April 30, 2019 and 2018, (iv) Consolidated Statements of Stockholders' Equity - for the years ended April 30, 2019 and 2018 (v) Consolidated Statements of Cash Flows - for the years ended April 30, 2019 and 2018, (vi) Notes to Consolidated Financial Statements.***

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

Index to Consolidated Financial Statements

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Reports of Management

Management's Report on Consolidated Financial Statements

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

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

Management's Annual Report on Internal Control over Financial Reporting

The Company's management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States. The Company's internal control over financial reporting includes those policies and procedures that:

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

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

The Company's management assessed the effectiveness of the Company's internal control over financial reporting as of April 30, 2019. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control - Integrated Framework (2013)*. Based on this assessment using those criteria, management concluded that the Company's internal control over financial reporting was effective as of April 30, 2019.

/s/ George H. Kirby III

George H. Kirby III
President and Chief Executive Officer

/s/ Matthew T. Shafer

Matthew T. Shafer
Chief Financial Officer and Treasurer

Report of Independent Registered Public Accounting Firm

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

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Ocean Power Technologies, Inc. and subsidiaries (the Company) as of April 30, 2019 and 2018, the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows for each of the years in the two-year period ended April 30, 2019, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of April 30, 2019 and 2018, and the results of its operations and its cash flows for each of the years in the two-year period ended April 30, 2019, in conformity with U.S. generally accepted accounting principles.

Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1(b) to the consolidated financial statements, as of April 30, 2019 the Company has cash and cash equivalents of $16.7 million, and the Company has suffered recurring losses from operations and has an accumulated deficit. These factors 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 consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Change in Accounting Principle

As discussed in Note 1(o) to the consolidated financial statements, effective May 1, 2018, the Company adopted Accounting Standards Update (ASU) 2014-09, Revenue from Contracts with Customers, and several related amendments, issued by the Financial Accounting Standards Board (FASB). This change was adopted using the modified retrospective method.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We 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 consolidated 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 consolidated 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 consolidated 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 consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ KPMG LLP

We have served as the Company's auditor since 2004.
Philadelphia, Pennsylvania
July 22, 2019

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES
Consolidated Balance Sheets
(in thousands, except share data)

	April 30, 2019	April 30, 2018
ASSETS		
Current assets:		
Cash and cash equivalents	$ 16,660	$ 11,499
Marketable securities	-	25
Restricted cash- short-term	344	572
Accounts receivable	63	171
Unbilled receivables	-	71
Contract assets	15	-
Litigation receivable	-	350
Other current assets	537	567
Total current assets	17,619	13,255
Property and equipment, net	592	712
Restricted cash- long-term	155	154
Total assets	$ 18,366	$ 14,121
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 312	$ 290
Accrued expenses	1,938	2,261
Litigation payable	-	350
Unearned revenue	-	18
Contract liabilities	188	-
Warrant liabilities	6	201
Current portion of capital lease obligations	-	23
Deferred credits payable current	-	600
Total current liabilities	2,444	3,743
Deferred rent	147	142
Total liabilities	2,591	3,885
Commitments and contingencies		
Ocean Power Technologies, Inc. stockholders' equity:		
Preferred stock, $0.001 par value; authorized 5,000,000 shares, none issued or outstanding	-	-
Common stock, $0.001 par value; authorized 100,000,000 shares, issued 5,425,517 and 921,247 shares, respectively	5	1
Treasury stock, at cost; 3,770 and 3,701 shares, respectively	(301)	(300)
Additional paid-in capital	226,026	208,233
Accumulated deficit	(209,784)	(197,538)
Accumulated other comprehensive loss	(171)	(160)
Total stockholders' equity	15,775	10,236
Total liabilities and stockholders' equity	$ 18,366	$ 14,121

Common stock, Treasury stock, Additional paid-in capital and share data at April 30, 2018 has been adjusted retroactively to reflect a 1-for-20 reverse stock split effective March 11, 2019.

See accompanying notes to consolidated financial statements.

OCEAN POWER TECHNOLOGIES, INC. AND SUBSIDIARIES
Consolidated Statements of Operations
(in thousands, except per share data)

	Twelve months ended April 30,	
	2019	**2018**
Revenues	$ 632	$ 511
Cost of revenues	1,303	763
Gross profit/(loss)	(671)	(252)
Operating expenses:		
Engineering and product development costs	4,984	4,320
Selling, general and administrative costs	7,616	6,988
Total operating expenses	12,600	11,308
Operating loss	(13,271)	(11,560)
Gain due to the change in fair value of warrant liabilities	195	122
Interest income, net	35	83
Other income	-	4
Foreign exchange gain/(loss)	(55)	75
Loss before income taxes	(13,096)	(11,276)
Income tax benefit	850	1,119
Net loss	$ (12,246)	$ (10,157)
Basic and diluted net loss per share	$ (9.52)	$ (13.24)
Weighted average shares used to compute basic and diluted net loss per share	1,286,727	767,330

Common stock and share data at April 30, 2018 has been adjusted retroactively to reflect a 1-for-20 reverse stock split effective March 11, 2019.

See accompanying notes to consolidated financial statements.

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

	Twelve months ended April 30,	
	2019	**2018**
Net loss	$ (12,246)	$ (10,157)
Foreign currency translation adjustment	(11)	-
Total comprehensive loss	$ (12,257)	$ (10,157)

See accompanying notes to consolidated financial statements.

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

	Common Shares		Treasury Shares		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balances, April 30, 2017	315,700	$ -	(2,403)	$ (263)	$ 193,240	$ (187,370)	$ (160)	$ 5,447
Net loss						(10,157)		(10,157)
Stock based compensation					329			329
Issuance/(forfeiture) of restricted stock, net	8,937	-			-			-
Sale of stock	596,610	1			14,653			14,654
Acquisition of treasury stock			(1,298)	(37)				(37)
Adoption of accounting standard update related to stock compensation accounting (ASU 2016-09)					11	(11)		
Other comprehensive loss							-	-
Balances, April 30, 2018	921,247	$ 1	(3,701)	$ (300)	$ 208,233	$ (197,538)	$ (160)	$ 10,236
Net loss						(12,246)		(12,246)
Stock based compensation					295			295
Issuance/(forfeiture) of restricted stock, net	(5,090)	-			-			-
Common stock issued for commitment fee	21,429	-			295			295
Issuance of common stock- Aspire financing, net of issuance costs	162,162	-			593			593
Issuance of common stock- AGP At The Market offering, net of issuance costs	151,561	-			882			882
Issuance of common stock, common and pre-funded warrants, net of issuance costs	1,542,000	1			15,711			15,712
Exercise of pre-funded warrants	2,632,120	3			17			20
Acquisition of treasury stock			(89)	(1)				(1)
Other comprehensive loss							(11)	(11)
Other	88	-	20	-				-
Balances, April 30, 2019	5,425,517	$ 5	(3,770)	$ (301)	$ 226,026	$ (209,784)	$ (171)	15,775

Common stock, Treasury stock, Additional paid-in capital and share data at April 30, 2018 and April 30, 2017 have been adjusted retroactively to reflect a 1-for-20 reverse stock split effective March 11, 2019.

See accompanying notes to consolidated financial statements

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

	Twelve months ended April 30,	
	2019	**2018**
Cash flows from operating activities:		
Net loss	$ (12,246)	$ (10,157)
Adjustments to reconcile net loss to net cash used in operating activities:		
Foreign exchange loss/(gain)	55	(75)
Depreciation	180	122
Loss on disposal of property, plant and equipment	-	5
Compensation expense related to stock option grants and restricted stock	295	329
Gain due to the change in fair value of warrant liabilities	(195)	(122)
Changes in operating assets and liabilities:		
Accounts receivable	108	(123)
Unbilled receivables	71	225
Contract assets	(15)	-
Other assets	325	194
Accounts payable	23	(296)
Accrued expenses	(316)	(821)
Deferred rent	5	5
Deferred credit payable	(600)	-
Unearned revenue	(18)	18
Contract liabilities	188	-
Net cash used in operating activities	(12,140)	(10,696)
Cash flows from investing activities:		
Purchases of marketable securities	(25)	(25)
Maturities of marketable securities	50	25
Leasehold improvements and purchase of equipment	(54)	(658)
Net cash used in investing activities	(29)	(658)
Cash flows from financing activities:		
Proceeds from issuance of common stock, net of issuance costs	-	14,654
Proceeds from issuance of common stock- Aspire financing net of issuance costs	593	-
Proceeds from issuance of common stock- AGP At The Market offering, net of issuance costs	882	-
Proceeds from issuance of common stock, common and pre-funded warrants, net of issuance costs	15,712	-
Proceeds from exercise of pre-funded warrants	20	-
Payment of capital lease obligations	(23)	(35)
Acquisition of treasury stock	(1)	(37)
Net cash provided by financing activities	17,183	14,582
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(80)	88
Net increase in cash, cash equivalents and restricted cash	4,934	3,316
Cash, cash equivalents and restricted cash, beginning of period	12,225	8,909
Cash, cash equivalents and restricted cash, end of period	$ 17,159	$ 12,225
Supplemental schedule of cash flows information:		
Cash paid for interest	$ 1	$ 3
Supplemental disclosure of noncash investing activities:		
Acquisition of leasehold improvements and equipment through accrued expenses	$ 5	$ 11
Supplemental disclosure of noncash financing activities:		
Common stock issued for payment of commitment fee	$ 295	$ -

See accompanying notes to the consolidated financial statements

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

(1) Background and Liquidity

(a) Background

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

(b) Liquidity/Going Concern

Our consolidated financial statements have been prepared assuming the Company will continue as a going concern. The Company has experienced substantial and recurring losses from operations, which have contributed to an accumulated deficit of $209.8 million at April 30, 2019. At April 30, 2019, the Company had approximately $17.2 million in cash, cash equivalents and restricted cash on hand. The Company generated revenues of only $0.6 million and $0.5 million during the years ended April 30, 2019 and 2018, respectively. Based on the Company's cash, cash equivalents and restricted cash balances as of April 30, 2019, the Company believes that it will be able to finance its capital requirements and operations into the quarter ending July 31, 2020. The Company will require additional equity and/or debt financing to continue its operations. The Company cannot provide assurances that it will be able to secure additional funding when needed or at all, or, if secured, that such funding would be on favorable terms. These factors raise substantial doubt about the Company's ability to continue as a going concern.

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

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

In fiscal 2019 and 2018, the Company has continued to make investments in ongoing product development efforts in anticipation of future growth. The Company's future results of operations involve significant risks and uncertainties. Factors that could affect the Company's future operating results and cause actual results to vary materially from expectations include, but are not limited to, risks from lack of available financing and insufficient capital, performance of PowerBuoys®, its inability to market and commercialize its PowerBuoys®, technology development, scalability of technology and production, dependence on skills of key personnel, concentration of customers and suppliers, deployment risks and laws, regulations and permitting. In order to continue to implement its business strategy, the Company requires additional equity and/or debt financing. The Company closed five equity financing arrangements during the two-year period ended April 30, 2019. The Company does not currently have any committed sources of debt or equity financing, and the Company cannot assure that additional equity and/or debt financing will be available to the Company as needed on acceptable terms, or at all. Historically, the Company has raised capital through securities sales in the public capital markets. If sufficient additional financing is not obtained when needed, the Company may be required to further curtail or limit operations, engineering and product development costs, and/or selling, general and administrative activities in order to reduce its cash expenditures. This could cause the Company to be unable to execute its business plan, take advantage of future opportunities and may cause it to scale back, delay or eliminate some or all of its product development activities and/or reduce the scope of or cease its operations.

On June 2, 2016, the Company entered into a securities purchase agreement, which was amended on June 7, 2016 (as amended, the “Purchase Agreement”) with certain institutional purchasers (the “June Purchasers”). Pursuant to the terms of the Purchase Agreement, the Company sold an aggregate of 20,850 shares of Common Stock together with warrants to purchase up to an aggregate of 7,298 shares of Common Stock. Each share of Common Stock was sold together with a warrant to purchase 0.35 of a share of Common Stock at a combined purchase price of $92.00. The net proceeds to the Company from the offering were approximately $1.7 million, after deducting placement agent fees and estimated offering expenses payable by the Company, but excluding the proceeds, if any, from the exercise of the warrants issued in the offering. The warrants have an exercise price of $121.60 per share, became exercisable on December 3, 2016 (“Initial Exercise Date”), and will expire five years following the Initial Exercise Date. The Company paid the placement agents approximately $100,000 as placement agent fees in connection with the sale of securities in the offering. The Company also reimbursed the placement agents $35,000 for their out of pocket and legal expenses in connection with the offering.

On July 22, 2016, the Company entered into the Second Amendment to the Purchase Agreement (the “Second Amended Purchase Agreement”) with certain purchasers (the “July Purchasers”). Pursuant to the terms of the Second Amended Purchase Agreement, the Company sold an aggregate of 29,750 shares of Common Stock together with warrants to purchase up to an aggregate of 8,925 shares of Common Stock. Each share of Common Stock was sold together with a warrant to purchase 0.30 of a share of Common Stock at a combined purchase price of $135.00. The net proceeds to the Company from the offering were approximately $3.6 million, after deducting placement agent fees and estimated offering expenses payable by the Company, but excluding the proceeds, if any, from the exercise of the warrants issued in the offering. The Warrants were exercisable immediately at an exercise price of $187.20 per share. The Warrants will expire on the fifth (5th) anniversary of the initial date of issuance.

On October 19, 2016, the Company sold 138,000 shares of common stock at a price of $55.00 per share, which includes the sale of 18,000 shares of the Company’s common stock sold by the Company pursuant to the exercise, in full, of the over-allotment option by the underwriters in a public offering. The net proceeds to the Company from the offering were approximately $6.9 million, after deducting underwriter fees and offering expenses payable by the Company.

On May 2, 2017, the Company sold 309,638 shares of common stock at a price of $26.00 per share, which includes the sale of 40,388 shares of the Company’s common stock sold by the Company pursuant to the exercise, in full, of the over-allotment option by the underwriters in a public offering. The net proceeds to the Company from the offering were approximately $7.2 million, after deducting underwriter fees and offering expenses payable by the Company.

On October 23, 2017, the Company sold 286,972 shares of common stock at a price of $28.40 per share in a best efforts public offering. The net proceeds to the Company from the offering were approximately $7.4 million, after deducting placement fees and offering expenses payable by the Company.

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

On January 7, 2019, the Company entered into an At the Market Offering Agreement (“2019 ATM Facility”) with A.G.P./Alliance Global Partners (“AGP”), under which the Company may issue and sell to or through A.G.P./Alliance Global Partners, acting as agent and/or principal, shares of the Company’s common stock having an aggregate offering price of up to $25 million. As of April 30, 2019, under the 2019 ATM Facility the Company issued and sold 151,561 shares of its common stock with an aggregate market value of $958,229 at an average price of $6.32 per share and paid AGP a sales commission of approximately $33,469 related to those shares.

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

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

(c) Reverse Stock-Split

At the special meeting of the Company's stockholders on March 8, 2019, our stockholders approved a proposal to amend our Certificate of Incorporation to affect a reverse split of our common stock at a ratio to be determined by the Company's Board of Directors within a specific range. After the special meeting of stockholders, the Company's Board of Directors convened and decided to initiate the reverse split, chose a ratio, and directed management to take the necessary steps to effectuate the reverse split as soon as possible. Pursuant to the direction of the Board, the Company filed a Certificate of Amendment to our Certificate of Incorporation to affect a one-for-twenty reverse stock split of our common stock (the "Reverse Stock Split"). As of the close of markets on March 11, 2019, the effective date of the Reverse Stock Split, every twenty shares of issued and outstanding common stock were combined into one issued and outstanding share of common stock, without any change in the par value per share. Any fractional shares in connection with the Reverse Stock Split were rounded up to the nearest whole share and no cash payments were made by the Company to stockholders in lieu of fractional shares. The common stock began trading on a reverse stock split-adjusted basis on the Nasdaq Stock Market ("Nasdaq") on March 12, 2019. All share and per share data included in this annual report has been retroactively restated to reflect the Reverse Stock Split.

(2) Summary of Significant Accounting Policies

(a) Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation. The Company also periodically evaluates its relationships with other entities to identify whether they are variable interest entities, and to assess whether it is the primary beneficiary of such entities. If the determination is made that the Company is the primary beneficiary, then that entity is included in the consolidated financial statements. As of April 30, 2019, there were no such entities.

(b) Use of Estimates

The preparation of the consolidated financial statements requires management of the Company to make a number of estimates and assumptions relating to the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Significant items subject to such estimates and assumptions include fair value of warrant liabilities; estimated costs to complete projects and percentage of completion of customer contracts for purposes of revenue recognition. Actual results could differ from those estimates. The current economic environment, particularly the macroeconomic pressures in certain European countries, has increased the degree of uncertainty inherent in those estimates and assumptions.

(c) Revenue Recognition

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

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

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

The Company classifies leases as either operating or capital lease arrangements in accordance with the authoritative accounting guidance contained within Accounting Standards Codification ("ASC") Topic 840, *"Leases"*. At inception of the contract, the Company evaluates the lease against the four lease classification criteria within ASC Topic 840. In general, if one of the four criteria is met, then the lease is accounted for as a capital lease. All others are treated as an operating lease. For operating leases, lessee payments are recorded to revenue on a straight-line basis over the term of the lease.

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

The Company has two types of fixed price contracts, firm fixed price and cost-sharing. Under firm fixed price contracts, the Company receives an agreed-upon amount for providing products and services specified in the contract, a profit or loss is recognized depending on whether actual costs are more or less than the agreed upon amount. Under cost-sharing contracts, the fixed amount agreed upon with the customer is only intended to fund a portion of the costs on a specific project. Under cost sharing contracts, an amount corresponding to the revenue is recorded in cost of revenues, resulting in gross profit on these contracts of zero. The Company's share of the costs is recorded as product development expense. For the twelve-month period ended April 30, 2019 and 2018 all of the Company's contracts were classified as firm fixed price.

As of April 30, 2019, the Company's total remaining performance obligations, also referred to as backlog, totaled $0.9 million. The Company expects to recognize approximately 81%, or $0.7 million, of the remaining performance obligations as revenue over the next twelve months and an additional 19% the following twelve months.

(d) Cash and Cash Equivalents, Restricted Cash and Security Agreements

Cash and Cash Equivalents

The Company considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. The Company invests excess cash in a money market account. The following table summarizes cash and cash equivalents for the years ended April 30, 2019 and 2018:

	April 30, 2019	**April 30, 2018**
	(in thousands)	
Checking and savings accounts	$ 860	$ 1,332
Money market account	15,800	10,167
	$ 16,660	$ 11,499

Restricted Cash and Security Agreements

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

One agreement is between the Company and Barclays Bank. Under this agreement, the cash is on deposit at Barclays Bank and serves as security for letters of credit and bank guarantees that are expected to be issued by Barclays Bank on behalf of OPT LTD, one of the Company's subsidiaries, under a credit facility established by Barclays Bank for OPT LTD. The credit facility is approximately €0.3 million ($0.3 million) and carries a fee of 1% per annum of the amount of any such obligations issued by Barclays Bank. The credit facility does not have an expiration date but is cancelable at the discretion of the bank. As of April 30, 2019, there was €0.3 million ($0.3 million) in letters of credit outstanding under this agreement.

The other agreement is between the Company and Santander Bank. Under the agreement, the cash is on deposit at Santander Bank and serves as security for letter of credit issued by Santander Bank for the lease of new warehouse/office space in Monroe Township, New Jersey. The agreement cannot be extended beyond January 31, 2025 and is cancelable at the discretion of the bank. The following table summarizes restricted cash for the years ended April 30, 2019 and 2018:

	April 30, 2019	April 30, 2018
	(in thousands)	
Barclay's Bank Agreement	$ 344	$ 372
Santander Bank	155	354
	$ 499	$ 726

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within the statement of financial position that sum to the total of the same such amounts shown in the statement of cash flows for the years ended April 30, 2019 and 2018:

	April 30, 2019	April 30, 2018
	(in thousands)	
Cash and cash equivalents	$ 16,660	$ 11,499
Restricted cash- short term	344	572
Restricted cash- long term	155	154
	$ 17,159	$ 12,225

(e) Marketable Securities

Marketable securities with original maturities longer than three months but that mature in less than one year from the balance sheet date are classified as current assets. Marketable securities that the Company has the intent and ability to hold to maturity are classified as investments held-to-maturity and are reported at amortized cost. The difference between the acquisition cost and face values of held-to-maturity investments is amortized over the remaining term of the investments and added to or subtracted from the acquisition cost and interest income. As of April 30, 2019, the Company did not have any marketable securities. As of April 30, 2018, the Company had $25,000 in certificates of deposit and all of the Company's investments were classified as held-to-maturity.

(f) Property and Equipment

Property and equipment consists primarily of equipment, furnishings, fixtures, computer equipment and leasehold improvements and are recorded at cost. Depreciation and amortization is calculated using the straight-line method over the estimated useful lives of the assets. 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.

Description	Estimated useful life
Equipment	5 - 7 years
Computer equipment & software	3 years
Office furniture & fixtures	3 - 7 years
Equipment under capitalized lease	Over the life of the lease
Leasehold improvements	Shorter of the estimated useful life or lease term

(g) Foreign Exchange Gains and Losses

The Company has invested in certain certificates of deposit and has maintained cash accounts that are denominated in British pounds sterling, Euros and Australian dollars. These amounts are included in cash, cash equivalents, restricted cash and marketable securities on the accompanying consolidated balance sheets. Such positions may result in realized and unrealized foreign exchange gains or losses from exchange rate fluctuations, which are included in “foreign exchange gain (loss)” in the accompanying consolidated statements of operations.

(h) Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentration of credit risk consist principally of cash balances and trade receivables. The Company invests its excess cash in money market funds and does not believe that it is exposed to any significant risks related to its cash accounts.

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

	Twelve months ended April 30,	
	2019	**2018**
Eni S.p.A.	54%	33%
Mitsui Engineering & Shipbuilding	0%	43%
Premier Oil UK Limited	33%	10%
Office of Naval Research	0%	14%
Other	13%	0%
	100%	100%

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

(i) Warrant Accounting

The Company accounts for warrants issued in connection with its public offerings in accordance with the guidance on “Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity” in Topic 480 which provides that warrants meeting the classification of a liability award are recorded as a liability at its fair value. The warrant liabilities are subject to re-measurement at each balance sheet date using the Black-Scholes option pricing model. The Company recognizes any change in fair value in its consolidated statements of operations within “Gain due to the change in fair value of warrant liabilities”. The Company will continue to adjust the carrying value of the warrants for changes in the estimated fair value until such time as these instruments are exercised or expire. At that time, the liabilities will be reclassified to “Additional paid-in capital”, a component of “Stockholders’ equity” on the Consolidated Balance Sheets. The warrants issued in connection with the Company’s public offerings in June and July 2016 met the criteria of a liability award and were classified in warrant liabilities. The pre-funded and common warrants issued in the Company’s April 8, 2019 public offering did not meet the criteria to be classified as a liability award and therefore were treated as an equity award.

(j) Net Loss per Common Share

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

In computing diluted net loss per share, options to purchase shares of common stock, warrants on common stock and non-vested restricted stock issued to employees and non-employee directors, totaling 5,013,981 and 45,503 for the years ended April 30, 2019 and 2018, respectively, were excluded from each of the computations as the effect would be anti-dilutive due to the Company's losses.

(k) 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, 2019 and 2018 was approximately $0.3 million and $0.3 million, respectively. The following table summarizes share-based compensation related to the Company's share-based plans by expense category for the years ended April 30, 2019 and 2018:

	Twelve months ended April 30,	
	2019	**2018**
	(in thousands)	
Product development	$ 29	$ 24
Selling, general and administrative	266	305
Total share-based compensation expense	$ 295	$ 329

Valuation Assumptions for Restricted Stock and Options Granted During the Years Ended April 30, 2019 and 2018

Options

The fair value of each stock option granted, for both service-based and performance-based vesting requirements during the year ended April 30, 2019, was estimated at the date of grant using the Black-Scholes option pricing model, assuming no dividends, and using the weighted average valuation assumptions noted in the below table. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant. The expected life (estimated period of time outstanding) of the stock options granted was estimated using the "simplified" method as permitted by the SEC's Staff Accounting Bulletin No. 110, *Share-Based Payment.* Expected volatility was based on the Company's historical volatility during the twelve months ended April 30, 2019.

	Twelve months ended April 30,	
	2019	**2018**
Risk-free interest rate	2.7%	2.1%
Expected dividend yield	0.0%	0.0%
Expected life (in years)	5.5	5.5
Expected volatility	126.4%	128.2%

The above assumptions were used to determine the weighted average per share fair value of $7.15 and $23.40 for stock options granted during the years ended April 30, 2019 and 2018, respectively.

Restricted Stock

Compensation expense for non-vested restricted stock is recorded based on its market value on the date of grant and recognized ratably over the associated service and performance period. During the twelve months ended April 30, 2019, the Company granted 943 shares subject to service-based vesting requirements.

(l) Deferred Rent

On March 31, 2017, the Company signed a new 7-year lease for approximately 56,000 square feet in Monroe Township, New Jersey that will be used as warehouse/production space and the Company's principal offices and corporate headquarters. The lease was classified as an operating lease. Rent payments relating to the Monroe premises are subject to annual increases. The minimum monthly payments will vary over the 7-year term of the lease. The Company will record rent expense on a straight-line basis over the 7-year term of the lease. The difference between rent expense and the monthly lease payment will go to a deferred rent/prepaid rent account. The Landlord has provided the Company a tenant improvement allowance in an amount up to, but not exceeding, $137,563 to be applied to the cost of tenant improvement work. The Company collected the full amount of the tenant improvement allowance in May 2018. The Company recorded lease incentive liability to deferred rent. With the Company's adoption of ASU No. 2016-02 on May 1, 2019, the balances in lease incentive liability and deferred rent will be included in the value of the right of use asset.

(m) Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit 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. 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.

(n) Accumulated Other Comprehensive Loss

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

(o) Recently Issued Accounting Standards

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2014-09, *"Revenue from Contracts with Customers (Topic 606)."* ASU 2014-09 outlines a new, single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. This new revenue recognition model provides a five-step analysis in determining when and how revenue is recognized. The new model will require revenue recognition to depict the transfer of promised goods or services to customers in an amount that reflects the consideration a company expects to receive in exchange for those goods or services. The FASB subsequently issued additional clarifying standards to address issues arising from implementation of the new revenue standard, including a one-year deferral of the effective date for the new revenue standard. Public companies should now apply the guidance in ASU 2014-09 to annual reporting periods beginning after December 15, 2017 and interim periods within those annual periods. Earlier application is permitted only as of annual reporting periods beginning after December 15, 2016, including interim periods within that annual period. Companies may use either a full retrospective or a modified retrospective approach to adopt ASU 2014-09. Under the full retrospective method, the standard would be applied to each prior reporting period presented and the cumulative effect of applying the standard would be recognized at the earliest period shown. Under the modified retrospective method, the cumulative effect of applying the standard would be recognized at the date of application. Effective May 1, 2018, the Company adopted the requirements of ASU 2014-09 using the modified retrospective method. As a practical expedient, the Company adopted the new standard only for existing contracts as of May 1, 2018, the date of adoption. Any contracts that had expired prior to May 1, 2018 were not evaluated against the new standard. The Company adopted ASU 2014-09 and the adoption did not have a material impact on the Company's consolidated financial position, results of operations or cash flows.

In February 2016, the FASB issued ASU No. 2016-02, *“Leases (Topic 842)”* which amends the existing guidance on accounting for leases. Topic 842 was further clarified and amended within ASU 2017-13, ASU 2018-01, ASU 2018-10, ASU 2018-11 and ASU 2018-20. The new standard establishes a right-of-use (ROU) model that requires a lessee to record a ROU asset and a lease liability on the balance sheet for all leases with terms longer than twelve months or leases that contain a purchase option that is reasonably certain to be exercised. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. ASU 2016-02 is effective for annual periods beginning after December 15, 2018, including interim periods within those annual periods, with early adoption permitted. The company will adopt Topic 842 during the first quarter of 2019 using the modified retrospective method. The new guidance will be applied to leases that exist or are entered into on or after May 1, 2019 without adjusting comparative periods in the financial statements. The company expects to utilize the package of practical expedients in ASC 842-10-65-1(f) that, upon adoption of Topic 842, allows entities to (1) not reassess whether any expired or existing contracts are or contain leases, (2) retain the classification of leases (e.g., operating or finance lease) existing as of the date of adoption and (3) not reassess initial direct costs for any existing leases. Based on the most recent assessment of existing leases, the Company expects to record a right-of-use asset and lease liability in the range of $1.0 to $2.0 million that will be included on the balance sheet as of May 1, 2019. The Company does not expect the adoption of Topic 842 to have a material impact on the company’s results of operations or cash flows.

In August 2016, the FASB issued ASU 2016-15, *“Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments”*, providing additional guidance on eight specific cash flow classification issues. The goal of the ASU is to reduce diversity in practice of classifying certain items. The amendments in the ASU are effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years and early adoption is permitted. The Company adopted the standard on May 1, 2018 and determined the standard had no impact on its financial position, results of operation or cash flows.

In May 2017, the FASB issued ASU 2017-09, *"Compensation — Stock Compensation (ASC Topic 718): Scope of Modification Accounting,"* which clarifies when changes to the terms or conditions of a share-based payment award must be accounted for as a modification. Entities should apply the modification accounting guidance if the value, vesting conditions or classification of the award changes. The amendments in the ASU are effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years and early adoption is permitted. The Company adopted the standard on May 1, 2018 and determined the standard had no impact on its financial position, results of operations or cash flows.

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

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

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

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

Accounts Receivable

The Company grants credit to its customers, generally without collateral, under normal payment terms (typically 30 to 60 days after invoicing). Generally, invoicing occurs after the related services are performed or control of good has transferred to the customer. Accounts receivable represents an unconditional right to consideration arising from the Company's performance under contracts with customers. The carrying value of such receivables represent their estimated realizable value. Accounts receivable consisted of the following at April 30, 2019 and April 30, 2018.

	April 30, 2019	April 30, 2018
	(in thousands)	
Opening balance	$ 171	$ 48
Amount invoiced to customer	857	754
Collections	(965)	(631)
Ending balance	$ 63	$ 171

Contract Assets and Contract Liabilities

Contract assets (previously referred to as unbilled receivables). Contract assets include unbilled amounts typically resulting from arrangements whereby the right to payment is conditioned on completing additional tasks or services for a performance obligation. On May 1, 2018, the day of adoption of ASC 2014-09, the Company reclassified $71,000 of unbilled receivables to contract assets.

Contract liabilities (previously referred to as unearned revenue). Contract liabilities consist of amounts invoiced to customers in excess of revenue recognized. On May 1, 2018, the day of adoption of ASC 2014-09, the Company reclassified $18,000 of unearned revenue to contract liabilities.

A summary of the contract assets and contract liabilities is as follows:

	April 30, 2019	April 30, 2018
	(in thousands)	
Contract assets	$ 15	$ -
Contract liabilities	(188)	-
Contract (liability)/assets, net	$ (173)	$ -

The increase in contract assets is primarily a result of services performed but unbilled during the twelve months ended April 30, 2019. The increase in contract liabilities is primarily a result of additional amounts invoiced to customers in excess of revenue recognized during the twelve months ended April 30, 2019. During the twelve months ended April 30, 2019, the Company recognized $18,000 of revenue that was included in contract liabilities at May 1, 2018. During the twelve months ended April 30, 2019, the Company recognized revenue of $145,000 related to performance obligations that were partially satisfied in previous periods.

(4) Property and Equipment

The components of property and equipment as of April 30, 2019 and 2018 consisted of the following:

	April 30, 2019	April 30, 2018

	(in thousands)	
Equipment	$ 339	$ 394
Computer Equipment & Software	558	614
Office Furniture & Equipment	341	338
Leasehold improvements	474	473
Equipment under capitalized lease	103	103
Construction in process	15	0
	$ 1,830	$ 1,922
Less: accumulated depreciation	(1,238)	(1,210)
	$ 592	$ 712

Depreciation expense was $0.2 million and $0.1 million for the years ended April 30, 2019 and 2018, respectively.

As of April 30, 2019 and 2018, computer equipment and software under capital leases was $103 thousand and $103 thousand, respectively. The terms of the leases are for 36 months. The leases for computer equipment and software under capital leases have ended and there no future minimum lease payments under capital leases as of April 30, 2019.

(5) Accrued Expenses

Accrued expenses consist of the following at April 30, 2019 and April 30, 2018.

	April 30, 2019	April 30, 2018
	(in thousands)	
Project costs	$ 9	$ 57
Contract loss reserve	211	395
Employee incentive payments	580	761
Accrued salary and benefits	500	442
Legal and accounting fees	273	246
Accrued taxes payable	177	179
Other	188	181
	$ 1,938	$ 2,261

(6) Deferred Credits Payable

During the year ended April 30, 2001, in connection with the sale of Common Stock to an investor, the Company received $0.6 million from the investor in exchange for an option to purchase up to 500,000 metric tons of carbon emissions credits generated by the Company during the years 2008 through 2012, at a 30% discount from the then-prevailing market rate. If the Company received emission credits under applicable laws and failed to sell to the investor the credits up to the full amount of emission credits covered by the option, the investor was entitled to liquidated damages equal to 30% of the aggregate market value of the shortfall in emission credits (subject to a limit on the market price of emission credits). Under the terms of the agreement, if the Company did not become entitled under applicable laws to the full amount of emission credits covered by the option by December 31, 2012, the Company was obligated to return the option fee of $0.6 million, less the aggregate discount on any emission credits sold to the investor prior to such date. In December 2012, the Company and the investor agreed to extend the period for the sale of emission credits until December 31, 2017. The Company did not generate any emissions credits eligible for purchase under the agreement and it was agreed by the investor and the Company that the Company return the option fee of $0.6 million, which was completed as of August 31, 2018. As a result, this matter is completely resolved, and no additional amounts are owed by the Company to the investor.

(7) Warrants

Liability Classified Warrants

On June 2, 2016, the Company entered into a securities purchase agreement, which was amended on June 7, 2016 (as amended, the "June Purchase Agreement") with certain institutional purchasers (the "June Purchasers"). Pursuant to the terms of the June Purchase Agreement, the Company sold an aggregate of 20,850 shares of Common Stock together with warrants to purchase up to an aggregate of 7,298 shares of Common Stock. Each share of Common Stock was sold together with a warrant to purchase 0.35 of a share of Common Stock at a combined purchase price of $92.00. The warrants have an exercise price of $121.60 per share, became exercisable on December 3, 2016 ("Initial Exercise Date"), and will expire five years following the Initial Exercise Date. As of April 30, 2019, none of the warrants have been exercised.

On July 22, 2016, the Company entered into a Second Amendment to the Purchase Agreement (the "Second Amended Purchase Agreement") with certain institutional purchasers (the "July Purchasers"). Pursuant to the terms of the Second Amended Purchase Agreement, the Company sold an aggregate of 29,750 shares of Common Stock together with warrants to purchase up to an aggregate of 8,925 shares of Common Stock. Each share of Common Stock was sold together with a warrant to purchase 0.30 of a share of Common Stock at a combined purchase price of $135.00. The Warrants were exercisable immediately at an exercise price of $187.20 per share. The Warrants will expire on the fifth (5th) anniversary of the initial date of issuance. As of April 30, 2019, none of the warrants have been exercised.

Equity Classified Warrants

On April 8, 2019, the Company entered into a securities purchase agreement (the "April Purchase Agreement") with certain institutional purchasers. Pursuant to the terms of the April Purchase Agreement, the Company issued and sold 1,542,000 shares of common stock and pre-funded warrants to purchase up to 3,385,680 shares of common stock and common warrants to purchase up to 4,927,680 shares of our common stock in an underwritten public offering. The public offering price for the pre-funded warrants was equal to the public offering price of the common stock, less the $0.01 per share exercise price of each warrant. The pre-funded warrants have no expiration date. As of April 30, 2019, 753,560 of the pre-funded warrants have not been exercised. In connection with the public offering, the Company issued common warrants to purchase up to 4,927,680 shares of our common stock. The common stock warrants have an exercise price of $3.85 per share and expire five years from the issuance date. As of April 30, 2019, none of the common stock warrants have been exercised.

The Company accounts for warrants issued in connection with its public offerings in accordance with the guidance on "Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity" in Topic 480 which provides that the Company classify the warrant instruments as a liability at its fair value. The warrant liabilities are subject to re-measurement at each balance sheet date using the Black-Scholes option pricing model. The June and July 2016 warrants contain a feature whereby they could require the transfer of assets and therefore are classified as a liability award in accordance with the guidance Topic 480. As such, the warrants have a value of $6,000 at April 30, 2019 and $0.2 million at April 30, 2018 and are reflected within "Warrant liabilities" in the consolidated balance sheets. The pre-funded and common warrants issued in the Company's April 8, 2019 public offering did not meet the criteria to be classified as a liability award and therefore were treated as an equity award and recorded as a component of stockholders' equity in the consolidated balance sheets.

An unrealized gain of $0.2 million and $0.1 million, were included within "Gain due to change in fair value of warrant liabilities" in the consolidated statements of operations for the year ended April 30, 2019 and 2018, respectively. The Company determined the fair value using the Black-Scholes option pricing model with the following assumptions for the period ended April 30, 2019 and April 30, 2018:

	April 30, 2019	April 30, 2018
Dividend rate	0.0%	0.0%
Risk-free rate	2.2% - 2.3%	2.7% - 2.8%
Expected life (years)	2.2 - 2.6	3.2 - 3.6
Expected volatility	110.0% - 153.4%	132.9% - 142.7%

(8) Preferred Stock

The Company has authorized 5,000,000 shares of undesignated preferred stock with a par value of $0.001 per share. As of April 30, 2019, and 2018, no shares of preferred stock had been issued.

(9) Common Stock

As of April 30, 2019, the Company has 100,000,000 shares authorized with a par value of $0.001 per share and 5,425,517 shares issued.

On May 2, 2017, the Company sold 309,638 shares of common stock at a price of $26.00 per share, which includes the sale of 40,388 shares of the Company's common stock sold by the Company pursuant to the exercise, in full, of the over-allotment option by the underwriters in a public offering. The net proceeds to the Company from the offering were approximately $7.2 million, after deducting underwriter fees and offering expenses payable by the Company.

On October 23, 2017, the Company sold 286,972 shares of common stock at a price of $28.40 per share in a best efforts public offering. The net proceeds to the Company from the offering were approximately $7.4 million, after deducting placement fees and offering expenses payable by the Company.

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

On January 7, 2019, the Company entered into an At the Market Offering Agreement ("2019 ATM Facility") with A.G.P./Alliance Global Partners ("AGP"), under which the Company may issue and sell to or through A.G.P./Alliance Global Partners, acting as agent and/or principal, shares of the Company's common stock having an aggregate offering price of up to $25 million. As of April 30, 2019, under the 2019 ATM Facility the Company had issued and sold 151,561 shares of its common stock with an aggregate market value of $958,229 at an average price of $6.32 per share and paid AGP a sales commission of approximately $33,469 related to those shares.

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

(10) Treasury Shares

During the years ended April 30, 2019 and 2018, 89 and 1,298 shares of Common Stock, respectively, were purchased by the Company from employees to pay taxes related to the vesting of restricted stock.

(11) Share-Based Compensation Plans

2015 Omnibus Incentive Plan

In 2015, upon approval by the Company's stockholders, the Company's 2015 Omnibus Incentive Plan (the "2015 Plan") became effective. A total of 12,036 shares were authorized for issuance under the 2015 Omnibus Incentive Plan, including shares available for awards under the 2006 Stock Incentive Plan remaining at the time that plan terminated, or that were subject to awards under the 2006 Stock Incentive Plan that thereafter terminated by reason of expiration, forfeiture, cancellation or otherwise. On October 21, 2016, upon approval by the Company's stockholders, the Company increased the number of shares authorized for issuance to 32,036. 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. As of April 30, 2019, the Company has 58,555 shares available for future issuance under the 2015 Plan.

The 2015 Plan provides for the grant of stock options, SARs, restricted stock awards, stock unit awards and unrestricted stock awards, dividend equivalent rights, performance share awards or other performance-based awards, other equity-based awards or cash to eligible employees, officers and non-employee directors of the Company or any affiliate of the Company, or any consultant or adviser to the Company. The maximum number of shares of stock subject to Awards that can be granted under the 2015 Plan in any one calendar year to any person, other than a non-employee director, is 3,750. However, incentive stock options may only be granted to employees. The limitation on the amount of shares of stock issuable under the 2015 Plan is subject to adjustment in the event of certain changes in the Company's capital stock, such as recapitalizations, reclassifications, stock splits, reverse stock splits, spin-offs, combinations of our stock, exchanges of the Company's stock and other increases or decreases in the Company's stock without receipt of consideration.

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.

Except in connection with a corporate transaction in which the Company is involved, without obtaining stockholder approval, the 2015 Plan may not be amended to reduce the exercise price of such outstanding options or SARs, cancel outstanding options or SARs in exchange for or in substitution of options or SARs with an exercise price that is less than the exercise price of the original options or SARs, or cancel outstanding options or SARs with an exercise price above the current stock price in exchange for cash or other securities.

2018 Employment Inducement Incentive Award Plan

On January 18, 2018, the Company's Board of Directors adopted the Company's Employment Inducement Incentive Award Plan (the "2018 Inducement Plan") pursuant to which the Company reserved 25,000 shares of common stock for issuance under the Inducement Plan. In accordance with Rule 5635(c)(4) and Rule 5635(c)(3) of the Nasdaq Listing Rules, awards under the Inducement Plan may only be made to individuals not previously employees of the Company (or following such individuals' bona fide period of non-employment with the Company), as an inducement material to the individuals' entry into employment with the Company. An award is any right to receive the Company's common stock pursuant to the 2018 Inducement Plan, consisting of a performance share award, restricted stock award, a restricted stock unit award or a stock payment award. As of April 30, 2019, there were no shares outstanding and 25,000 shares available for grant under the 2018 Inducement Plan.

(a) Stock Options

A summary of stock options under the plans described above is as follows:

	Shares Underlying Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (In Years)
Outstanding as of April 30, 2018	19,427	$ 123.00	7.4
Granted	49,750	$ 8.20	
Exercised	-	$ -	
Cancelled/forfeited	(3,605)	$ 392.80	
Outstanding as of April 30, 2019	65,572	$ 21.08	8.9
Exercisable as of April 30, 2019	17,822	$ 55.60	7.1

As of April 30, 2019, the total intrinsic value of outstanding and exercisable options was approximately zero. As of April 30, 2019, approximately 42,343 additional options were unvested, which options had no intrinsic value and a weighted-average remaining contractual term of 9.6 years. There was approximately $0.2 million and $0.2 million of total recognized compensation cost related to employees for stock options during the years ended April 30, 2019 and 2018, respectively. As of April 30, 2019, 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 0.6 years. The Company typically issues newly authorized but unissued shares to satisfy option exercises under these plans.

(b) Restricted Stock

Compensation expense for non- vested restricted stock is generally recorded based on its market value on the date of grant and recognized ratably over the associated service and performance period. During fiscal 2019, the Company granted 943 shares subject to service-based vesting requirements and no shares subject to performance-based vesting requirements.

A summary of unvested restricted stock under the plans described above is as follows:

	Number of Shares	**Weighted Average Price per Share**
Issued and unvested at April 30, 2018	9,854	$ 27.00
Granted	943	$ 22.80
Vested	(258)	$ 64.40
Cancelled/forfeited	(6,033)	$ 22.51
Issued and unvested at April 30, 2019	4,506	$ 30.08

There was approximately $0.1 million and $0.1 million of total recognized compensation cost relating to restricted stock granted to employees during the years ended April 30, 2019 and 2018, respectively. As of April 30, 2019, there was $9,000 of total unrecognized compensation cost related to unvested restricted stock granted under the plans. This cost is expected to be recognized over a weighted-average period of 0.3 years.

(12) Fair Value Measurements

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

Level 1 Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities. Active markets are considered to be those in which transactions for the assets or liabilities occur in sufficient frequency and volume to provide pricing information on an ongoing basis.

Level 2 Quoted prices in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability. This category includes quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in inactive markets.

Level 3 Unobservable inputs are not corroborated by market data. This category is comprised of financial and non-financial assets and liabilities whose fair value is estimated based on internally developed models or methodologies using significant inputs that are generally less readily observable from objective sources.

Transfers into or out of any hierarchy level are recognized at the end of the reporting period in which the transfers occurred. There were no transfers between any levels during the year ended April 30, 2019 and 2018.

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

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

Warrant Liabilities

The fair value of the Company's warrant liabilities (refer to Note 7) recorded in the Company's financial statements is determined using the Black-Scholes option pricing model and the quoted price of the Company's common stock in an active market, volatility and expected life, is a Level 3 measurement. Volatility is based on the actual market activity of the Company's stock. The expected life is based on the remaining contractual term of the warrants and the risk-free interest rate is based on the implied yield available on U.S. Treasury Securities with a maturity equivalent to the warrants' expected life.

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

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

The following table presents financial assets and liabilities measured at fair value on a recurring basis as of April 30, 2018:

	Total Carrying Value in Consolidated Balance Sheet	Quoted prices in active markets for identical assets or liabilities (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
	(in thousands)			
Warrant liabilities	$ 201	$ -	$ -	$ 201

The following table provides a summary of changes in the fair value of the warrant liabilities during the year ended April 30, 2019;

Fair Value Measurement Using Significant Unobservable Inputs (Level 3)	
	Total Warrant Liability
	(in thousands)
Fair value – April 30, 2017	$ 323
Issuance	-
Transfers	-
Change in fair value	(122)
Fair value – April 30, 2018	$ 201
Change in fair value	(195)
Fair value – April 30, 2019	$ 6

(13) Income Taxes-

Loss before income taxes for the years ended April 30, 2019 and 2018 consisted of the following components:

	April 30, 2019	April 30, 2018
	(in thousands)	
Domestic	$ (12,860)	$ (11,004)
Foreign	(236)	(272)
Total loss before income taxes	$ (13,096)	$ (11,276)

The income tax benefit for the years ended April 30, 2019 and 2018 consist of state income tax benefits of $0.9 million and $1.1 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 US federal income tax rate for the periods ended April 30, 2019 and 2018 to loss before income taxes as a result of the following:

	April 30, 2019	April 30, 2018
Computed expected tax (benefit)	-21.0%	-29.7%
Increase(reduction) in income taxes resulting from:		
State income taxes, net of federal (benefit)	0.8%	3.0%
Federal research and development tax credits	-1.5%	-1.5%
Foreign rate differential	0.2%	0.3%
Other non-deductible expenses	0.1%	0.4%
Proceeds of sale of New Jersey tax (benefits)	-6.5%	-9.9%
U.S. tax reform effects	0.0%	162.2%
Other	0.6%	5.1%
Increase in valuation allowance	20.8%	-139.4%
Income tax (benefit)	-6.5%	-9.5%

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, 2019	April 30, 2018
	(in thousands)	
Deferred tax assets:		
Federal net operating loss carryforwards	$ 32,025	$ 29,329
Foreign net operating loss carryforwards	3,641	3,852
State operating loss carryforwards	1,653	1,460
Federal and New Jersey research and development tax credits	3,315	3,143
Stock compensation	486	645
Unrealized foreign exchange loss	5	12
Accrued expenses	145	487
Other	438	330
Net deferred tax assets before valuation allowance	41,708	39,258
Valuation allowance	(41,708)	(39,258)
Net deferred tax assets	$ -	$ -

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences and carry forwards become deductible or are utilized. As of April 30, 2019 and 2018, based upon the level of historical taxable losses, valuation allowances of $41.7 million and $39.3 million, respectively, were recorded to fully offset deferred tax assets. The valuation allowance increased $2.5 million during the year ended April 30, 2019 and decreased $15.4 million during the year ended 2018 respectively.

As of April 30, 2019, the Company had net operating loss carry forwards for federal income tax purposes of approximately $152.5 million, which begin to expire in fiscal 2019. The Company also had federal research and development tax credit carry forwards of approximately $3.2 million as of April 30, 2019, which begins to expire in 2019. 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 such an ownership change, as described in Section 382 of the Internal Revenue Code, occurred in conjunction with the Company's U.S. initial public offering in April 2007. The Company's annual Section 382 limitation is approximately $3.3 million. The Section 382 limitation is cumulative from year to year, and thus, to the extent net operating loss or other credit carry forwards are not utilized up to the amount of the available annual limitation, the limitation is carried forward and added to the following year's available limitation. Such limitation only applies to net operating losses incurred in periods prior to the ownership change. The Company has not performed additional analysis on ownership changes that may have occurred subsequently to further limit the ability to utilize net tax attributes. As of April 30, 2019, the Company had state net operating loss carry forwards of approximately $23.3 million which begin to expire in 2037, which also may be limited to utilization limitations. As of April 30, 2019, the Company had foreign net operating loss carry forwards of approximately $16.9 million. The ability to utilize these carry forwards may also be limited in the event of a significant change to ownership.

New Jersey Net Operating Loss

During the years ended April 30, 2019 and 2018, the Company sold New Jersey State net operating losses and research and development credits in the amount of $9.1 million and $11.5 million, respectively, resulting in the recognition of income tax benefits of $0.9 million and $1.1 million, respectively, recorded in the Company's Statement of Operations.

Uncertain Tax Positions

The Company applies the guidance issued by the FASB for the accounting and reporting of uncertain tax positions. The guidance requires the Company to recognize in its consolidated financial statements the impact of a tax position if that position is more likely than not to be sustained upon examination, based on the technical merits of the position. The Company is currently undergoing an income tax audit in Spain for the period from 2008 to 2014, when the Company's Spanish branch was closed (see Note 15 to the Consolidated Financial Statements) . At April 30, 2019 and 2018, the Company had no other unrecognized tax positions. The Company does not expect any material increase or decrease in its income tax expense in the next twelve months, related to examinations or uncertain tax positions. U.S. federal and state income tax returns were audited through fiscal 2014 and fiscal 2010 respectively. Net operating loss and credit carry forwards since inception remain open to examination by taxing authorities and will continue to remain open for a period of time after utilization.

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

(14) Commitments and Contingencies

(a) Operating Lease Commitments

The Company leases office, laboratory, manufacturing and other space in Monroe Township, New Jersey under an operating lease that expires on October 31, 2024. The lease commencement date is November 1, 2017, with lease payments beginning the same month. The lease expiration date is seven years from the rent commencement date. The Company provided a cash security deposit of approximately $154,000. The Lease contains a tenant improvement allowance of up to $138,000 and annual escalations, as such, the Company accounts for rent expense on a straight-line basis. Rent expense under operating leases was approximately $0.5 million and $0.4 million for the years ended April 30, 2019 and 2018, respectively.

Future minimum lease payments under operating leases as of April 30, 2019 are as follows:

	April 30, 2019 (in thousands)
2020	322
2021	331
2022	341
2023	352
2024	362
Thereafter	184
	$ 1,892

Shareholder Litigation

The Company and certain of its current and former directors and officers were identified as defendants in a derivative lawsuit filed on March 18, 2015 in the United States District Court for the District of New Jersey captioned *Labare v. Dunleavy, et. al.*, Case No. 3:15-cv-01980-FLW-LHG. The derivative complaint alleged claims for breach of fiduciary duty, abuse of control, gross mismanagement and unjust enrichment relating to the now terminated agreement between Victorian Wave Partners Pty. Ltd. (VWP) and the Australian Renewable Energy Agency (ARENA) for the development of a wave power station. The derivative complaint sought unspecified monetary damages and other relief.

On July 10, 2015, a second derivative lawsuit, captioned *Rywolt v. Dunleavy, et al.*, Case No. 3:15-cv-05469, was filed by another shareholder against the same defendants in the United States District Court for the District of New Jersey alleging similar claims for breach of fiduciary duty, gross mismanagement, abuse of control, and unjust enrichment relating to the now terminated agreement between VWP and ARENA. The *Rywolt* complaint also seeks unspecified monetary damages and other relief.

On April 21, 2016, a third derivative lawsuit, captioned *LaCalamito v. Dunleavy, et al.*, Case No. 3:16-cv-02249, was filed by another shareholder against certain current and former directors and officers of the Company in the United States District Court for the District of New Jersey alleging similar claims for breach of fiduciary duty relating to the now terminated agreement between VWP and ARENA. The *LaCalamito* complaint sought unspecified monetary damages and other relief.

On June 9, 2016, a fourth derivative lawsuit, captioned *Pucillo v. Dunleavy, et al.*, was filed by another shareholder against certain current and former directors and officers of the Company in the United States District Court for the District of New Jersey alleging similar claims for breach of fiduciary duty, unjust enrichment, and abuse of control relating to the now terminated agreement between VWP and ARENA. The *Pucillo* complaint seeks unspecified monetary damages and other relief.

On October 25, 2016, the Court approved and entered a Stipulation and Order that, among other things, (i) consolidated the *LaBare*, *Rywolt*, *LaCalamito and Pucillo* derivative actions; (ii) identified plaintiff *Pucillo* as the lead plaintiff in the consolidated actions; and (iii) stayed the consolidated actions pending the November 14, 2016 settlement hearing in the now-settled securities class action and further order of the Court.

On October 23, 2017, the parties entered into a Stipulation and Agreement of Settlement to resolve the four consolidated derivative lawsuits. The settlement provided for, among other things, the Company to implement certain corporate governance changes, a $350,000 payment to the plaintiffs' attorneys for attorneys' fees and costs that will be made by the Company's insurance carrier, dismissal of the derivative lawsuits, and certain releases. On November 21, 2017, the plaintiffs filed an unopposed motion seeking preliminary approval of the settlement, which the Court granted on March 9, 2018. On May14, 2018, the Court held a final settlement approval hearing at which the Court stated that it was approving the settlement. On June 13, 2018, the Court issued a Final Order and Judgment, approving the Stipulation and Agreement of Settlement. The Company had accrued $350,000 related to this matter as a probable and reasonably estimable loss contingency during the twelve months ended April 30, 2018. The Company also recorded a receivable of $350,000 from its insurance carrier with the offset to the statement of operations. The Company's insurance carrier made a payment of $350,000 to the plaintiffs' attorneys on May 3, 2018. As a result, the consolidated derivatives lawsuits are now completely resolved, the releases are operative, and the matter is closed.

Employment Arbitration

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

On August 28, 2018, counsel for Mr. Dunleavy filed a demand for arbitration, captioned *Charles F. Dunleavy v. Ocean Power Technologies, Inc.*, Case No. 01-18-0003-2374, before the American Arbitration Association in New Jersey. The demand names Ocean Power Technologies, Inc. as the respondent and alleges various claims and seeks declaratory relief and permanent injunction. The demand seeks damages in the amount of $5 million for compensatory and punitive damages, plus interest and attorneys' fees as well as certain equitable relief. On November 8, 2018, the Company through counsel responded to the demand for arbitration, denied all allegations, and asserted various affirmative defenses. On April 5, 2019, a three-member arbitration panel scheduled the discovery process to run from April 12, 2019 until November 9, 2019, set a pre-hearing case management conference for October 14, 2019, and set the hearing for December 9-13, 2019 in Princeton, New Jersey. As of April 30, 2019, the Company has not accrued any provision related to this matter since it cannot reasonably estimate the loss contingency.

Tide Runner Marine, Inc. Lawsuit

On June 13, 2018, Tide Runner Marine, Inc. ("Tide Runner") filed a lawsuit in the United States District Court for the District of New Jersey captioned *Tide Runner Marine, Inc. v. Ocean Power Technologies, Inc.*, Case No. 1:18-cv-10496. The complaint names the Company as defendant and alleges claims for breach of contract, unjust enrichment, conversion, and fraud, negligent and/or reckless misrepresentation all as associated with the removal of a Company mooring system off the coast of New Jersey that was completed in May 2017. The complaint seeks damages in the amount of $2,825,130 together with interest, costs, attorney's fees, punitive damages and such other relief as may be appropriate under the circumstances. On July 27, 2018, the Company filed an answer denying the claims in the complaint, asserted various affirmative defenses, and asserted a counter-claim for damages in the amount of $15,000 for Tide Runner's failure to pay the Company for certain portions of the mooring system that were recovered. On August 2, 2018, Tide Runner filed its answer to and denied the Company's counterclaim and asserted various affirmative defenses. During the initial scheduling conference held on September 13, 2018, the parties agreed to engage in mediation in an effort to resolve this matter and also agreed to include Tide Runner's subcontractor, Wittich Bros. Marine Inc. ("Wittich") in the mediation process. The parties participated in mediation on November 15, 2018 but were unable to reach an agreement. However, the parties agreed to continue the mediation process and on February 11, 2019 reached a settlement agreement. On February 22, 2019, the parties executed a Settlement Agreement and Release ("Settlement"). Under the Settlement, the Company will pay to Wittich (i) $50,000 within 10 days after the final execution of the Settlement and (ii) another $150,000 on or before May 1, 2019. Subsequently, the parties filed a stipulation of dismissal of both Tide Runner's complaint and the Company's counterclaim with prejudice and without costs, and the Court granted the dismissal and terminated the case. The parties have also provided mutual releases for the matters in dispute in the litigation and will indemnify each other for future similar claims. As of April 30, 2019, the Company made the two required payments to Wittich.

Nasdaq Compliance

On August 9, 2018, the Company received written notification from Nasdaq indicating that the closing bid price of the Company's common stock had been below $1.00 per share for a period of 30 consecutive trading days, and as a result, the Company was not in compliance with the minimum bid price requirement for continued listing. Under the Nasdaq Listing Rules, the Company was provided with a grace period of 180 calendar days, or until February 5, 2019, in which to regain compliance with the minimum bid price rule. To regain compliance, the closing bid price of the Company's common stock must meet or exceed $1.00 per share for a minimum of ten consecutive business days during the grace period. If the Company did not regain compliance before February 5, 2019, Nasdaq stated that it would provide the Company with written notice that its securities are subject to delisting. At that time, the Company could appeal Nasdaq's determination to a Nasdaq Listing Qualifications Panel, which would stay any further delisting action by Nasdaq pending a final decision by the panel. Alternatively, the Company could have been eligible for an additional 180 calendar day grace period if it met the continued listing standards, with the exception of bid price, for the Nasdaq Capital Market, and if the Company stated its intent to affect a reverse split, if necessary, to cure such deficiency.

On February 11, 2019, the Company received another written notification from Nasdaq indicating that the Company had not regained compliance with the minimum bid price requirement and that the Company's stockholders' equity, as reported in the Company's Quarterly Report on Form 10-Q for the quarter ended October 31, 2018, did not qualify the Company for an additional 180 calendar day extension period for compliance. On February 19, 2019, the Company appealed Nasdaq's determination to a Hearings Panel (the "Panel"), pursuant to the procedures set forth in the Nasdaq Listing Rule 5800 Series. The appeal stayed the suspension of the Company's securities pending the Panel's decision, during which time the Company's common stock will continue to be listed on Nasdaq, and the Company's common stock will continue to trade under the symbol "OPTT".

On March 14, 2019, the Company received another written notification from Nasdaq indicating that the Company did not comply with the minimum stockholders' equity requirement for continued listing. The earlier-filed appeal of the minimum bid price requirement was sufficient to encompass the minimum stockholder's equity requirement, and the stay of suspension continued pending the Panel hearing and decision.

The Panel held its hearing on March 28, 2019. On April 4, 2019, the Panel issued the following two decisions: (i) the Panel concluded that the Company was in compliance with the minimum bid price rule; and (ii) the Panel granted the Company's request to cure its stockholder equity deficiency by conducting a public offering that was estimated to raise $10 million by no later than April 30, 2019. On April 24, 2019, the Company provided the Panel with an update following a public offering that raised approximately $15.7 million (after deducting underwriter fees, commissions and other offering expenses) and closed on April 8, 2019. The update included revised projections of stockholder equity based upon the actual amount of proceeds raised during the public offering, which in the Company's opinion was sufficient to cure the stockholder equity deficiency.

On May 20, 2019 the Company received a letter from Nasdaq confirming that the Company has regained compliance with the minimum shareholders' equity rule, as required by the Panel's decision dated April 4, 2019, and is in compliance with other applicable requirements as set forth in the decision and required for listing on Nasdaq. Accordingly, the Panel has determined to continue the listing of the Company's securities on Nasdaq and closed the matter.

FINRA Review

On April 4, 2019, FINRA notified the Company that it was conducting a routine review of the Company's stock associated with two public announcements and asked several questions regarding: (i) an April 3, 2019 announcement that the Company had won a contract with a leading oil and gas operator; and (ii) an April 4, 2019 announcement of the pricing of an underwritten public offering. The Company provided its response to the FINRA questions on Tuesday, April 9, 2019. As of July 22, 2019, FINRA has not provided any follow-up.

Spain Income Tax Audit

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

(15) Operating Segments and Geographic Information

The Company's business consists of one segment as this represents management's view of the Company's operations. The Company operates on a worldwide basis with one operating company in the US and operating subsidiaries in the UK and in Australia. Revenues and expenses are generally attributed to the operating unit that bills the customers. Geographic information is as follows:

	Year Ended April 30, 2019			
	North America	Europe	Asia and Australia	Total
	(in thousands)			
Revenues from external customers	$ 632	$ -	$ -	$ 632
Operating loss	(13,045)	(204)	(22)	(13,271)
Long-lived assets	592	-	-	592
Total assets	18,028	49	289	18,366

	Year Ended April 30, 2018			
	North America	Europe	Asia and Australia	Total
	(in thousands)			

Revenues from external customers	$ 511	$ -	$ -	$ 511
Operating loss	(11,282)	(243)	(35)	(11,560)
Long-lived assets	712	-	-	712
Total assets	13,762	22	337	14,121

(16) Adoption of Revenue Recognition Guidance

The Company adopted the new revenue recognition guidance effective May 1, 2018, using the modified retrospective method. The primary impact of the new guidance was a change in the timing of revenue recognition on certain long-term contracts. The new guidance does not change the total sales or operating income on the related customer contracts, only the timing of when sales and operating income are recognized. The Company uses the expected cost plus a margin approach and lease accounting literature for revenue recognition on customer contracts. The impact of the adoption for the twelve months ended April 30, 2019 was an increase of $118,000 to net loss. Further, as the Company's adoption of the guidance decelerated the timing of revenue recognition on the Company's contracts, the adoption resulted in an $118,000 increase in the Company's remaining performance obligations, also referred to as backlog, as of April 30, 2019.

The following tables present how the adoption of the new revenue recognition standard affected certain line items in the Company's condensed statement of operations for the twelve months ended April 30, 2019.

	Twelve months ended April 30, 2019		
	As Reported	Effect of Adoption	Amounts Excluding Effect of Adoption
Revenues	$ 632	$ (118)	$ 750
Operating loss	(13,271)	(118)	(13,153)
Net loss	$ (12,246)	$ (118)	$ (12,128)
Basic and diluted net loss per share	$ (9.52)	$ (0.09)	$ (9.43)
Weighted average shares used to compute basic and diluted net loss per share	1,286,727	1,286,727	1,286,727

The following tables present how the adoption of the new revenue recognition standard affected certain line items in the Company's statement of comprehensive loss for the twelve months ended April 30, 2019.

	Twelve months ended April 30, 2019		
	As Reported	Effect of Adoption	Amounts Excluding Effect of Adoption
Net loss	$ (12,246)	$ (118)	$ (12,128)
Foreign currency translation adjustment	(11)	-	(11)
Total comprehensive loss	$ (12,257)	$ (118)	$ (12,139)

The following tables present how the adoption of the new revenue recognition standard affected certain line items in the Company's consolidated balance sheet as of April 30, 2019.

	As of April 30, 2019		
	As Reported	Effect of Adoption	Amounts Excluding Effect of Adoption
ASSETS			
Contract assets	$ 15	$ (70)	$ 85
Total assets	$ 18,366	$ (70)	$ 18,436
LIABILITIES AND STOCKHOLDERS' EQUITY			
Contract liability	$ 188	$ 48	$ 140
Accumulated deficit	(209,784)	(118)	(209,666)
Total stockholders' equity	$ 15,775	$ (70)	$ 15,845
Total liabilities and stockholders' equity	$ 18,366	$ (70)	$ 18,436

The following tables present how the adoption of the new revenue recognition standard affected certain line items in the Company's consolidated statement of cash flows for the twelve months ended April 30, 2019.

	Twelve months ended April 30, 2019		
	As Reported	Effect of Adoption	Amounts Excluding Effect of Adoption
Net loss	$ (12,246)	$ (118)	$ (12,128)
Contract assets	(15)	70	(85)
Contract liability	188	48	140
Net cash used in operating activities	$ (12,140)	$ -	$ (12,140)
Net increase in cash, cash equivalents and restricted cash	$ 4,934	$ -	$ 4,934
Cash, cash equivalents and restricted cash, end of period	$ 17,159	$ -	$ 17,159

INDUSTRIAL LEASE AGREEMENT

Between

Landlord: PPF INDUSTRIAL 28 ENGELHARD, LLC,
a Delaware limited liability company

and

Tenant: OCEAN POWER TECHNOLOGIES, INC.
a Delaware corporation

Premises: A Portion of 28 Engelhard Drive, Monroe Township, New Jersey

INDUSTRIAL LEASE AGREEMENT

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SUMMARY OF BASIC LEASE PROVISIONS

This Summary of Basic Lease Provisions (this "Summary") by and between PPF Industrial 28 Engelhard, LLC a Delaware limited liability company ("Landlord") and Ocean Power Technologies, Inc., a Delaware corporation ("Tenant"). In the event of any conflict between the terms and provisions of this Summary and the terms and provisions of the attached Industrial Lease Agreement (the "Lease"), the terms and provisions of the Lease shall control. In addition to the basic lease provisions contained in this Summary, all of the other terms and conditions of the Lease hereinafter set forth are hereby incorporated as an integral part of this Summary.

1. Landlord:		PPF Industrial 28 Engelhard, LLC, a Delaware limited liability company
2. Tenant:		Ocean Power Technologies, Inc., a Delaware corporation
3. Building:		That certain building located on the Land (as hereinafter defined) containing approximately 144,850 rentable square feet of space and known as 28 Engelhard Drive, Monroe, New Jersey (the "Building"), which is generally depicted on Exhibit A-1 attached hereto.
4. Premises:		Approximately 55,958 rentable square feet of space, consisting of approximately 8,245 rentable square feet of office space and approximately 47,713 rentable square feet of warehouse/production space in the Building, as is generally depicted on Exhibit A-1 attached hereto (the "Premises").
5. Term:		
	Initial Term:	Seven (7) Lease Years. (See Section 2(a))
	Commencement Date	The earlier of (i) the Tender Date (as defined in Section 3) or (ii) the date that Tenant occupies and uses the Premises for the conduct of business therein (See Section 3).
	Rent Commencement Date:	The later of (i) the Commencement Date or (ii) November 1, 2017. (See Section 6)
	Expiration Date:	11:59 p.m. on the last day of the full calendar

month which is eighty-four (84) months following the Rent Commencement Date.

Extension Term(s): One 5-year option. (See Section 2(b))

6. Base Rent

Lease Year	Annual Base Rent	Monthly Installment
1*	$307,769.00	$25,647.42
2	$317,002.07	$26,416.84
3	$326,512.13	$27,209.34
4	$336,307.50	$28,025.62
5	$346,396.72	$28,866.39
6	$356,788.62	$29,732.39
7	$367,492.28	$30,624.36

*Rent shall commence on the Rent Commencement Date.

7. Rent Payment Address: Matrix Development Group
Forsgate Drive, CN 4000
Cranbury, NJ 08512
Attn: Mr. Donald Epstein

8. Use of Premises: Warehousing, receiving, storing, processing, assembling, shipping, manufacturing, fabricating, testing and repairing of Tenant's Power Buoy technology and any ancillary, incidental or accessory equipment and any substitutes for such items, or items which are a technological evolution of the foregoing items, and related general office use and any other ancillary office uses (the "Permitted Use")

9. Tenant's Share: 38.63% (See Section 7(a))

10. Letter of Credit Security: $153,884.52 (See Section 16)

11. Parking: See Section 1(d)

12. Tenant Improvement Allowance: $137,563.42 (See Section 60)

13. Tenant's Required Insurance: See Section 25

14. Landlord's Broker: Matrix Realty, Inc.

15. Tenant's Broker: Savills Studley

16. Notice Addresses:

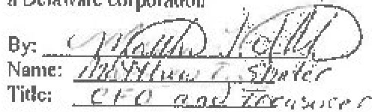
Landlord	Tenant
PPF Industrial 28 Engelhard, LLC c/o Matrix Development Group Forsgate Drive, CN4000 Cranbury, NJ 08512 Attention: Mr. Donald Epstein E-Mail Address: depstein@matrixcompanies.com Fax No.: 609-395-8289	Prior to Occupancy of the Premises: Ocean Power Technology, Inc. 1590 Reed Road Pennington, NJ 08534 Attention: E-Mail Address: mshafer@oceanpowertech.com Fax No.: (609) 730-0404
-and-	
Morgan Stanley Real Estate Advisor, Inc. 1585 Broadway, Floor 37 New York, NY 10036 Attention: Mr. Brian Beck E-Mail Address: Brian.Beck@morganstanley.com Fax No.: 212-507-6307	After Occupancy of the Premises: Ocean Power Technology, Inc. 28 Engelhard Drive Monroe Township, NJ Attention: E-Mail Address: mshafer@oceanpowertech.com Fax No.: (609) 730-0404

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES APPEAR ON NEXT PAGE.]

IN WITNESS WHEREOF, intending to be legally bound, Landlord and Tenant have executed this Summary as of the 31st day of March, 2017.

Tenant:

OCEAN POWER TECHNOLOGIES, INC.,
a Delaware corporation



By: ____________________
Name: Matthew T. Shafer
Title: CFO and Treasurer

Landlord:

PPF INDUSTRIAL 28 ENGELHARD, LLC, a Delaware limited liability company

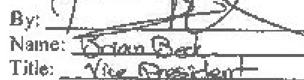
By: PPF Industrial, LLC, a Delaware limited liability company, its sole member

By: PPF OP, LP, a Delaware limited partnership, its sole member

By: PPF OPGP, LLC, a Delaware limited liability company, its general partner

By: Prime Property Fund, LLC, a Delaware limited liability company, its sole member

By: Morgan Stanley Real Estate Advisor, Inc., a Delaware corporation, its Investment Advisor



By: ____________________
Name: Brian Beck
Title: Vice President

INDUSTRIAL LEASE AGREEMENT

THIS INDUSTRIAL LEASE AGREEMENT (this "Lease") is made and entered into as of the 31 day of March, 2017 (the "Effective Date") by and between the Landlord and Tenant identified in the Summary.

1. Premises.

(a) Landlord does hereby demise, rent and lease to Tenant and Tenant does hereby accept, rent and lease from Landlord, approximately 55,958 rentable square feet located in the Building identified in the Summary (the "Premises"), situated on the real property described in Exhibit "A" attached hereto (the "Land"). The Premises is more particularly cross-hatched on the drawing attached hereto as Exhibit "A-1" and made a part hereof by reference. The Land and the improvements thereon are hereinafter collectively called the "Property". Notwithstanding anything to the contrary in this Lease, Tenant shall have no right to occupy or use the Premises until the Tender Date.

(b) The Premises are demised, rented and let subject to (i) the rights of any persons or entities in possession of the remainder of the Property; provided, however, that, notwithstanding anything to the contrary herein, for the entire Term, Tenant shall have exclusive use of the Premises, and Tenant's Truck Parking Area (as described in Section 1.(d) below) and non-exclusive use of the Common Areas as described below in Section 1(d), (ii) the existing state of title of the Property as of the Effective Date, including all easements, agreements, covenants and restrictions affecting the Property as of such date , (iii) any state of facts which an accurate survey or physical inspection of the Property might show, (iv) all laws and legal requirements, and (v) the condition of the Premises and the remainder of the Property as of the Commencement Date, without representation or warranty by Landlord except as otherwise set forth herein. Notwithstanding the foregoing, Landlord represents and warrants to Tenant that to Landlord's knowledge without investigation, no recorded document affecting title to the Land restricts Tenant's use of the Premises for the Permitted Use.

(c) Tenant shall inspect the Premises upon the Tender Date and subject to the Premises then satisfying the Delivery Requirements (as defined in Section 3), agrees to accept the same "AS IS," "WHERE IS" "WITH ALL FAULTS" without representation or warranty except as otherwise expressly set forth herein; provided, however, that such acceptance shall not relieve Landlord of its ongoing repair and restoration obligations under this Lease. No easement for light, air or view is granted hereunder or included within or appurtenant to the Premises.

(d) Tenant shall have the non-exclusive right, in common with the parties occupying the Building, to use the grounds, sidewalks, driveways and alleys located on the Land which are intended for the common use of tenants (collectively, the "Common Areas"), subject to the Rules and Regulations (as defined in Section 13). Tenant may park cars in the parking area depicted on Exhibit "A-1" as Tenant's Car Parking Area during normal business hours on a non-exclusive basis, subject to the Rules and Regulations. Tenant shall also have the exclusive use of Tenant's Truck Parking Area depicted on Exhibit "A-1" for, (i) the parking and storage of trucks, trailers, cranes, forklifts and other similar vehicles, and (ii) the storage and operation of

equipment, vehicles and materials used by Tenant with respect to the Permitted Use, including, but not limited to, storage containers, Buoy parts, Buoy stands, safety equipment, loading and unloading equipment and trailers. Tenant shall have the right to store (i) the items listed on Exhibit "E-1" in Tenant's Truck Parking Area and (ii) the items listed on Exhibit "E-2" in the Premises, provided that in any such case of (i) and/or (ii), all such storage shall be in compliance with all applicable laws and regulations (including, without limitation, applicable occupational and other regulatory requirements and any applicable reporting requirements), Tenant shall not create a nuisance or interfere with other tenants at the Property, and Tenant shall ensure that all such items are properly secured so as to not cause damage to the Property.

(e) Tenant shall not succeed to any of Landlord's easement rights over and relating to the Land, nor shall Tenant have or obtain any rights to the Common Areas other than those rights specifically granted to Tenant in this Lease. Landlord shall have the sole right of control over the use, maintenance, configuration, repair and improvement of the Common Areas, so long as none of the foregoing materially and adversely interferes with Tenant's use and enjoyment of the Premises and parking areas as contemplated in this Lease. Landlord may make such changes to the use or configuration of, or improvements comprising, or maintenance of or repair to the Common Areas as Landlord may reasonably elect without liability to Tenant, provided that Tenant's access to the Premises throughout the Term shall not be materially impaired and so long as none of the foregoing materially and adversely interferes with Tenant's use and enjoyment of the Premises and parking areas as contemplated in this Lease.

2. Lease Term.

(a) Initial Term. Tenant shall have and hold the Premises for the Initial Term identified in the Summary commencing on the Commencement Date identified in the Summary, and terminating at 11:59 p.m. on the Expiration Date as identified in the Summary, unless sooner terminated or extended as hereinafter provided. Promptly following the Commencement Date, Landlord and Tenant shall enter into a letter agreement in the form attached hereto as Exhibit "C", specifying and/or confirming the Commencement Date and the Expiration Date and the other matters set forth therein. The Initial Term of this Lease shall consist of a series of seven (7) full "Lease Years" as follows:

(i) The first Lease Year shall consist of a year commencing on the Commencement Date and expiring at 11:59 p.m. on the date that is the last day of the twelfth (12th) full calendar month following the Rent Commencement Date, provided that if the Rent Commencement Date is the first day of a calendar month, the Lease Year shall end on the last day of the calendar month immediately preceding the date that is 12 full calendar months thereafter) (by way of example only, if the Rent Commencement Date is November 20, 2017, then the First Lease Year shall expire at 11:59 p.m. on November 30, 2018 and if the Rent Commencement Date is November 1, 2017, then the First Lease Year shall expire at 11:59 p.m. on October 31, 2018).

(ii) Each Lease Year thereafter through the end of the seventh (7th) Lease Year shall commence on the first day after the date on which the prior Lease Year expires, and shall expire at 11:59 p.m. on the date that is twelve (12) months following the first day of such Lease Year.

(b) Option to Extend.

(i) Provided no default by Tenant has occurred and is continuing either at the time the extension option provided herein is exercised or on the date on which the Extension Term (as hereinafter defined) is to commence, Tenant shall have the option to extend the Term of this Lease for one (1) additional period of five (5) years (the "Extension Term"), upon the same terms, covenants and conditions contained in this Lease which were in effect during the Initial Term except that Base Rent for the Extension Term shall be adjusted as set forth in Section 5(b) below, and Tenant shall have no additional right to extend the Term. This option to extend is personal to Tenant and shall not apply to any assignee of Tenant. The Extension Term will commence immediately following the seventh (7th) Lease Year.

(ii) Tenant may exercise its option to extend this Lease only by giving Landlord written notice of its intention to extend at least nine (9) months but not more than fifteen (15) months prior to the expiration of the Initial Term. Tenant's written notice exercising an extension option hereunder, once given to Landlord, shall be irrevocable. If Tenant properly exercises its option to extend this Lease in accordance with the provisions of this Section 2(b), then from and after such date of exercise by Tenant of its option to extend, "Term" shall mean both the Initial Term and the Extension Term.

3. **Delivery of Possession.**

(a) Promptly after the full execution of this Lease, Landlord shall, at Landlord's expense, make application to the applicable governmental authority for the issuance of a continuing certificate of occupancy (or local equivalent) (a "C/O") for the Premises in its current "as-is", "where-is" condition. Tenant shall cooperate with Landlord in such application and shall provide Landlord and any applicable governmental authority with such information and documentation as may be requested to pursue such process. Landlord shall have no obligation to make any improvements, repairs, replacements or alterations to the Premises or the Building, or to undertake any other work or expend any funds (other than customary application fees to applicable governmental authorities), in connection with the issuance of such C/O. Prior to delivery of the Premises to Tenant, all of the following conditions must be met: (i) delivery by Landlord of the C/O, (ii) the Landlord's Work (as defined in Section 3(c)) being substantially completed, (iii) the existing tenant of the Premises and any and all other occupants of the Premises (or any portion thereof) having completely vacated the entire Premises and Tenant having exclusive possession of the Premises and the Tenant Truck Parking Area thereafter in accordance with the provisions hereof, (iv) all mechanical, electrical, plumbing and structural items in the Premises including, without limitation, all lights, overhead doors, gates, and HVAC systems (but specifically excluding the warehouse air conditioning system), shall be in good working order with no replacement of any major component thereof necessary, but subject to normal wear and tear, and (v) Landlord providing Tenant with all keys for the Premises. The requirements set forth in the above subparts (i) through (v) of this Section 3 are each a condition of delivery and are in the aggregate the "Delivery Requirements" The "Tender Date" shall be deemed to have occurred upon the later of (i) Landlord delivering to Tenant full physical possession of the Premises and Tenant Truck Parking Area and the satisfaction of all of the Delivery Requirements and (ii) October 1, 2017.

(b) If the Tender Date has not occurred on or before December 1, 2017 (the "Outside Date"), then Tenant may, in its sole discretion, terminate this Lease by delivering written notice thereof to Landlord before the earlier of (Y) ten (10) business days after the Outside Date and (Z) the date upon which the Tender Date occurs, and after the earlier of such dates, Tenant's right to terminate this Lease set forth in this Section 3 shall expire and be of no further force or effect. Landlord shall not be liable for damages to Tenant for failure to deliver possession of the Premises to Tenant, except that the commencement of the Term shall be delayed until Landlord delivers possession of the Premises to Tenant (so long as Tenant is not responsible for such failure or delay). If Tenant is responsible for any delay in the occurrence of the Tender Date (and Landlord has otherwise completed all of its requirements with respect to the Tender Date which are not delayed by Tenant), the Tender Date shall be deemed to be the date on which the Tender Date would have occurred but for such delay.

(c) Landlord shall fill in the doorways between the Premises and the adjacent premises in the Building, such work being referred to herein as "Landlord's Work".

4. **Quiet Enjoyment**. Tenant, upon payment in full of the required Rent and upon full performance by Tenant of the terms, covenants and agreements contained in this Lease to be performed by Tenant, and subject to the terms, covenants and conditions imposed upon Tenant's occupancy of the Premises as set forth in this Lease, shall peaceably and quietly have, hold and enjoy the Premises during the Term hereof, subject to this Lease and any ground lease, mortgage or trust deed now or hereafter encumbering the Premises and/or the Property; provided, however, that nothing in this Section 4 is intended to limit the provisions of Section 40 below. Landlord shall not be responsible for the acts or omissions of Tenant, any other tenant, or any third party that may interfere with Tenant's use and enjoyment of the Premises, but Landlord shall use commercially reasonable efforts to enforce its rights, if any, under any lease or other occupancy agreement to stop such third party interference.

5. **Base Rent**.

(a) Tenant shall pay to Landlord, at the address stated in the Summary or at such other place as Landlord shall designate in writing to Tenant, annual base rent ("Base Rent") as set forth in the Summary. Tenant may, in its discretion, pay Base Rent by EFT payment in which case Landlord shall provide to Tenant account information and wire transfer instructions such that Tenant can pay electronically by wire transfer of immediately available federal funds.

(b) Landlord, within thirty (30) days following receipt of notice from Tenant exercising its option to extend the Term pursuant to Section 2(b) above, shall advise Tenant in writing as to Landlord's determination of what the Fair Market Rent for the Premises would be for the Extension Term. "Fair Market Rent," as that phrase is used herein, shall mean annual rent in an amount which a landlord willing but not forced to lease and a tenant willing but not forced to rent would accept and pay for the Premises, or space similar to the Premises of the same quality located in the Township of Monroe, State of New Jersey (the "Market Area"), with Landlord, in making such determination, taking into account all relevant economic factors including, but not limited to, the length of the Extension Term, the condition and location of the Premises and the fact that Landlord will not be obligated to provide any tenant allowance or other tenant concessions with respect to any Extension Term; provided, however, in no event

shall the Fair Market Rent be less than the Base Rent which is payable during the Lease Year immediately preceding the relevant Extension Term for which Fair Market Rent is being determined (the "Minimum Extension Base Rent"). Tenant shall have twenty (20) days from its receipt of Landlord's notice to notify Landlord in writing that Tenant does not agree with Landlord's determination of the Fair Market Rent and that Tenant elects to determine Fair Market Rent (as calculated below). If Tenant does not notify Landlord of such election within twenty (20) days of its receipt of Landlord's notice, Base Rent for the Premises for the Extension Term shall be the Fair Market Rent set forth in Landlord's notice to Tenant. In the event Tenant timely notifies Landlord that Tenant does not agree with Landlord's determination of the Fair Market Rent, the Fair Market Rent shall be determined by an appraisal procedure as follows:

In the event that Tenant timely notifies Landlord that Tenant disagrees with Landlord's determination of the market rate and that Tenant elects to determine the Fair Market Rent, then Tenant shall specify, in such notice to Landlord, Tenant's selection of a real estate appraiser who shall act on Tenant's behalf in determining the Fair Market Rent. Within twenty (20) days after Landlord's receipt of Tenant's selection of a real estate appraiser, Landlord, by written notice to Tenant, shall designate a real estate appraiser, who shall act on Landlord's behalf in the determination of the Fair Market Rent. Within twenty (20) days after the selection of Landlord's appraiser, the two (2) appraisers shall render a joint written determination of the Fair Market Rent, which determination shall take into consideration any differences between the Building and those buildings comparable to the Building located in the Market Area, including without limitation age, location, setting and type of building, but in no event shall the Fair Market Rent be less than the Minimum Extension Base Rent. If the two (2) appraisers are unable to agree upon a joint written determination within said twenty (20) day period, the two appraisers shall select a third appraiser within such twenty (20) day period. Within twenty (20) days after the appointment of the third appraiser, the third appraiser shall render a written determination of the Fair Market Rent by selecting, without change, the determination of one (1) of the original appraisers as to the Fair Market Rent and such determination shall be final, conclusive and binding; provided, however, in no event shall the Fair Market Rent be less than the Minimum Extension Base Rent. All appraisers selected in accordance with this subparagraph shall have at least ten (10) years prior experience in the commercial leasing market of the Market Area and shall be members of the American Institute of Real Estate Appraisers or similar professional organization. If either Landlord or Tenant refuses to or fails to timely select an appraiser, the other appraiser shall alone determine the Fair Market Rent. Landlord and Tenant agree that they shall be bound by the determination of Fair Market Rent pursuant to this paragraph; provided, however, in no event shall the Fair Market Rent be less than the Minimum Extension Base Rent. Landlord shall bear the fee and expenses of its appraiser; Tenant shall bear the fee and expenses of its appraiser; and Landlord and Tenant shall share equally the fee and expenses of the third appraiser, if any.

6. **Rent Payment**.

(a) The Base Rent for each Lease Year shall be payable in equal monthly installments, due on or before the first (1st) day of each calendar month, in advance, in legal tender of the United States of America, without abatement (except as expressly provided for in this Lease), notice, demand, deduction or offset of any kind whatsoever. Monthly installments of Base Rent shall be due and payable on or before the first day of each calendar month following

the Rent) Commencement Date during the Term hereof. Notwithstanding the foregoing, Tenant shall pay Base Rent for the first full calendar month after the Rent Commencement Date upon the execution of this Lease.

(b) For the purposes hereof, the term "Rent Commencement Date" means the later of (i) the Commencement Date and (ii) November 1, 2017. If the Rent Commencement Date is not the first day of a calendar month then Base Rent for the month in which the Rent Commencement Date falls shall be prorated, with Tenant to receive an abatement of the Base Rent for the period accruing prior to the Rent Commencement Date, and Tenant shall, on the Rent Commencement Date, pay the prorated amount of the monthly installment of Base Rent accruing for the period from the Rent Commencement Date through the last day of the calendar month in which the Rent Commencement Date falls.

(c) Commencing on the Rent Commencement Date, Tenant shall pay, as Additional Rent, all other sums due from Tenant under this Lease (the term "Rent", as used herein, means all Base Rent, Additional Rent and all other amounts payable hereunder from Tenant to Landlord).

7. **Operating Expenses/Taxes.**

(a) Tenant agrees to reimburse Landlord throughout the Term, as Additional Rent hereunder, for Tenant's Share, as defined in the Summary, of: (i) the annual Operating Expenses for each calendar year, or portion thereof, during the Term; and (ii) the annual Taxes for each calendar year, or portion thereof, during the Term. "Tenant's Share" has been determined by dividing the rentable square footage of the Premises by the rentable square footage of the Building. Landlord and Tenant hereby agree that Tenant's Share is the percentage amount set forth in the Summary. Tenant's Share of Operating Expenses and Taxes for any calendar year shall be appropriately prorated for any partial calendar year occurring during the Term, using the ratio of the number of days of the Term in such partial calendar year divided by the total number of days in the calendar year.

(b) "Operating Expenses" means all costs and expenses incurred by Landlord which are directly attributable or reasonably allocable to the ownership, maintenance and operation of the Property including, but not limited to: maintenance, repair and replacement of any plumbing, electrical, mechanical, utility and safety systems which are part of the Property, paving and parking areas, roads and driveways of the Property; maintenance of exterior areas such as gardening and landscaping, snow removal and signage; maintenance and repair of roof membranes (except that the cost to maintain the roof at the penetration points of Tenant-installed roof vents shall be billed directly to Tenant as Additional Rent), flashings, gutters, downspouts, roof drains, skylights and waterproofing; painting; lighting; cleaning; refuse removal; security; insurance costs, utility services attributable to the Common Areas; personnel costs for employees or agents directly related to the management, operation, repair or maintenance of the Property; personal property taxes (relating to personal property used exclusively for the Common Areas at the Property, or if not used exclusively at the Property, the cost of such shall be equitably allocated among the properties at which such is used); assessments or other fees or expenses due under recorded documents affecting the Property, rentals or lease payments paid by Landlord for rented or leased personal property used in the operation or maintenance of the Property; fees for

required licenses and permits; a property management fee; costs incurred up to the deductible limit in any insurance policy to repair damage from a casualty; and capital improvements made to or capital assets acquired for the Property after the Commencement Date that (1) are intended to reduce Operating Expenses (but only to the extent of the amount of actual savings of Operating Expenses) or (2) are reasonably necessary for the health and safety of the occupants of the Property or (3) are required under any and all applicable laws, statutes, codes, ordinances, orders, rules, regulations, conditions of approval and requirements of all federal, state, county, municipal and governmental authorities and all administrative or judicial orders or decrees and all permits, licenses, approvals and other entitlements issued by governmental entities, and rules of common law, relating to or affecting the Property or the use or operation thereof, whether now existing or hereafter enacted, including, without limitation, the Americans with Disabilities Act of 1990, 42 USC 12111 et seq. (the "ADA") as the same may be amended from time to time, all Environmental Laws (as hereinafter defined), and any CC&Rs, or any corporation, committee or association formed in connection therewith, or any supplement thereto recorded in any official or public records with respect to the Property or any portion thereof ("Permitted Capital Expenses"), which capital costs, or an allocable portion thereof, in excess of $10,000 per improvement shall be amortized over their useful lives, together with interest on the unamortized balance of such costs at the Prime Rate plus three percent (3%); provided, however, that costs savings resulting from capital improvements or capital assets may be included in Operating Expenses to the extent of savings realized in a particular Lease Year without regard to the foregoing amortization requirement. Operating Expenses shall, during any period the Building is not fully occupied, be "grossed up" so that Tenant's Share of such Operating Expenses is computed as though the Building had been fully occupied for such period in question. Operating Expenses do not include: (a) the cost of capital repairs, replacements or improvements, other than Permitted Capital Expenditures (as set forth above); (b) debt service under mortgages or ground rent under ground leases; (c) costs of restoration to the extent of net insurance proceeds received by Landlord or any other cost incurred by Landlord for which Landlord is fully reimbursed by insurance, warranties, service contracts, taking awards or by direct reimbursement by any other tenant of the Property; (d) leasing commissions, advertising costs and tenant improvement costs; (e) litigation expenses relating to disputes with tenants; (f) Taxes; (g) any Landlord asset management fee (other than the property management fee referenced in the immediately preceding sentence), Landlord corporate cost allocations, Landlord computer usage, Landlord office expense, Landlord mark-up or Landlord overhead cost allocation; (h) the maintenance, repair and replacement of any heating, ventilation and air conditioning systems at the Property (it being understood that such are excluded because Tenant is directly responsible for the maintenance, repair and replacement of the heating, ventilation and air conditioning systems within the Premises pursuant to Section 19 of this Lease); (i) depreciation of the Building or any other improvements situated within the Property; (j) any amount paid for products or services to an entity that is an affiliate of Landlord in excess of the fair market value of such services and products; (k) the costs of any utilities which are separately metered to the Premises or to another tenant's premises; (l) any fines or penalties imposed on Landlord for failing to timely perform its obligations under this Lease; (m) salaries of employees or agents not directly related to the management, operation, repair or maintenance of the Premises or Property; (n) expenses resulting from any violation by Landlord of the terms of any lease of space in the Building or other buildings on the Property and any costs necessitated by or resulting from the negligence or misconduct of Landlord, its agents, employees, vendors and/or contractors; (o) any

bad debt loss, rental loss, or reserves for bad debts or rental loss; (p) costs (other than the cost of routine maintenance and monitoring) of remediation of Hazardous Materials which are in or on the Property that are not Tenant's responsibility as provided in this Lease; (q) any increase in insurance premiums to the extent caused or attributable to the use or act of another tenant of the Building or Property; or (r) any costs which would allow Landlord a "double recovery" of any other costs for which Landlord is directly reimbursed other than as an Operating Expense.

(c) "Taxes" means all taxes and assessments of every kind and nature which Landlord shall become obligated to pay with respect to each calendar year of the Term or portion thereof because of or in any way connected with the ownership, leasing, and operation of the Property or any part thereof, subject to the following: (i) the amount of ad valorem real and personal property taxes against Landlord's real and personal property to be included in Taxes shall be the amount required to be paid for any calendar year, notwithstanding that such Taxes are assessed for a different calendar year (the amount of any tax refunds received by Landlord during the Term of this Lease shall be deducted from Taxes for the calendar year to which such refunds are attributable); (ii) the amount of special taxes and special assessments to be included shall be limited to the amount of the installments (plus any interest, other than penalty interest, payable thereon) of such special tax or special assessment payable for the calendar year in respect of which Taxes are being determined; (iii) the amount of any tax or excise levied by the State, County, Township, Borough and/or City where the Property is located, any political subdivision of either, or any other taxing body, on rents or other income from the Property (or the value of the leases thereon) to be included shall not be greater than the amount which would have been payable on account of such tax or excise by Landlord during the calendar year in respect of which Taxes are being determined had the income received by Landlord from the Property, excluding amounts payable under this subsection (iii), been the sole taxable income of Landlord for such calendar year; (iv) there shall be excluded from Taxes all income taxes, except those which may be included pursuant to the preceding subsection (iii) above, excess profits taxes, franchise, capital stock, and inheritance or estate taxes; and (v) Taxes shall also include Landlord's reasonable costs and expenses (including reasonable attorneys' fees) in contesting or attempting to reduce any Taxes, but only to the extent of the savings realized. Landlord shall, upon Tenant's written request, furnish Tenant with copies of tax bills relative to the Property. Taxes shall, during any period the Building is not fully occupied, be "grossed up" so that Tenant's share of such Taxes is computed as though the Building had been fully occupied for such period in question.

(d) Landlord shall, on or before the Commencement Date and as soon as reasonably possible after the commencement of each calendar year thereafter, provide Tenant with a statement of the estimated monthly installments of Tenant's Share of Operating Expenses and Taxes which will be due for the remainder of the calendar year in which the Commencement Date occurs or for the next ensuing calendar year, as the case may be. Landlord agrees to keep books and records showing the Operating Expenses in accordance with generally accepted accounting principles (as modified for industrial buildings in a manner comparable to other similar buildings in the commercial area where the Property is located) and practices consistently maintained on a year-to-year basis in compliance with such provisions of this Lease as may affect such accounts, and Landlord shall endeavor to deliver to Tenant within ninety (90) days after the close of each calendar year (including the calendar year in which this Lease terminates), a statement ("Landlord's Statement") as follows (but the failure of Landlord to deliver

Landlord's Statement within such time frame shall not affect Tenant's liability for Tenant's Share of Operating Expenses and Taxes): (1) confirming that the books and records covering the operation of the Property have been maintained in accordance with the requirements in this subsection (d); (2) showing the actual Operating Expenses for such calendar year; and (3) showing the actual Taxes for such calendar year. Upon reasonable prior written request given not later than sixty (60) days following the date Landlord's Statement is delivered to Tenant, Landlord will provide Tenant detailed documentation to support Landlord's Statement or provide Tenant with the opportunity to review such supporting information, and Tenant, at its sole cost and expense, will be entitled to audit such Landlord Statement. If Tenant does not notify Landlord of any objection to Landlord's Statement within ninety (90) days after delivery of Landlord's Statement (the "Outside Audit Objection Date"), Tenant shall be deemed to have accepted Landlord's Statement as true and correct and shall be deemed to have waived any right to dispute the Operating Expenses and/or Taxes due pursuant to that Landlord's Statement. Tenant acknowledges that Landlord is not required to maintain its records for the Property at the Property, and Tenant agrees that any review of records under this Section shall be at the sole expense of Tenant and shall be conducted by an accountant or other person experienced in accounting for income and expenses of industrial projects engaged solely by Tenant on terms which do not entail any compensation based or measured in any way upon any savings in Additional Rent or reduction in Operating Expenses achieved through the inspection process. Notwithstanding anything to the contrary contained herein, Tenant shall pay Tenant's Share of Operating Expenses and/or Taxes within the time periods specified in this Lease whether or not Tenant has any objection thereto or is contesting Landlord's Statement. Tenant acknowledges and agrees that any records reviewed under this Section constitute confidential information of Landlord, which shall not be disclosed to anyone other than the person performing the review, the employees and agents of Tenant who receive the results of the review (including its real estate and legal staff and consultants), and Tenant's accounting employees. The disclosure of such information to any other person, whether or not caused by the conduct of Tenant, shall constitute a material breach of this Lease. In the event of any errors based on the final undisputed audit findings, the appropriate party will make a correcting payment in full to the other party within thirty (30) days after the final determination and communication to all parties of the amount of such error. In the event of any errors shown by the final, undisputed audit of Landlord's Operating Expenses and Taxes, in excess of five percent (5%) of the Operating Expense and Taxes for that calendar year, Landlord will also reimburse Tenant for all reasonable costs of the audit and verification reasonably and actually incurred within the thirty (30) day correcting payment period

(e) Tenant shall pay to Landlord, together with its monthly payment of Base Rent as provided in Section 5 above, as Additional Rent hereunder, Landlord's estimate of the monthly installment of Tenant's Share of Operating Expenses and Taxes for the calendar year in question (assuming that 1/12th of Tenant's annual obligation for the same is to be paid each month). At the end of any calendar year, if Tenant has paid to Landlord an amount in excess of Tenant's Share of Operating Expenses and Taxes for such calendar year, Landlord shall reimburse to Tenant any such excess amount (or shall apply any such excess amount to any amount then owing to Landlord hereunder, and if none, to the next due installment or installments of Additional Rent due hereunder, at the option of Tenant). At the end of any calendar year if Tenant has paid to Landlord less than Tenant's Share of Operating Expenses and

Taxes for such calendar year, Tenant shall pay to Landlord any such deficiency within fifteen (15) business days after Tenant receives Landlord's Statement.

(f) For the calendar year in which this Lease terminates and is not extended or renewed, the provisions of this Section shall apply, but Tenant's Share for such calendar year shall be subject to a pro rata adjustment based upon the number of days prior to the expiration of the Term of this Lease. Tenant shall make monthly estimated payments of the pro rata portion of Tenant's Share for such calendar year (in the manner provided above) and when the actual prorated Tenant's Share for such calendar year in which this Lease terminates is determined, Landlord shall send Landlord's Statement to Tenant for such year and if Landlord's Statement reveals that Tenant's estimated payments for the prorated Tenant's Share for such calendar year exceeded the actual prorated Tenant's Share for such calendar year, Landlord shall include a refund for that amount along with Landlord's Statement (subject to offset in the event Tenant is in default hereunder). If Landlord's Statement reveals that Tenant's estimated payments for the prorated Tenant's Share for such calendar year were less than the actual prorated Tenant's Share for such calendar year, Tenant shall pay the shortfall to Landlord within twenty (20) days after the date of receipt of Landlord's Statement.

8. **Late Charge**. Other remedies for non-payment of Rent notwithstanding, if any monthly installment of Base Rent or Additional Rent is not received by Landlord within five (5) days after the date due, or if any payment due Landlord by Tenant which does not have a scheduled due date is not received by Landlord on or before the fifteenth (15th) day following the date Tenant was invoiced, a late charge of ten percent (10%) of such past due amount shall be immediately due and payable as Additional Rent hereunder. If any such delinquent amount remains outstanding five (5) days after the same was due, interest shall accrue on all such delinquent amounts, from the date past due until paid, at the lower of a rate of one and one-half (1-1/2%) percent per month or fraction thereof from the date such payment is due until paid (Annual Percentage Rate = 18%), or the highest rate permitted by applicable law.

9. **Partial Payment**. No payment by Tenant or acceptance by Landlord of an amount less than the Rent herein stipulated shall be deemed a waiver of any other Rent due. No partial payment or endorsement on any check or any letter accompanying such payment of Rent shall be deemed an accord and satisfaction, but Landlord may accept such payment without prejudice to Landlord's right to collect the balance of any Rent due under the terms of this Lease or any late charge assessed against Tenant hereunder.

10. **Use of Premises/Environmental Matters**.

(a) Use. Tenant shall use and occupy the Premises solely for the Permitted Use set forth in the Summary and for no other purpose. In no event shall Tenant use the Premises for any use which would render the Premises or Tenant's use thereof as an industrial establishment under Environmental Laws (as defined below). The Premises shall not be used for any illegal purpose, nor in violation of any valid law, ordinance or regulation of any governmental body, nor in any manner to create any nuisance or trespass, nor in any manner which might void the insurance or increase the rate of insurance on the Premises or the Property nor in any manner inconsistent with the quality of the Property. Landlord shall, at Landlord's expense, make application to the applicable governmental authority for the issuance of zoning or

use approval (or local equivalent) (the "Use Approval") for the Premises for the Permitted Use set forth in the Summary. Notwithstanding anything set forth in this Lease to the contrary, if Landlord is unable to obtain the Use Approval within sixty (60) days after the Effective Date (subject to a day-for-day extension for each day after the Effective Date that Tenant fails to provide all applicable information and signed documentation necessary to obtain the Use Approval), Tenant shall have the right to terminate this Lease as its sole and exclusive remedy by providing written notice to Landlord before the earlier of (i) five (5) days after the Outside Use Approval Date and (ii) the date upon which Landlord obtains the Use Approval. Tenant shall cooperate with Landlord in such application and shall provide Landlord and any applicable governmental authority with such information and documentation as may be requested to pursue such process. Notwithstanding the foregoing, Tenant acknowledges that Landlord has made no representations or warranties with respect to the suitability of the Premises for the Permitted Use or whether applicable laws permit such use.

(b) **Environmental Matters**.

(i) For purposes of this Lease:

"Contamination" means the contained or uncontained presence of or release, spillage, leakage, migration, disposal, burial, or placement of Hazardous Substances upon, within, below, or into any surface water, ground water, land surface, subsurface soil or strata, building, or improvement at any portion of the Property including the Land, the Premises and/or the Building.

"Environmental Laws" means (A) all federal, state and local codes, laws (including, without limitation, common law), ordinances, regulations, reporting or licensing requirements, rules, or statutes relating to pollution and/or safety and/or the protection of human health and/or the protection of the environment (including ambient air, surface water, ground water, land surface, or subsurface soil or strata), regardless of whether in existence on the date hereof or enacted thereafter, including, but not limited to, the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (CWA); the Clean Air Act, 42 U.S.C. § 7401 et seq. (CAA); the Resource, Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. ("RCRA"); the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § §6901 et seq. (CERCLA)to 6975; the Toxic Substance Control Act, 15 U.S.C. §§ 2601 et seq. (TSCA)to 2692; the Occupational Safety and Health Act, 29 U.S.C. § 651, et seq.; and the Emergency Planning and Community Right- to- Know Act of 1986 (EPCRA), 42 U.S.C.A. §11001, et seq. (EPCRA); the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 ("Spill Act"); and the New Jersey Site Remediation Reform Act, N.J.S.A. 58:10C (SRRA), and (B) any rules, regulations, amendments, guidelines, directives, orders or the like adopted pursuant to or implementing the statutes, laws, codes and ordinances referenced in subsection (A).

"Hazardous Substances" means any chemical, waste, by-product, pollutant, contaminant, compound, product, substance, equipment or fixture defined as or deemed hazardous or toxic under any Environmental Law or otherwise regulated under any Environmental Law, including, without limitation, (A) gasoline, diesel fuel, fuel oil, motor oil, waste oil, and any other petroleum or petroleum hydrocarbon, including any additives or other by-products or constituents associated therewith, (B) pesticides and other agricultural chemicals,

(C) asbestos and asbestos containing materials in any form, (D) polychlorinated biphenyls, (E) radioactive materials and radon, (F) mold and (G) urea formaldehyde foam insulation.

(ii) Tenant covenants that all its activities, and the activities of Tenant's employees, agents, contractors, and any entity related to, affiliated with or acting on behalf of Tenant (collectively, the "Tenant Parties"), on the Premises and on the Property, during the Term will be conducted in compliance with all Environmental Laws. Tenant, at Tenant's sole cost and expense, shall be responsible for obtaining all permits, licenses and/or approvals under Environmental Laws necessary for Tenant's operation of its business on the Premises ("Environmental Permits") and shall make all notifications and registrations required by any applicable Environmental Laws, and promptly provide copies to Landlord. Tenant, at Tenant's sole cost and expense, shall at all times comply with the terms and conditions of all such Environmental Permits, notifications and registrations and with any other applicable Environmental Laws. Tenant covenants that it shall obtain all such Environmental Permits necessary for Tenant's operation of its business on the Premises prior to the Commencement Date and make all such notifications and registrations required by any applicable Environmental Laws prior to the applicable deadline to do so.

(iii) Tenant shall not cause or permit any Hazardous Substances except for Permitted Materials (as hereinafter defined) to be brought upon, kept or used in or about the Premises or any other portion of the Property, without the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed. For purposes hereof, the term "Permitted Materials" means the following items used in the Permitted Use at the Premises:

1. cleaners and cleaning supplies of a household nature;
2. cleaners and other materials used for treating, cleaning, coating, lubricating or servicing equipment or other assets or inventory of Tenant at the Premises,
3. office supplies (such as, but not limited to, toner cartridges, white-out and similar items); and
4. Hazardous Materials kept and used on the Premises as reasonably necessary and convenient for the conduct of the Permitted Use, including, but not limited to; Lithium Iron Phosphate, Lithium Titanate, Lead acid batteries, Teflon grease, and denatured alcohol, and small quantities of Acetone.

(iv) "Prohibited Substances" are defined for purposes of this Lease as Hazardous Substances that are not Permitted Materials. All such Permitted Materials shall be used and stored on the Premises only in compliance with all applicable laws and regulations pertaining thereto (including Environmental Laws), and in the manner recommended by the product manufacturers or industry experts to reasonably minimize the possibility of release

("Recommended Practices"). Tenant shall be responsible for obtaining any required permits and paying any fees and providing any testing required by any governmental agency in connection with its activities at the Premises;

(v) Regardless of any consents granted by Landlord pursuant to Section 10(b)(iii), Tenant shall under no circumstances whatsoever cause or permit any Contamination by Tenant or the Tenant Parties. If such Contamination by Tenant or any of the Tenant Parties shall occur, Tenant shall promptly at its expense (A) contain and control, investigate, notify applicable governmental agencies, and clean up, remove, or remedy such Contamination and take any and all other actions required under applicable Environmental Laws, (B) restore the Premises and the Property to the condition existing prior to the Contamination, and (C) notify and keep Landlord reasonably informed of such containment, control, investigation, cleanup, removal, remediation and restoration activities, and any communications with governmental agencies. All such activities shall be conducted by Tenant or the Tenant Parties in accordance with any and all Environmental Laws and other applicable federal, state and local laws and regulations. Landlord shall have the right, but not the obligation, after providing Tenant with notice and a reasonable opportunity to cure, to enter onto the Premises or to take such other actions as Landlord deems necessary or advisable so to contain, control, investigate, clean up, remove, remediate, restore, resolve or minimize the impact of, or otherwise deal with, any such Contamination by Tenant or the Tenant Parties. All costs and expenses incurred by Landlord in the exercise of any such rights shall be payable by Tenant upon demand as Additional Rent.

(vi) Regardless of any consents granted by Landlord pursuant to Section 10(b)(iii), Tenant shall under no circumstances whatsoever (A) cause or permit any activity on the Premises, or (B) cause any activity on any other portion of the Property which would cause the Premises or any other portion of the Property to become subject to regulation as a hazardous waste treatment, storage or disposal facility under the Solid Waste Disposal Act, as amended by RCRA or the regulations promulgated thereunder, (C) cause or permit any activity on the Premises or cause on any other portion of the Property which would cause the Premises or any other portion of the Property to qualify as a Major Facility under the Spill Actor the regulations promulgated thereunder, now in existence and as may be amended from time to time, (D) cause or permit any activity on the Premises or cause any activity on the Property which would cause the Premises or any other portion of the Property to become subject to any lien imposed under or as a result of any Environmental Law, (E) cause or permit the discharge of Hazardous Substances into the storm sewer or sanitary sewer system serving the Property, (F) the installation of any underground tank, oil/water separator, sump pump, or underground piping on or under the Premises or any other portion of the Property, except in accordance with Section 10(b)(vii), or (F) cause or permit any activity on the Premises or the Property which would cause the Premises or any other portion of the Property to be considered an "Industrial Establishment" as that term is defined under the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:1K-6, et seq. ("ISRA").

(vii) If Landlord reasonably believes that Tenant may be in default of its obligations under this Section 10(b), Landlord shall have the right (but not the obligation) prior to the expiration of the Term to cause a qualified environmental consultant to perform, a Preliminary Assessment of the Premises. If such Preliminary Assessment shall reveal that

Tenant has breached its obligations under this Section 10(b), Tenant shall pay to Landlord on demand as Additional Rent all costs and expenses incurred by Landlord in connection with such Preliminary Assessment.

(viii) Tenant shall obtain the prior written approval of Landlord, which may be withheld in Landlord's sole discretion, for the installation of any storage tank, whether above or underground, at the Premises and will comply with all applicable laws as to its design, installation, operation and closure. Upon termination of this Lease, Landlord shall have the option of requiring that Tenant, at Tenant's sole cost and expense, perform tests relating to and/or remove any tank installed by Tenant and associated contaminated material, in which case Tenant shall promptly provide Landlord with copies of any required closure report and no further action letter. Tenant's obligations under this subsection shall survive expiration or sooner termination of this Lease.

(ix) If Tenant's use of any portion of the Premises is for any purpose that results in the requirement to obtain an approval of any kind by any governmental agency administering any Environmental Laws (A) in order to: (aa) change the form or substance of part or all of the ownership of the Premises or the assets thereon by any means or under any circumstances, or (bb) transfer the ownership of part or all of the Premises or the assets thereon by any means or under any circumstances, or (B) due to: (xx) cessation of part or all of the operations on the Premises for any reason, or (yy) a change in the operations on the Premises to a use that does not require such approval, Tenant shall, in compliance with all applicable requirements, and, if relevant, prior to the expiration or termination of this Lease or prior to assigning or transferring an interest in the Premises, at Tenant's sole cost and expense apply for and obtain for Landlord the required approval and perform all remedial actions and any other obligations, including but not limited to establishing a remediation funding source, necessitated in whole or part by Tenant's activities at the Premises. Tenant and Landlord shall cooperate as necessary to prepare any such application and represent and warrant that any such application made pursuant to this subsection shall be true and complete to the best knowledge, information and belief of each. If such a governmental approval requirement exists, but Tenant believes that its operations or planned transaction is not subject to such requirement, Tenant, at its sole cost and expense, shall obtain for Landlord a statement from the applicable governmental agency that the Premises is not subject to such requirement. Tenant's obligations under this subsection shall survive expiration or sooner termination of this Lease.

(x) Tenant agrees that any contracts or agreements of any kind entered into or renewed by Tenant after the date of this Lease, for the occupancy of or the performance of activities on the Premises will contain the same limitations on the activities of such other contracting party as are placed on Tenant by this Section 10(b).

(xi) Tenant agrees to permit Landlord and its authorized representatives to enter, inspect and assess the Premises at reasonable times and with reasonable advance notice, for the purpose of determining Tenant's compliance with the provisions of this Section 10(b). Such inspections and assessments may include obtaining samples and performing tests of soil, surface water, groundwater or other media at Landlord's expense, unless such inspections determine that there has been a violation of Environmental Laws by Tenant at the Premises or

Property or a release, spillage or leakage of Hazardous Substances by Tenant at the Premises, in which case such assessments shall be at Tenant's expense.

(xii) Tenant shall not use the Premises for any activity or use identified in N.J.A.C. 7:26B, Appendix C, as such may be amended from time to time. Tenant represents and warrants to Landlord that Tenant's use of the Premises is classified under the North American Industry Classification System (NAICS) as code 237130.

(xiii) Tenant shall and hereby does indemnify Landlord and hold Landlord harmless from and against any and all expense, loss, and liability suffered by Landlord by reason of the storage, generation, release, spillage, leakage, migration, burial, placement, handling, treatment, transportation, disposal, or arrangement for transportation or disposal, of any Hazardous Substances (whether accidental, intentional, or negligent) by Tenant or any of the Tenant Parties or by reason of Tenant's breach of any of the provisions of this Section 10. Such expenses, losses and liabilities shall include, without limitation, those that Landlord may incur (A) to comply with any Environmental Laws, (B) in studying, removing, disposing, remedying or otherwise addressing any Hazardous Substances and Contamination at, on, under, or from the Premises or any other portion of the Property, or restoring the Premises and the Property to its prior condition, (C) with respect to fines, penalties or other sanctions assessed upon Landlord, (D) with respect to legal and professional fees and costs incurred by Landlord in connection with the foregoing, and (E) with respect to any damages for bodily injury or property damage. The indemnity contained herein shall survive the expiration or earlier termination of this Lease. Tenant's obligations under this subsection shall survive expiration or sooner termination of this Lease. Notwithstanding anything to the contrary contained in this Lease, Landlord covenants and agrees with Tenant that Tenant shall have no liability or obligation whatsoever (whether to Landlord or to any third party or governmental agency) regarding (i) the presence, existence, release, use, manufacture, generation, discharge, storage or disposal of any Hazardous Substances on, under, in or about, or the transportation of any Hazardous Substances to or from the Premises or any other part of the Property, occurring prior to, or in existence as of, the Commencement Date, (ii) the violation (or alleged violation) of any Environmental Laws affecting the Premises or Property occurring prior to, or in existence as of, the Commencement Date, (collectively, "Preexisting Environmental Conditions"), or (iii) Hazardous Substances that migrates on, under or above the Premises or Property during the Term from offsite unless caused, permitted or exacerbated by Tenant or a Tenant Party.

(c) Landlord represents and warrants to Tenant that, to Landlord's actual knowledge without investigation, other than as may be set forth in that certain Phase I Environmental Site Assessment of 28 Engelhard Drive, Monroe Township, NJ, dated March 16, 2011 prepared by ATC Associates Inc., the Premises is not in violation of any Environmental Laws.

11. Compliance with Laws. Tenant shall comply with all federal, state, and municipal laws, ordinances and regulations (including, without limitation, the Americans with Disabilities Act) applicable to Tenant, Tenant's business and Tenant's use of the Premises. Tenant and Landlord agree to comply with all mandatory and voluntary energy, water or other conservation controls or requirements applicable to industrial buildings issued by the federal, state, county, municipal or other applicable governments, or any public utility or insurance

carrier including, without limitation, controls on the permitted range of temperature settings in office buildings or requirements necessitating curtailment of the volume of energy consumption or the hours of operation of the Building. Any terms or conditions of this Lease that conflict or interfere with compliance by Landlord with such mandatory controls or requirements shall be suspended for the duration of such controls or requirements. It is further agreed that compliance with such mandatory controls or requirements shall not be considered an eviction, actual or constructive, of Tenant from the Premises and shall not entitle Tenant to terminate this Lease or to an abatement or reduction of any rent payable hereunder.

12. **Waste Disposal**.

(a) Tenant shall be responsible for the removal and disposal of all normal trash and waste (i.e., waste that does not require special handling pursuant to subsection 12(b)) generated within the Premises and such shall be deposited in dumpsters located in areas designated therefor by Landlord and arranged for by Tenant at Tenant's cost.

(b) Tenant shall be responsible for the removal and disposal of any waste deemed by any governmental authority having jurisdiction to be hazardous or infectious or requiring special handling, such removal and disposal to be in accordance with any and all applicable governmental rules, regulations, codes, orders or requirements. Tenant agrees to separate and mark appropriately all hazardous, infectious or special waste to be removed and disposed of by Tenant pursuant to this subsection (b) and identify itself as the generator of that waste. Tenant hereby indemnifies and holds harmless Landlord from and against any loss, claims, demands, damage or injury Landlord may suffer or sustain as a result of Tenant's failure to comply with the provisions of this subsection (b), which indemnity shall survive the expiration or sooner termination of this Lease.

13. **Rules and Regulations**. The rules and regulations currently in effect, a copy of which is attached hereto as Exhibit "D" and all reasonable rules and regulations and modifications thereto which Landlord may hereafter from time to time adopt and promulgate after notice thereof to Tenant (collectively, the "Rules and Regulations"), for the government and management of the Property, are hereby made a part of this Lease and shall during the Term be observed and performed by Tenant, its agents, employees and invitees; provided same are applied and enforced by Landlord uniformly to all tenants and occupants of the Property. Notwithstanding anything to the contrary herein, Landlord shall not amend or adopt any rules and regulations which would materially prevent or materially interfere with the use of the Premises for the Permitted Use. In the event of any conflict or inconsistency between the Rules and Regulations and the express terms of this Lease, the conflict shall be resolved in favor of the express terms of this Lease.

14. **Utilities**. Landlord represents that the Premises are currently serviced by natural gas, electricity, sewer service, telephone, and water service connections. Tenant will promptly pay, directly to the appropriate supplier, the cost of all natural gas, heat, cooling, energy, light, power, sewer service, telephone, water, refuse disposal and other utilities and services supplied to the Premises, together with any related installation or connection charges or deposits incurred during the Term. Landlord shall deliver the Premises to Tenant separately-metered or sub-metered with respect to utilities. Any meter so installed may, at Landlord's option, be a "smart

meter". Tenant shall pay for the consumption shown on the meter plus any reasonable fee applicable to reading the meter, either directly to the third-party utility provider in the case of a direct meter or to Landlord in the case of a submeter or check meter, and Tenant shall report to Landlord Tenant's usage as measured by the meter. Tenant shall be required to submit to Landlord electricity and water consumption data in a format deemed reasonably acceptable by Landlord within thirty (30) days written request by Landlord. Landlord reserves the right to participate in wholesale energy purchase programs and to provide energy to the Property through such programs so long as the cost to Tenant is competitive. In no event shall Landlord be liable for any interruption or failure of any utility servicing the Property, except as is expressly provided below. Notwithstanding the foregoing, solely in the event of an interruption of any utility service which is caused by the gross negligence or willful misconduct of Landlord or its agents, employees or contractor(s) that lasts beyond five (5) consecutive business days after Tenant delivered written notice to Landlord of such interruption and Tenant furnished such notice promptly upon learning of the occurrence thereof, and such utility service interruption prevents Tenant from occupying the Premises or the Tenant Truck Parking Area or a material portion of either, or operating its business from the Premises, then, as Tenant's sole and exclusive remedy therefor, Rent shall abate as to those portions of the Premises which are unoccupiable from and after the fifth (5th) consecutive business day after Landlord's receipt of such written notice from Tenant and shall continue until such space is again occupiable.

15. Signs. Tenant shall not paint or place any signs, placards, or other advertisements of any character upon the Common Areas or on the outside walls or roof of the Building except with the prior written consent of Landlord, which consent may not be unreasonably withheld, delayed or conditioned. Tenant may install dock position numbers on the docks. In addition, Tenant may, at Tenant's cost, place its name on the existing monument signage located at the Premises in the approximate area depicted on Exhibit A-1, provided, Tenant's name shall be in the same font and size of the other tenants named thereon. All such signs installed by Tenant shall be in compliance with all applicable laws. Tenant shall remove any such signage and restore any damage caused thereby prior to the expiration or earlier termination of this Lease.

16. Letter of Credit Security.

(a) Upon execution of this Lease, Tenant shall deposit with Landlord and through the Term shall keep on deposit with Landlord, an irrevocable Letter of Credit (the "Letter of Credit") in the amount of One Hundred Fifty-Three Thousand Eight Hundred Eighty-Four and 52/100 Dollars ($153,884.52) as security for the payment by Tenant of the Rent and all other charges or payment to be paid hereunder and the performance of the covenants and obligations contained herein.

(b) If at any time Tenant shall be in default under any of the provisions of this Lease beyond the applicable notice and cure period set forth in Section 31 (if any), Landlord shall be entitled, at its sole discretion, to draw on the Letter of Credit in the amount necessary, in payment of (i) any Rent or other charge for the payment of which Tenant shall be in default, (ii) any reasonable expense incurred by Landlord as a result of any default of Tenant beyond the applicable notice and cure period set forth in Section 31, and/or (iii) any other sums due and payable to Landlord to which Landlord is entitled pursuant to the terms of this Lease. If any portion of the Letter of Credit is used, applied or retained by Landlord for any purpose set forth

above, Tenant shall, within fifteen (15) days after demand therefor is made by Landlord, restore the Letter of Credit, to its original amount. The Letter of Credit, or as much thereof as has not been utilized for such purposes, shall be returned to Tenant within sixty (60) days following the expiration or earlier termination of this Lease and proper surrender of the Premises to Landlord. Notwithstanding the above provisions of this Section 16, if any claims of Landlord exceed the amount of the Letter of Credit, Tenant shall remain liable for the balance of such claims.

(c) Landlord may transfer the Letter of Credit to the purchaser (or other transferee) of Landlord's interest in the Premises in the event such interest is sold (or transferred), and, in such instance; provided such transferee assumes Landlord's obligations under this Lease, Landlord named herein shall be discharged from any further liability with respect to the Letter of Credit and Tenant shall look to Landlord's successor for the return of the Letter of Credit.

(d) The required Letter of Credit shall be in the form of an Irrevocable Standby Letter of Credit in favor of Landlord as outlined hereinabove. Under any circumstances under which Landlord is entitled the use of all or a part of the Letter of Credit, then, Landlord, in addition to all other rights and remedies provided under the Lease, shall have the right to draw down such permitted amount of the Letter of Credit and retain the proceeds. The following terms and conditions shall govern the Letter of Credit:

(i) The Letter of Credit shall be in favor of Landlord, shall be issued by a commercial bank reasonably acceptable to Landlord having a Standard & Poors rating of "A" or better, shall comply with all of the terms and conditions of this Section 16, shall be transferrable to a purchaser or other transferee of Landlord's interest in the Premises who assumes this Leases without charge, and shall otherwise be in form reasonably acceptable to Landlord. The initial Letter of Credit shall have an expiration date not earlier than twelve (12) months after the Commencement Date. A draft of the form of Letter of Credit must be submitted to Landlord for its approval prior to issuance.

(ii) The Letter of Credit or any replacement Letter of Credit shall be irrevocable for the term thereof and, shall automatically renew on a year-to-year basis until a period ending not earlier than three (3) months after the then-scheduled expiration date of this Lease (the "End Date") without any action whatsoever on the part of Landlord; provided that the issuing bank shall have the right not to renew the Letter of Credit by giving written notice to Landlord not less than sixty (60) days prior to the expiration of the then-current term of the Letter of Credit that it does not intend to renew the Letter of Credit. Tenant understands that the election by the issuing bank not to renew the Letter of Credit shall not, in any event, diminish the obligation of Tenant to maintain such an irrevocable Letter of Credit in favor of Landlord through such date.

(iii) Landlord, or its then managing agent, shall have the right from time to time to make one or more draws on the Letter of Credit at any time that a default has occurred and is continuing beyond the applicable notice and cure period set forth in Section 31, if any. The Letter of Credit must state that it can be presented for payment at the office of the issuer or an approved correspondent in the New York, New York area and may also be presented for payment via facsimile. Funds may be drawn down on the Letter of Credit upon presentation

to the issuing or corresponding bank of Landlord's (or Landlord's then managing agent's) certificate stating as follows:

"Beneficiary is entitled to draw on this credit pursuant to that certain Lease with a Date of Execution as of _________, 2017 between PPF Industrial 28 Engelhard, LLC, a Delaware limited liability company, as Landlord, and Ocean Power Technologies, Inc., a Delaware corporation, as Tenant, as amended from time to time."

(e) It is understood that if Landlord or its managing agent be a corporation, a partnership or other entity, then such statement shall be signed by an officer (if a corporation), a general partner (if a partnership), or any authorized party (if another entity).

(f) Tenant acknowledges and agrees (and the Letter of Credit shall so state) that the Letter of Credit shall be honored by the issuing bank without inquiry as to the truth of the statements set forth in such draw request and regardless of whether the Tenant disputes the contest of such statement.

(g) Without limiting the generality of the foregoing, if the Letter of Credit expires earlier than the End Date, or the issuing bank notifies Landlord that it will not renew the Letter of Credit, Landlord shall accept a renewal thereof or substitute letter of credit from the issuing bank or another commercial bank meeting the requirements of this Section 16 (such renewal or substitute Letter of Credit to be in effect not later than thirty (30) days prior to the expiration of the expiring Letter of Credit), irrevocable and automatically renewable as above provided to ninety (90) days after the End Date upon the same terms as the expiring Letter of Credit or upon such other terms as may be acceptable to Landlord. However, if (i) the Letter of Credit is not timely renewed, or (ii) a substitute Letter of Credit, complying with all of the terms and conditions of this Section is not received at least thirty (30) days prior to the expiration of the expiring Letter of Credit, then Landlord may present the expiring Letter of Credit to the issuing bank, and the entire sum so obtained shall be paid to Landlord, to be held by Landlord until Tenant would otherwise be entitled to the return of the Letter of Credit, and to be retained by Landlord as security for the payment by Tenant of the Rent and all other charges or payments to be paid hereunder and the performance of the covenants and obligations contained herein (and Landlord shall have the right, from time to time, to apply the same in payment of the amounts referenced in Section 16(b) above).

(h) Provided (1) no Event of Default has occurred nor any event is continuing on any of the applicable times of determination set forth below which with the giving of notice and passage of time, or both, would constitute an Event of Default and (2) Tenant's cash flow from operating activities as reported on its annual Form 10-K filed with the Securities and Exchange Commission for the prior calendar year immediately preceding the applicable Reduction Date (as hereinafter defined) is at least One Million Dollars ($1,000,000) (subsections (1) and (2), collectively, the "Reduction Requirements"), then the amount required as a Security Deposit shall be reduced as set forth below. For the avoidance of doubt, if Tenant fails to satisfy the Reduction Requirements at the time of any of the Reduction Dates, Tenant shall forfeit its right to a reduction in the Security Deposit as of such Reduction Date; provided, however, such shall not preclude Tenant from any future reduction(s) in the Security Deposit on any future Reduction Date if the Reduction Requirements are met on such date.

(i) On the fourth (4th) anniversary of the Commencement Date (the "First Reduction Date"), the amount required as a Security Deposit shall be reduced by $25,647.42;

(ii) On the fifth (5th) anniversary of the Commencement Date (the "Second Reduction Date"), the amount required as a Security Deposit shall be reduced by $25,647.42;

(iii) On the sixth (6th) anniversary of the Commencement Date (the "Third Reduction Date"), the amount required as a Security Deposit shall be reduced by $25,647.42; and

(iv) On the seventh (7th) anniversary of the Commencement Date (the "Fourth Reduction Date"; and together with the First Reduction Date, Second Reduction Date, Third Reduction Date, collectively, the "Reduction Dates" and each individually, a "Reduction Date"), the amount required as a Security Deposit shall be reduced by $25,647.42.

17. **Force Majeure**. In the event of a strike, lockout, labor trouble, civil commotion, an act of God, inability to obtain governmental permits (despite Landlord's commercially reasonable efforts), adverse weather conditions, shortage of labor or material, or any other event beyond a party's control, whether similar or dissimilar to the foregoing examples (a "force majeure event"), which results in such party being unable to timely perform its obligations hereunder (other than the payment of Rent by Tenant or the surrender of the Premises by Tenant at the expiration or termination of this Lease for which this Section 17 shall not be applicable), such party shall not be in breach hereunder and any relevant time period for such party's performance shall be extended on a day-for-day basis to account for such delay.

18. **Repairs By Landlord**.

(a) Tenant, by taking possession of any portion of the Premises, shall accept and shall be held to have accepted such portion of the Premises as suitable for the use intended by this Lease. In no event shall Tenant be entitled to compensation or any other damages or any other remedy against Landlord in the event the Premises are not deemed suitable for Tenant's use. Landlord shall not be required to make any repairs or improvements to the Premises or the Property except as otherwise specifically set forth in this Lease. Except for damage caused by casualty and condemnation (which shall be governed by Sections 22 and 23 below), and subject to normal wear and tear, Landlord shall maintain (and the cost of same shall be an Operating Expense (except to the extent that the cost of such is expressly prohibited from being included as an Operating Expense under Section 7(b) of this Lease)) in good repair (in a good condition and state consistent with similar quality industrial buildings in the Market Area) the structural components of the Building; the roof (including the roof membrane, flashing, gutters (if any) and downspouts (if any)); the exterior walls, footings and foundations of the Building; the floor slabs and columns of the Building; and the electrical, lighting, mechanical, plumbing and HVAC systems, facilities, fixtures and components serving more than just the Premises; provided, however, if Landlord is required to make repairs or replacement to any of the foregoing or any other portion of the Property by reason of the act or omission of Tenant, its employees, agents, contractors, customers or invitees, Tenant agrees to pay Landlord within thirty (30) days of

receipt of invoice from Landlord, 100% of the reasonable out-of-pocket costs incurred by Landlord for making such repairs or replacements, as Additional Rent, regardless of whether Landlord would otherwise be prohibited from including the same as an Operating Expense under Section 7(b) of this Lease, provided that Tenant shall not be responsible for the payment of any costs which would be covered by an insurance policy required to be maintained under this Lease by Landlord (but Tenant shall be responsible for payment of the deductible). Landlord shall also be responsible for maintaining and repairing the Common Areas, including all grounds, drives, parking areas and safety barriers, the cost of which shall be an Operating Expense (except to the extent that the cost of such is expressly prohibited from being included as an Operating Expense under Section 7(b) of this Lease).

(b) Solely in the event that Tenant's operations at the Premises are interrupted as a result of Landlord's breach of its repair obligations set forth in Section 18(a) above, which (A) continues beyond five (5) business days after Tenant delivered written notice to Landlord of such failure and interruption and Tenant furnished such notice promptly upon the occurrence thereof and (B) prevents Tenant from occupying the Premises or a material portion thereof and operating its business from the Premises, then, as Tenant's sole and exclusive remedy therefor, Rent shall abate as to those portions of the Premises which are unoccupiable from and after the fifth (5th) consecutive business day after Landlord's receipt of such written notice from Tenant and shall continue until such space is again occupiable. For the avoidance of doubt, Landlord shall not be deemed in default hereunder this Section 18 unless Landlord shall have failed to maintain or repair any such item required to be maintained or repaired by Landlord under this Section 18 within thirty (30) days after notice by Tenant, or if such item is not reasonably able to be repaired within such thirty (30) day period, then Landlord shall be afforded such additional as may be reasonably necessary to complete such repair.

19. **Repairs By Tenant**. Tenant shall, at its own cost and expense, clean and maintain the interior of the Premises in good working order, condition and repair, making all necessary repairs and replacements, including but not limited to: lighting, partitions, doors, fixtures, plate glass, the Building's mechanical, electrical and plumbing systems, the heating, ventilating and air conditioning systems and serving only the Premises (provided Tenant shall not be required to repair and maintain the warehouse air conditioning system) and signs installed by Tenant. If Tenant fails to make such repairs or replacements promptly, Landlord may, at its option, upon prior reasonable written notice to Tenant (except in an emergency) make the required repairs and replacements and the reasonable costs of such repairs and/or replacements shall be charged to Tenant as Additional Rent and shall become due and payable by Tenant with the monthly installment of Base Rent next due hereunder. Tenant shall, at its own cost and expense, enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor for servicing all hot water, heating and air conditioning systems and equipment within the Premises. The maintenance contractor and the contract must be approved in writing by Landlord in advance, such approval not to be unreasonably withheld. The service contract shall include all services recommended by the equipment manufacturer within the operation/maintenance manual and shall become effective (and a copy thereof delivered to Landlord) within thirty (30) days following the Commencement Date. Tenant shall promptly deliver to Landlord copies of quarterly service reports (the "Service Reports") for the required scheduled maintenance for the hot water, heating and air conditioning systems within the Premises. Tenant shall additionally repair any damage to the Premises caused by any act or

omission of Tenant, its employees, agents, contractors, customers, invitees and licensees (including, but not limited to, any repairs or replacements necessitated by (i) the construction or installation of trade fixtures or other improvements to the Premises and (ii) the moving of any property into or out of the Premises.

20. **Alterations and Improvements**. Tenant shall not make or allow to be made any alterations, additions or improvements in or to the Premises ("Alterations") without first obtaining in writing Landlord's written consent for such alterations or additions, which consent shall not be unreasonably withheld, unless such Alteration will affect the Building structure, in which event Landlord's consent may be granted or withheld in Landlord's sole discretion. Notwithstanding the foregoing, Landlord's consent shall not be required if the alterations, additions or improvements will not affect the Building structure or systems, will not be visible from outside the Premises and will cost less than Twenty Thousand and 00/100 Dollars ($20,000.00) in the aggregate (any such Alteration, a "Minor Alteration"). Upon Landlord's request, Tenant shall deliver to Landlord plans and specifications for any proposed alterations, additions or improvements, Tenant shall reimburse Landlord for Landlord's reasonable cost to review such plans. Any Alterations shall at once become the property of Landlord; provided, that Tenant shall remove any Minor Alterations upon the expiration or earlier termination of the Lease in order to restore the Premises to the condition existing prior to the performance of the same. Tenant, at the time of seeking Landlord's request to an Alteration, may at such time request Landlord's determination as to whether or not such Alterations will be required to be removed at the end of the Term (and the Premises returned to the condition existing prior to the performance of same), in which event Landlord shall so notify Tenant at the time of granting such consent. If Tenant shall fail to seek Landlord's determination at the time of such Approval, Tenant shall be deemed to be required to remove such Alteration and restore the Premises. All costs of any such alterations, additions or improvements shall be borne by Tenant. All alterations, additions or improvements shall be made in a good, first class, workmanlike manner, free of liens and in a manner that does not disturb other tenants of the Property and Tenant must maintain the builder's risk insurance specified in Section 25(a)(v) throughout the construction. Tenant does hereby indemnify and hold Landlord harmless from and against all claims for damages or death of persons or damage or destruction of property arising out of the performance of any such alterations, additions or improvements made by or on behalf of Tenant, which indemnity shall survive the expiration or sooner termination of this Lease. Under no circumstances shall Landlord be required to pay, during the Term and any extensions or renewals hereof, any ad valorem or property tax on such alterations, additions or improvements, Tenant hereby covenanting to pay all such taxes when they become due. In the event any Alterations, other than a Minor Alteration, are to be performed by contractors or workmen other than Landlord's contractors or workmen, any such contractors or workmen must first be approved, in writing, by Landlord (which approval shall not be unreasonably withheld, delayed or conditioned).

21. **Liens**. Tenant shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord or Tenant in the Premises or to charge the Rent payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any alteration, addition, improvement, replacement or repair. Tenant shall pay or cause to be paid all sums legally due and payable by it on account of any labor performed or

materials furnished in connection with any work performed by or on behalf of Tenant at the Premises. Tenant shall discharge of record by payment, bonding or otherwise any lien filed against the Premises or the Property on account of any labor performed or materials furnished in connection with any work performed by or on behalf of Tenant at the Premises within ten (10) business days after Tenant has knowledge of the filing of any claim of lien. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all liability, loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the right, title and interest of Landlord in the Premises or the Property or this Lease arising from the act or agreement of Tenant, which indemnity shall survive the expiration or sooner termination of this Lease. Tenant agrees to give Landlord immediate written notice, upon the learning thereof, of the placing of any lien or encumbrance against the Premises or the Property. Landlord shall have the right, at Landlord's option after written notice to Tenant and Tenant's failure to pay or bond such lien or encumbrance within ten (10) business days after the filing thereof, of paying and discharging the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and applicable late charge, shall be Additional Rent due and payable by Tenant within fifteen (15) days of Landlord's rendition of a bill therefor.

22. <u>Destruction or Damage</u>.

(a) If the Premises is totally destroyed by storm, fire, earthquake, or other casualty, or damaged to the extent that, in Landlord's reasonable opinion, the damage cannot be restored within one hundred eighty (180) days of the date Landlord provides Tenant written notice of Landlord's reasonable estimate of the time necessary to restore the damage, or if the damage is not covered by Landlord's property insurance, or if Landlord's lender requires that the insurance proceeds be applied to its loan, Landlord shall have the right to terminate this Lease effective as of the date of such destruction or damage, and Rent shall be abated as of such date, by written notice delivered to Tenant on or before thirty (30) days following Landlord's notice described in the next sentence. Landlord shall provide Tenant with written notice no later than sixty (60) days following the date of such damage of the estimated time needed to restore, whether the loss is covered by Landlord's insurance coverage and whether or not Landlord's lender requires the insurance proceeds be applied to its loan.

(b) If the Premises is damaged by any such casualty or casualties but Landlord is not entitled to or does not terminate this Lease as provided in subsection (a) above, this Lease shall remain in full force and effect, Landlord shall notify Tenant in writing no later than sixty (60) days after the date of such damage that such damage will be restored (and will include Landlord's good faith estimate of the date the restoration will be complete), in which case Rent shall abate as to any portion of the Premises which is not usable for the period of such untenantability, and Landlord shall promptly commence to diligently restore the Premises to substantially the same condition as before such damage occurred as soon as practicable. Full Rent shall recommence on the date that Landlord delivers possession of the restored Premises to Tenant. In the event that Landlord estimates that the Premises cannot be restored to substantially the same condition as before such damage within one hundred eighty (180) days from the date of its notice to Tenant, Tenant may, upon written notice to Landlord within thirty (30) days of Landlord's notice, terminate this Lease effective as of the date of such written notice, and Rent shall be accounted for as between Landlord and Tenant as of such date.

(c) If such damage occurs within the last twelve (12) months of the Term and in Landlord's reasonable opinion, the damage cannot be restored by the end of the Term or 60 days after the casualty, whichever occurs earlier, either party shall have the right, upon delivery of written notice to the other party within thirty (30) days following such damage, to cancel and terminate this Lease as of the date of such damage and Rent shall be abated as of such date, provided, however, that Tenant may not elect to terminate this Lease if such damage was caused by the grossly negligent act or willful misconduct of Tenant, its agents, servants, employees or invitees. If prior to any such election to terminate Tenant has elected to extend the Term pursuant to the provisions of this Lease and such election may not then according to its terms be rescinded or terminated, then, for purposes of this Section 22, the Term shall be deemed to expire on the expiration date of the Extension Term.

(d) Tenant agrees that Landlord's obligation to restore, and the abatement of Rent provided herein, or Tenant's right to terminate as above set forth in this Section 22, shall be Tenant's sole recourse to Landlord in the event of any casualty damage, and Tenant waives any other rights Tenant may have under any applicable law to terminate this Lease by reason of damage to the Premises or Property.

23. Eminent Domain. If all of the Premises or Tenant Truck Parking Area (if no replacement area satisfactory to Tenant is available) shall be condemned or taken, then in such event, this Lease shall automatically terminate upon and the Term hereby granted shall cease from the time when possession thereof is taken by the condemning authority, and Rent shall be accounted for as between Landlord and Tenant as of such date. If twenty percent (20%) or more of the rentable area of the Premises or Tenant Truck Parking Area (if no replacement area reasonably satisfactory to Tenant is available) shall be so taken, Tenant may cancel and terminate this Lease effective as of the date possession of such portion condemned shall be taken by such condemning authority, provided that such option to cancel is exercised within twenty (20) days after the receipt of notice by Tenant of such condemnation. If this Lease is not terminated pursuant to one of the preceding two (2) sentences, this Lease shall continue in full force and effect and (1) Landlord shall promptly restore the Premises to substantially its condition immediately prior to the taking, to the extent such restoration is reasonably and financially practicable in Landlord's sole discretion (and to the extent that such restoration is not reasonably and financially practicable in Landlord's sole discretion, Landlord may terminate this Lease); (2) all Rent shall proportionately abate during such restoration for the period and to the extent that Tenant shall be unable to use the Premises and/or Tenant Truck Parking Area; and (3) from and after any such restoration all Rent shall be reduced in the proportion which the area of the Premises and/or Tenant Truck Parking Area taken shall bear to the entire area of the Premises and/or Tenant Truck Parking Area immediately prior to such taking. Tenant shall have no right or claim to any part of any award made to or received by Landlord for such condemnation or taking, and all awards for such condemnation or taking shall be made solely to Landlord, provided however that Tenant shall have the right to pursue any separate award for loss of its equipment and trade fixtures and for moving expenses so long as such action does not reduce the award to which Landlord is entitled.

24. Damage or Theft of Personal Property. All personal property brought into the Premises shall be at the risk of Tenant only and Landlord shall not be liable for theft thereof or any damage thereto occasioned by any acts of co-tenants, or other occupants of any portion of

the Property, or any other person, except, with respect to damage to the Premises as may be occasioned by the grossly negligent or willful misconduct of Landlord, its employees and agents (but subject to the insurance and waiver of subrogation provisions set forth in Section 25 below).

25. **Insurance; Waivers.**

(a) Tenant covenants and agrees that from and after the date of delivery of the Premises from Landlord to Tenant, Tenant will carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for:

(i) Commercial General Liability Insurance written on an occurrence basis, covering the Premises and all operations of Tenant in or about the Premises and the Common Areas against claims for bodily injury, property damage and product liability and to include contractual liability coverage insuring Tenant's indemnification obligations under this Lease, to be in limits of not less than $1,000,000 each occurrence for bodily injury and property damage, $1,000,000 for products/completed operations aggregate, $1,000,000 for personal injury, and to have general aggregate limits of not less than $2,000,000 (per location) and Umbrella Liability Insurance in an amount not less than $10,000,000 per occurrence and in the aggregate for each policy year. The general aggregate limits under the Commercial General Liability insurance policy or policies shall apply separately to the Premises and to Tenant's use thereof (and not to any other location or use of Tenant) and such policy shall contain an endorsement to that effect. The certificate of insurance evidencing the Commercial General Liability form of policy shall specify all endorsements required herein and shall specify on the face thereof that the limits of such policy apply separately to the Premises.

(ii) Insurance covering all of the items included in Tenant's leasehold improvements, heating, ventilating and air conditioning equipment maintained by Tenant, trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, and alterations, additions, improvements or changes made by Tenant pursuant to Section 20, in an amount not less than one hundred percent (100%) of their full replacement value from time to time during the Term, providing protection against perils included within the standard form of "all-risks" fire and casualty insurance policy including terrorism. Any policy proceeds from such insurance shall be held in trust by Tenant's insurance company for the repair, construction and restoration or replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Section 22 of this Lease.

(iii) Workers' Compensation and Employer's Liability Insurance affording statutory coverage and containing minimum statutory limits and the Employer's Liability portion thereof having a minimum limit of $1,000,000.00 per accident, disease and in the aggregate.

(iv) Business Interruption Insurance to be written on an actual loss sustained basis (as defined in the standard form of business interruption insurance policy).

(v) During any period in which any substantial repairs or any alterations, additions and/or improvements are being undertaken, builder's risk insurance

covering the total completed value including any "soft costs" (on a completed value, non-reporting basis), replacement cost of work performed and equipment, supplies and materials furnished in connection with such construction or repair, together with such "soft cost" endorsements and such other endorsements as Landlord may reasonably require.

(vi) Business Automobile Liability Policy with a limit per accident of not less than $1,000,000 combined single limit for bodily injury and property damage.

(vii) Such other insurance (or other terms with respect to any insurance required pursuant to this Section 25, including without limitation amounts of coverage, deductibles, form of mortgagee clause) on or in connection with the Premises as Landlord any Landlord lender may reasonably require, which at the time is usual and commonly obtained in connection with properties similar in type, use and location to the Premises.

(b) All policies of insurance specified in Section 25(a) above shall be issued in form acceptable to Landlord by insurance companies with a rating and financial size of not less than A IX in the most current available "Best's Insurance Reports" (the "Rating Requirements"), and licensed to do business in the state in which the Premises is located. Each and every such policy:

(i) shall name Landlord and its subsidiaries, affiliates, managers, members, partners, agents, employees, directors, officers, lenders, successors and assigns as an additional insured (as well as any mortgagee of Landlord and any other party reasonably designated by Landlord), except with respect to the insurance described in Section 25(a)(iii) above;

(ii) shall (and a certificate thereof shall be delivered to Landlord at or prior to the execution of this Lease) be delivered to each of Landlord and any such other parties in interest prior to delivery of possession of the Premises to Tenant and thereafter upon inception (or renewal) of each new policy, and as often as any such policy shall expire or terminate. Renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent;

(iii) shall contain a provision that the insurer will give to Landlord and such other parties in interest at least thirty (30) days' notice in writing (and ten days in the case of non-payment) in advance of any material change, cancellation, termination or lapse, or the effective date of any reduction in the amounts of insurance; and

(iv) shall be written as a primary policy which does not contribute to and is not in excess of coverage which Landlord may carry.

(c) Any insurance provided for in Section 25(a) may be maintained by means of a policy or policies of blanket insurance, covering additional items or locations or insureds, provided, however, that:

(i) Landlord and any other parties in interest from time to time designated by Landlord to Tenant shall be named as an additional insured thereunder as its interest may appear;

(ii) The coverage afforded Landlord and any such other parties in interest will not be reduced or diminished by reason of the use of such blanket policy of insurance; and

(iii) The requirements set forth in this Section 25 are otherwise satisfied.

(d) During the Term hereof, Landlord shall, in a manner similar to other comparable industrial buildings in the market area where the Property is located, keep in effect (i) commercial property insurance on the Building, its fixtures and equipment in an amount not less than one hundred percent (100%) of the Property's replacement cost, insuring against physical loss or damage generally included in the classification of "all risk" coverage, and rent loss insurance for a period and amount of not less than one (1) year of rent, and (ii) a policy or policies of commercial general liability insurance insuring against liability arising out of the risks of death, bodily injury, property damage and personal injury liability with respect to the Common Areas of the Property.

(e) Notwithstanding anything to the contrary set forth hereinabove, Landlord and Tenant do hereby waive any and all claims against one another for damage to or destruction of real or personal property to the extent such damage or destruction can be covered by "all risks" property insurance of the type described in Section 25(a)(ii) and Section 25(d)(i) above. Each party shall also be responsible for the payment of any deductible amounts required to be paid under the applicable "all risks" fire and casualty insurance carried by the party whose property is damaged. These waivers shall apply if the damage would have been covered by a customary "all risks" insurance policy, even if the party fails to obtain such coverage. The intent of this provision is that each party shall look solely to its insurance with respect to property damage or destruction which can be covered by insurance of the type described in Section 25(a)(ii) and Section 25(d)(i). Each such policy shall include a waiver of all rights of subrogation by the insurance carrier against the other party, its agents and employees with respect to property damage covered by the applicable "all risks" fire and casualty insurance policy.

26. Indemnity.

(a) Subject to the waiver of subrogation provisions set forth in Section 25, Tenant agrees to indemnify, defend and save harmless Landlord, its agents, employees, directors, affiliates, partners, members and shareholders (collectively, the "Indemnified Parties") from and against any and all claims, loss, cost or damage arising by, or related to, any injury (including death) to persons or damage to property, (a) which takes place in the Premises (or which arises out of actions taking place in the Premises), except to the extent the foregoing is caused by the gross negligence or willful misconduct of an Indemnified Party or its contractor, or (b) otherwise which is on the Property outside of the Premises and caused by the negligence or willful misconduct of Tenant or any Tenant Party.

(b) Subject to the waiver of subrogation provisions set forth in Section 25, Landlord agrees to indemnify, defend and save harmless Tenant, its agents, employees, directors, affiliates, partners, members and shareholders (collectively, the "Tenant Indemnified Parties") from and against any and all claims, loss, cost or damage arising by, or related to, any injury

(including death) to persons or damage to property, which takes place on the Property and caused by the negligence or willful misconduct of an Indemnified Party, except to the extent the foregoing is caused by the gross negligence or willful misconduct of a Tenant Indemnified Party or its contractor.

(c) The indemnities set forth in this Section 26 shall include the obligation to pay reasonable expenses incurred by the indemnified party, including, without limitation, reasonable, actually incurred attorneys' fees. The indemnities contained in this Section 26 do not override the waivers contained in Section 25(e) above. The indemnity obligations of this Section 26 shall survive expiration or sooner termination of this Lease.

27. **Acceptance and Waiver**. Except to the extent caused by the gross negligence or willful misconduct of Landlord, its agents and employees (but subject to the insurance provisions in Section 25 above, including, without limitation, the waivers contained in Section 25(e) above), Landlord shall not be liable to Tenant, its partners, members, agents, employees, guests or invitees for any damage caused to any of them due to the Building, the Common Areas or any other part of the Property or any appurtenances thereof being improperly constructed or being or becoming out of repair, or arising from the leaking of gas, water, sewer or steam pipes, or from electricity, but Tenant, by moving into the Premises and taking possession thereof, shall accept, and shall be held to have accepted the Premises as suitable for the purposes for which the same are leased, and shall accept and shall be held to have accepted the Premises and every appurtenances thereof, and Tenant by said act waives any and all defects therein; provided, however, that such acceptance shall not relieve Landlord of its ongoing repair and restoration obligations under this Lease and nothing in this Section 27 shall preclude Tenant from seeking recovery from any third party responsible for such damage or injury.

28. **Estoppel**. Tenant and Landlord agree, upon not less than ten (10) days prior written request by the other party, to execute, acknowledge and deliver to such requesting party, a written statement certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which the Rent has been paid, that there are no known defaults hereunder (or, if there is a default, specifying the nature of the default), whether to such party's knowledge, Tenant has any offsets or defenses against Landlord under this Lease, and any other relevant matter reasonably requested, it being intended that any such statement delivered pursuant to this Section may be relied upon by a prospective purchaser of Landlord's interest or by a mortgagee of Landlord's interest or assignee of any security deed upon Landlord's interest in the Property and/or the Premises or a prospective purchaser, investor partner, lender or Permitted Transferee with respect to Tenant.

29. **Notices**. Any notice which is required or permitted to be given by either party under this Lease shall be in writing and must be given only by certified mail, return receipt requested, by hand delivery or by nationally recognized overnight courier service at the addresses set forth in the Summary. Each party shall further use reasonable efforts to provide the other party with a courtesy copy of any notice by fax and by electronic mail. Any such notice shall be deemed given on the earlier of two business days after the date sent in accordance with

one of the permitted methods described above or the date of actual receipt thereof, provided that receipt of notice solely by fax or electronic mail shall not be deemed to be delivery of notice hereunder. The time period for responding to any such notice shall begin on the date the notice is deemed received. Either party may change its notice address by notice to the other party in accordance with the terms of this Section 29. Notices on behalf of a party may be given by such party's legal counsel.

30. **Abandonment of Premises**. If Tenant abandons or vacates the Premises for more than thirty (30) days, Tenant shall be solely responsible for any increase in Landlord's insurance premium caused by such abandonment or vacation, and such shall be payable by Tenant as Additional Rent hereunder within fifteen (15) days following written demand for the same. If Tenant abandons or vacates the Premises, Tenant agrees to maintain in effect the security systems that Tenant employed while Tenant occupied the Premises and to take reasonable measures to monitor and secure the Premises.

31. **Default**.

Each of the following shall constitute a default under this Lease by Tenant:

(a) If Tenant shall default in the payment of Rent herein reserved when due and fails to cure such default within five (5) days after written notice of such default is given to Tenant by Landlord.

(b) If Tenant shall fail to perform any of the terms, conditions or provisions of this Lease (other than the provisions requiring the payment of Rent), and fails to cure such non-monetary default within thirty (30) days after written notice of such default is given to Tenant by Landlord, provided however that if such non-monetary default is of such a nature that it cannot through the exercise of diligent and reasonable efforts be cured within thirty (30) days, then Tenant shall not be in default in such instance if Tenant promptly commences and diligently pursues the cure of such non-monetary default to completion as soon as possible and in all events within ninety (90) days after such initial notice.

(c) If Tenant is adjudicated a bankrupt, becomes insolvent or admits in writing that it is not generally able to pay its debts as they become due.

(d) If a permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after appointment thereof.

(e) If, whether voluntarily or involuntarily, Tenant takes advantage of any debtor relief proceedings under any present or future laws, whereby the Rent or any part thereof, is, or is proposed to be, reduced or payment thereof deferred.

(f) If Tenant's effects should be levied upon or attached and such levy or attachment is not satisfied or dissolved within thirty (30) days after such levy or attachment.

(g) If Tenant is an individual, in the event of the death of the individual and the failure of the executor, administrator or personal representative of the estate of the deceased

individual to have assigned this Lease within three (3) months after such death to an assignee approved by Landlord.

(h) If the Letter of Credit is not timely renewed pursuant to Section 16 or if a substitute Letter of Credit complying with all of the terms of Section 16 is not received at least thirty (30) days prior to the expiration of the expiring Letter of Credit.

Notwithstanding the foregoing, Landlord shall not be required to give written notice of default under Sections 31(a) or 31(b) above more than two (2) times during any consecutive twelve (12) month period during the Term of the Lease (or if the second such default occurs prior to the default subject to the first notice in such twelve (12) month period having been cured, then no further notice by Landlord shall be required), it being the intention of the parties that any subsequent default occurring during such twelve (12) month period after the first notice has been given (if such first default is not cured) and otherwise after the two notices have been given, shall be a default hereunder without the requirement of additional notice to Tenant or the expiration of any grace period.

In any of such events, Landlord, at its sole option, may exercise any or all of the remedies set forth in Section 32 below.

32. **Landlord's Remedies**. Upon the occurrence of any default set forth in Section 31 above which is not cured by Tenant within the applicable cure period provided therein, if any, Landlord may exercise all or any of the following remedies:

(a) declare due and payable and sue for and recover, all unpaid Rent for the unexpired period of the Term as if by the terms of this Lease the same were payable in advance, or sue for Rent monthly as it accrues;

(b) terminate this Lease by giving Tenant written notice of termination, in which event this Lease shall terminate on the date specified in such notice and all rights of Tenant under this Lease shall expire and terminate as of such date, Tenant shall remain liable for all obligations under this Lease up to the date of such termination and Tenant shall surrender the Premises to Landlord on the date specified in such notice; and if Tenant fails to so surrender, Landlord shall have the right, without notice, to enter upon and take possession of the Premises and to expel and remove Tenant and all persons and entities claiming by, through or under Tenant, and Tenant's and their personal property and other effects without being liable for prosecution or any claim of damages therefor;

(c) terminate this Lease as provided in the immediately preceding subsection and recover from Tenant all damages Landlord may incur by reason of Tenant's default, including without limitation, the then present value (discounted at a rate equal to the then issued treasury bill having a maturity approximately equal to the remaining Term of this Lease had such default not occurred) of (i) the total Rent which would have been payable hereunder by Tenant for the period beginning with the day following the date of such termination and ending with the Expiration Date of the Term as originally scheduled hereunder (but as extended by the Extension Term if Tenant has exercised its option pursuant to Section 2(b) above), minus (ii) the aggregate reasonable rental value of the Premises for the same period (as determined by a real estate

appraiser selected by Landlord who is licensed in the state where the Property is located, who has at least ten (10) years' experience immediately prior to the date in question in evaluating industrial space, taking into account all relevant factors including, without limitation, the length of the remaining Term, the then current market conditions in the general area, the likelihood of reletting for a period equal to the remainder of the Term, net effective rates then being obtained by landlords for similar type space in similar buildings in the general area, vacancy levels in the general area, current levels of new construction in the general area and how that would affect vacancy and rental rates during the period equal to the remainder of the Term and inflation), plus (iii) the costs of recovering the Premises, and all other expenses incurred by Landlord due to Tenant's default, including, without limitation, reasonable attorneys' fees, plus (iv) the unpaid Rent earned as of the date of termination, plus interest, all of which sum shall be immediately due and payable by Tenant to Landlord;

(d) without terminating this Lease, and without notice to Tenant, Landlord may in its own name, but as agent for Tenant enter into and take possession of the Premises and re-let the Premises, or any portion thereof, as agent of Tenant, upon any terms and conditions as Landlord may deem necessary or desirable (Landlord shall have no obligation to attempt to re-let the Premises or any part thereof except to the extent required by applicable law). Upon any such re-letting, all rentals received by Landlord from such re-letting shall be applied first to the costs incurred by Landlord in accomplishing any such re-letting, and thereafter shall be applied to the Rent owed by Tenant to Landlord during the remainder of the Term of this Lease and Tenant shall pay any deficiency between the remaining Rent due hereunder and the amount received by such re-letting as and when due hereunder.

(e) allow the Premises to remain unoccupied and collect Rent from Tenant as it becomes due; or

(f) pursue such other remedies as are available at law or in equity.

In the event of Default by Tenant hereunder, if Landlord has terminated Tenant's possession of the Premises or terminated this Lease, Landlord shall use commercially reasonable efforts to mitigate its damages, provided, however, in no event shall Landlord be required to (A) lease the Premises to a prospective tenant that Landlord reasonably believes (i) is a type and quality inconsistent with the nature of the Building; (ii) does not have the financial capacity and creditworthiness to undertake and perform the obligations of a lease for the Premises; (iii) is a party by whom any suit or action could be defended on the ground of sovereign immunity or diplomatic immunity; or (iv) will impose an additional burden upon Landlord in the operation of the Building; (B) lease the Premises first if Landlord or an affiliate of Landlord has available space for rent in the Building or the Market Area, or (C) lease less than 100% of the Premises. In calculating future Rent for purposes of this Section 32, Landlord's reasonable and good faith estimate of future Operating Expenses and Taxes shall be conclusive and binding on the parties. In addition, Landlord may include as an item of Rent its reasonable attorney's fees and costs in enforcing its rights hereunder.

33. Intentionally Omitted.

34. **Advertising**. Landlord may advertise the Premises as being "For Rent" (including, without limitation, the right to place a sign on the Premises advertising the same are "For Rent") at any time following a default by Tenant which remains uncured after the applicable cure period and at any time within nine (9) months prior to the expiration, cancellation or termination of this Lease for any reason, and, during any such periods, Landlord may exhibit the Premises to prospective tenants upon forty-eight (48) hours prior telephonic or email notice to Tenant.

35. **Surrender of Premises**. Whenever under the terms hereof Landlord is entitled to possession of the Premises, Tenant at once shall surrender the Premises and the keys thereto to Landlord in substantially the same condition as on the Tender Date hereof, normal wear and tear, casualty and condemnation only excepted, and Tenant shall remove all of its personalty therefrom and shall, unless otherwise directed to do so by Landlord as set forth in Section 20, remove all alterations, additions and improvements made pursuant to Section 20 and restore the Premises to its original condition prior to the construction of any such alterations, additions and improvements which have been made therein by or on behalf of Tenant pursuant to Section 20 excepting only: (i) ordinary wear and tear, (ii) damage from fire or other casualty, (iii) damage from condemnation or other taking, and (iv) alterations, additions and improvements made to the Premises that are permitted by Landlord to remain in the Premises. Landlord may forthwith re-enter the Premises and repossess same and remove all persons, entities, personal property and other effects therefrom, using such force as may be reasonably necessary without being guilty of forcible entry, detainer, trespass or other tort. Tenant's obligation to observe or perform these covenants shall survive the expiration or other termination of the Term of this Lease. If the last day of the Term of this Lease or any renewal falls on a Saturday, Sunday or a legal holiday, this Lease shall expire on the business day immediately preceding.

36. **Cleaning Premises**. Upon vacating the Premises, Tenant agrees to return the Premises to Landlord broom clean and in substantially the same condition when Tenant's possession commenced, ordinary wear and tear, casualty and condemnation excepted.

37. **Removal of Fixtures**. If Tenant is not in default hereunder beyond applicable notice and cure periods, Tenant may, prior to the expiration of the Term of this Lease, or any extension thereof, remove any trade fixtures and equipment which Tenant has placed in the Premises which can be removed without significant damage to the Premises, provided Tenant promptly repairs all damage to the Premises caused by such removal.

38. **Holding Over**. In the event Tenant remains in possession of the Premises after the expiration of the Term hereof, with Landlord's written consent, Tenant shall be a month-to-month tenant and such tenancy shall be subject to all the provisions hereof, except that the monthly base rental shall be at 150% of the monthly Base Rent payable hereunder for the first month upon such expiration of the Term and 200% of the monthly Base Rent payable hereunder for each month thereafter. In the event Tenant remains in possession of the Premises after the expiration of the Term hereof, without Landlord's written consent, Tenant shall be a tenant at sufferance and may be evicted by Landlord without any notice, but Tenant shall be obligated to pay Rent for such period that Tenant holds over without written consent at the same rate provided in the previous sentence and shall also be liable for any and all other damages Landlord suffers as a result of such holdover including, without limitation, the loss of a prospective tenant

for such space. There shall be no renewal of this Lease by operation of law or otherwise. Nothing in this Section shall be construed as a consent by Landlord for any holding over by Tenant after the expiration of the Term hereof, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises upon the expiration of the Term or upon the earlier termination hereof and to assert any remedy in law or equity to evict Tenant and/or collect damages in connection with such holding over.

39. **Attorneys' Fees.** In case Landlord shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by Landlord in connection with such litigation. In the event of any action, suit or proceeding brought by Landlord or Tenant to enforce any of the other's covenants and agreements in this Lease, the prevailing party shall be entitled to recover from the non-prevailing party any costs, expenses and reasonable attorneys' fees incurred in connection with such action, suit or proceeding. This provision shall survive the termination of this Lease.

40. **Mortgagee's Rights.**

(a) Landlord represents and warrants to Tenant that as of the Effective Date there is no mortgage, deed of trust or other security interest encumbering the Property.

(b) Tenant agrees that this Lease shall be subject and subordinate to (i) any mortgage, deed of trust or other security interest now encumbering the Property and to all advances which may be hereafter made, to the full extent of all debts and charges secured thereby and to all renewals or extensions of any part thereof, and to any mortgage, deed of trust or other security interest which any owner of the Property may hereafter, at any time, elect to place on the Property; (ii) any assignment of Landlord's interest in the leases and rents from the Property (which includes this Lease) which now exists or which any owner of the Property may hereafter, at any time, enter into; and (iii) any Uniform Commercial Code Financing Statement covering the personal property rights of Landlord or any owner of the Property which now exists or which any owner of the Property may hereafter, at any time, elect to place on the foregoing personal property (all of the foregoing instruments set forth in (i), (ii) and (iii) above being hereafter collectively referred to as "Security Documents"), provided that with respect to any Security Document executed and delivered after the date of this Lease, such subordination shall be conditioned upon Tenant receiving a subordination, non-disturbance and attornment agreement from the holder of such Security Document ("Holder") on such Holder's commercially reasonably form. In addition, Tenant agrees, upon request of any Holder to hereafter execute any documents which counsel for Landlord or Holder may reasonably deem necessary to evidence the subordination of this Lease to the Security Documents.

(c) In the event of a foreclosure pursuant to any Security Documents, Tenant shall at the election of Landlord, thereafter remain bound pursuant to the terms of this Lease as if a new and identical Lease between the purchaser at such foreclosure ("Purchaser"), as landlord, and Tenant, as tenant, had been entered into for the remainder of the Term hereof and Tenant shall attorn to Purchaser upon such foreclosure sale and shall recognize Purchaser as Landlord under this Lease. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of any of the parties hereto. Tenant agrees, however, to

execute and deliver at any time and from time to time, upon the request of Landlord or of Holder, any instrument or certificate that may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

(d) If Holder of any Security Document or Purchaser upon the foreclosure of any of the Security Documents shall succeed to the interest of Landlord under this Lease, such Holder or Purchaser shall have the same remedies, by entry, action or otherwise for the non-performance of any agreement contained in this Lease, for the recovery of Rent or for any other default hereunder that Landlord had or would have had if any such Holder or Purchaser had not succeeded to the interest of Landlord. Any such Holder or Purchaser which succeeds to the interest of Landlord hereunder, shall not be (a) liable for any act or omission of any prior Landlord (including Landlord) unless such act or omission is of a continuing nature; or (b) subject to any offsets or defenses which Tenant might have against any prior Landlord (including Landlord); or (c) bound by any Rent which Tenant might have paid for more than the current month to any prior Landlord (including Landlord); or (d) bound by any amendment or modification of this Lease made without its consent.

(e) Notwithstanding anything to the contrary set forth in this Section 40, the Holder of any Security Documents shall have the right, at any time, to elect to make this Lease superior and prior to its Security Document. No documentation, other than written notice to Tenant, shall be required to evidence that this Lease has been made superior and prior to such Security Documents, but Tenant hereby agrees to execute any documents reasonably requested by Landlord or Holder to acknowledge that this Lease has been made superior and prior to the Security Documents.

41. Entering Premises. Landlord may enter the Premises at reasonable hours provided that Landlord's entry shall not unreasonably interrupt Tenant's business operations and that twenty-four (24) hours prior telephonic or email notice is given when reasonably possible (and, if in the opinion of Landlord any emergency exists, at any time and without notice): (a) to make repairs, perform maintenance and provide other services described in Section 18 above which Landlord is obligated to make to the Premises pursuant to the terms of this Lease; (b) to inspect the Premises; (c) to remove from the Premises any articles or signs kept or exhibited therein in violation of the terms hereof; (d) to run pipes, conduits, ducts, wiring, cabling or any other mechanical, electrical, plumbing or HVAC equipment through the areas behind the walls, below the floors or above the ceilings in the Premises; and (e) to exercise any other right or perform any other obligation that Landlord has under this Lease. Landlord shall be allowed to take all material into and upon the Premises that may be required to make any repairs, improvements, additions or alterations, without in any way being deemed or held guilty of trespass and without constituting a constructive eviction of Tenant. Except as provided for in the last sentence of this Section 41, the Rent reserved herein shall not abate while such repairs, improvements, alterations or additions are being made and Tenant shall not be entitled to maintain a set-off or counterclaim for damages against Landlord by reason of loss from interruption to the business of Tenant because of the prosecution of any such work. All such repairs, alterations, additions and improvements may be done during ordinary business hours, or, if any such work is at the request of Tenant to be done during any other hours, Tenant shall pay all overtime and other extra costs.

42. **<u>Assignment and Subletting</u>**.

(a) Tenant may not, without the prior written consent of Landlord (which may be granted or withheld in Landlord's reasonable discretion), assign this Lease or any interest hereunder, or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than Tenant (each, a "<u>Transfer</u>"). In the event that Tenant is a corporation or entity other than an individual or an entity whose stock is traded on a recognized public stock exchange, any transfer of a majority or controlling interest in Tenant (whether by stock transfer, merger, operation of law or otherwise) shall be considered a Transfer for purposes of this Section and shall require Landlord's prior written consent (which may be granted or withheld in Landlord's reasonable discretion). Landlord shall not be deemed to have unreasonably withheld its consent if (1) Landlord determines that the proposed transferee: (i) with respect to an assignment only, does not have the financial capacity and creditworthiness to undertake and perform the obligations of the sublease or this Lease, as applicable; (ii) is a party by whom any suit or action could be defended on the ground of sovereign immunity or diplomatic immunity; or (iii) will impose an additional material burden upon Landlord in the operation of the Building; and/or (2) Landlord or an affiliate of Landlord has space of a similar size and type available for rent in the Building or the Market Area. Consent to one assignment or sublease shall not destroy or waive this provision, and all later assignments and subleases shall likewise be made only upon the prior written consent of Landlord (which may be granted or withheld in Landlord's reasonable discretion). Subtenants or assignees shall become liable to Landlord for all obligations of Tenant hereunder, without relieving Tenant's liability hereunder and, in the event of any default by Tenant under this Lease, Landlord may, at its option, but without any obligation to do so, elect to treat a sublease as a direct Lease with Landlord and collect rent directly from the subtenant. In addition, upon any request by Tenant for Landlord's consent to an assignment or sublease, Landlord may elect to terminate this Lease and recapture all of the Premises (in the event of an assignment request) or the applicable portion of the Premises (in the event of a subleasing request). If Tenant desires to assign or sublease, Tenant shall provide written notice to Landlord describing the proposed transaction in detail and providing all documentation (including detailed financial information for the proposed assignee or subtenant) reasonably necessary to permit Landlord to evaluate the proposed transaction. Landlord shall notify Tenant within fifteen (15) business days of Landlord's receipt of such notice whether Landlord elects to exercise Landlord's recapture right and, if not, whether Landlord consents to the requested assignment or sublease. If Landlord elects to exercise its recapture right it shall notify Tenant in writing thereof and Tenant shall have the right to withdraw its request to assign within ten business days of receipt of Landlord's recapture notice, and in such event this Lease shall continue and Landlord's recapture notice shall be null and void. If Landlord fails to respond within such fifteen (15) business day period, Landlord will be deemed not to have elected to recapture and not to have consented to the assignment or sublease.

(b) Any subletting or assignment hereunder shall not release or discharge Tenant of or from any liability, whether past, present or future, under this Lease, and Tenant shall remain fully liable hereunder. Any subtenant or assignee shall agree in a form reasonably satisfactory to Landlord to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease (to the extent of the space sublet in the case of a sublease), and Tenant shall deliver to Landlord promptly after execution, an executed copy of each such sublease or assignment and an agreement of compliance by each such subtenant or

assignee. Tenant agrees to pay to Landlord all reasonable out-of-pocket costs incurred by Landlord (including fees paid to consultants (as may be required) and attorneys) in connection with any request by Tenant for Landlord to consent to any assignment or subletting by Tenant, up to a maximum amount of $2,500 per consent, unless the Tenant or its proposed assignee or subtenant engages in protracted negotiations, in which event there will be no cap on Tenant's obligation to reimburse Landlord's expenses.

(c) Notwithstanding anything contained herein to the contrary, so long as the proposed assignee or subtenant has a net worth equal to or greater than the higher of that of Tenant at the execution of this Lease and at the time of such proposed Transfer (under GAAP consistently applied) Tenant may, without consent of Landlord, at any time assign this Lease or sublet the Premises or any portion thereof (i) to any parent, subsidiary or affiliate corporation or entity; (ii) to any corporation or other entity resulting from the consolidation, merger or conversion of Tenant into or with any other entity; or (iii) to any person, firm, corporation or other entity acquiring all or substantially all of Tenant's business or assets. As used herein, the expression "affiliate corporation" or "entity" means a person or business entity, corporate or otherwise, that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with Tenant. The word "control" means the right and power, direct or indirect, to direct or cause the direction of the management and policies of a person or business entity, corporation or otherwise, through ownership or voting securities, by contract or otherwise. Any transfer as described herein shall be known as a "Permitted Transfer." In the event of a Permitted Transfer, the following shall apply: (a) Tenant shall provide Landlord, on or before thirty (30) days before the effective date thereof, with written notice of such Permitted Transfer, a fully executed copy of the documents(s) which are used to effectuate the transfer contemplated herein and reasonable evidence of both Tenant's and the proposed transferee's net worth; (b) in case of an assignment, Tenant shall cause the assignee to expressly assume in writing and agree to perform all of the covenants, duties and obligations of Tenant hereunder; and (c) the use and operation being conducted in the Premises shall remain substantially unaffected. No such assignment shall be deemed to be binding on Landlord until such time as Landlord has received an original counterpart of the documents used to effect the assignment signed by both the assignor and the assignee.

43. Financial Reports. Within ten (10) business days' following Landlord's request therefor, Tenant shall submit to Landlord Tenant's most recent audited financial statement (including any notes to them), or if no such audited statements have been prepared, such other financial statements (and notes to them), certified by an officer of Tenant, as may have been prepared by an independent certified public accountant, or failing those, Tenant's internally prepared financial statements certified by an officer of Tenant. If Tenant is a publicly traded corporation, Tenant may satisfy its obligations hereunder by providing to Landlord Tenant's most recent annual and quarterly reports. Tenant shall have no obligation to provide any such information as to Tenant, so long as (i) the Tenant, is a company whose shares are traded on the NYSE, AMEX or NASDAQ stock exchange, and (ii) current financial statements of Tenant, audited and certified by an independent certified public accounting firm, are posted on "EDGAR," the "Home Page" of such Tenant, or other electronic resource that is available, without charge, to the general public For purposes hereof, "EDGAR" means the Securities and Exchange Commission's Electronic Data Gathering, Analysis, and Retrieval system, and any successor system that is available to the public without charge, and "Home Page" means the

Internet website home page of Tenant and any successor equivalent electronic site available to the public without charge. Landlord acknowledges that all such financial information which is not publicly available is to remain confidential for Landlord's benefit for the evaluation of the credit of Tenant and/or to enforce Landlord's rights hereunder subject to the terms of this Section 43, and Landlord will not disclose any aspect of Tenant's financial statements except (a) to Landlord's mortgagee, prospective mortgagees or purchasers of the Building or prospective investors in Landlord, (b) in litigation between Landlord and Tenant, and/or (c) if required by court order or applicable law.

44. **Sale**. In the event the original Landlord hereunder, or any successor owner of the Property, shall sell or convey the Premises and/or the Property, all liabilities and obligations on the part of the original Landlord, or such successor owner, under this Lease accruing thereafter shall terminate (but not liabilities and obligations accruing prior to such sale or other conveyance), and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant agrees to attorn to such new owner.

45. **Limitation of Liability**. Landlord's obligations and liability with respect to this Lease shall be limited solely to Landlord's interest in the Property, as such interest is constituted from time to time, and neither Landlord nor any partner or member of Landlord, or any officer, director, shareholder, or partner or member of any partner or member of Landlord, shall have any individual or personal liability whatsoever with respect to this Lease.

46. **Broker Disclosure**. Landlord's Broker identified in the Summary, who is a real estate broker licensed in the State where the Property is located, has acted as agent for Landlord in this transaction and is to be paid a commission by Landlord pursuant to a separate agreement. Tenant's Broker identified in the Summary, who is a real estate broker licensed in the State where the Property is located, has acted as agent for Tenant in this transaction and is to be paid a commission by Landlord's Broker pursuant to a separate agreement. Landlord represents that Landlord has dealt with no other broker other than Landlord's Broker and Tenant's Broker identified herein. Landlord agrees that, if any other broker makes a claim for a commission based upon the actions of Landlord, Landlord shall indemnify, defend and hold Tenant harmless from any such claim. Tenant represents that Tenant has dealt with no broker other than Landlord's Broker and Tenant's Broker. Tenant agrees that, if any other broker makes a claim for a commission based upon the actions of Tenant, Tenant shall indemnify, defend and hold Landlord harmless from any such claim. Tenant will cause Tenant's Broker to execute a customary lien waiver, adequate under applicable law, to extinguish any lien claims such broker may have in connection with this Lease.

47. **Landlord/Tenant**. "Landlord" shall include the party named in the first paragraph hereof, its representatives, assigns and successors in title to the Property. "Tenant" shall include the party named in the first paragraph hereof, its heirs and representatives, and, if this Lease shall be validly assigned or sublet, shall also include Tenant's assignees or subtenants, as to the Premises, or portion thereof, covered by such assignment or sublease. "Landlord" and "Tenant" include male and female, singular and plural, corporation, partnership, limited liability company (and the officers, members, partners, employees or agents of any such entities) or individual, as may fit the particular parties.

48. **Construction of this Agreement**. No failure of either party to exercise any power given thereto hereunder, or to insist upon strict compliance by the other party of its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of such party's right to demand exact compliance with the terms hereof. Time is of the essence of this Lease. This Lease shall be interpreted and enforced without the aid of any canon, custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provision in question.

49. **No Estate In Land**. This Lease shall create the relationship of landlord and tenant between Landlord and Tenant. No estate shall pass out of Landlord. Tenant has only a right of use, not subject to levy or sale, and not assignable by Tenant except with Landlord's consent or as otherwise provided in this Lease. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or member a joint enterprise with Tenant. This Lease establishes a relationship solely of that of a landlord and tenant.

50. **Section Titles; Severability**. The section titles used herein are not to be considered a substantive part of this Lease, but merely descriptive aids to identify the section to which they refer. If any section or provision herein is held invalid by a court of competent jurisdiction, all other sections or severable provisions of this Lease shall not be affected thereby, but shall remain in full force and effect.

51. **Cumulative Rights**. All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative but not restrictive to those given by law.

52. **Waiver of Jury Trial**. **LANDLORD AND TENANT SHALL AND DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR ANY STATUTORY REMEDY.**

53. **Entire Agreement**. This Lease contains the entire agreement of the parties and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect.

54. **Submission of Agreement**. Submission of this Lease to Tenant for signature does not constitute a reservation of space or an option to acquire a right of entry. This Lease is not binding or effective until execution by and delivery to both Landlord and Tenant.

55. **Authority**. If Tenant executes this Lease as a corporation, limited partnership, limited liability company or any other type of entity, each of the persons executing this Lease on behalf of Tenant does hereby personally represent and warrant that Tenant is a duly organized and validly existing corporation, limited partnership, limited liability company or other type of entity, that Tenant is qualified to do business in the state where the Property is located, that Tenant has full right, power and authority to enter into this Lease, and that each person signing

on behalf of Tenant is authorized to do so. In the event any such representation and warranty is false, all persons who execute this Lease shall be individually, jointly and severally, liable as Tenant. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing representations and warranties.

56. **Consequential Damages**. Except to the extent expressly provided for hereunder, including, without limitation, Sections 10(b) and 38, in no event shall either Landlord or Tenant be liable to the other party or any other party on account of any claims for any consequential damages or any punitive damages.

57. **Counterparts; Fax Signatures**. This Lease may be executed in any number of counterparts, each of which when taken together shall be deemed to be one and the same instrument. For purposes of facilitating the execution of this Agreement, an electronic copy (e.g. fax, pdf format or email) of a handwritten signature of either party hereto shall be deemed an original.

58. **Survival**. All representations, warranties and indemnifications of the parties shall survive expiration or termination of this Lease.

59. **Building Certification**. Landlord may, from time to time, decide to develop, maintain and/or operate the Building in accordance with third-party accreditations, ratings or certifications that relate to sustainability issues, energy efficiency or other comparable goals. Tenant shall cooperate with Landlord's efforts in that regard at no cost to Tenant and provide any such information in its possession or control required to attain these accreditations, ratings or certification. The foregoing provisions shall apply whether Landlord affirmatively seeks an accreditation, rating or certification and to thereafter maintain the accreditation, rating or certification, or to operate voluntarily in accordance with such accreditation, rating or certification

60. **Tenant Improvement Allowance**. Landlord will provide to Tenant an allowance (the "Tenant Improvement Allowance") in an amount up to, but not exceeding, $137,563.42 (the "Maximum Tenant Improvement Allowance") to be applied to the cost of the Tenant Improvement Work described in Exhibit "B". Tenant and Landlord agree that all costs of the Tenant Improvement Work in excess of such Tenant Improvement Allowance shall be paid solely by Tenant. Tenant, upon written notice to Landlord given no later than the twelfth (12th) anniversary of the Commencement Date shall have the right to apply up to $25,647.42 from the Tenant Improvement Allowance towards the payment of Rent (the "TI Credit"). If the total costs of the Tenant Improvement Work and the TI Credit are less than the Tenant Improvement Allowance, Tenant shall have no right to receive any additional credit for such savings. Tenant shall perform the Tenant Improvement Work in accordance with Sections 20 and 21 of this Lease and Exhibit B attached hereto and in any case no later than one (1) year after the Tender Date. Provided Tenant is not in default of the terms of this Lease and no event has occurred, which, with the passing of time or the giving of notice, or both, would constitute a default by Tenant under this Lease, Landlord shall pay to Tenant the Tenant Improvement Allowance upon (i) the completion of the Tenant Improvement Work and (ii) receipt by Landlord of the first installment of Base Rent which is payable by Tenant, but in no event shall the Tenant

Improvement Allowance be paid to Tenant prior to Tenant having furnished to Landlord, in form and substance acceptable to Landlord, all of the following:

(a) A certification by tenant's architect that the Tenant Improvement Work has been completed in accordance with Tenant's plans therefor and in compliance with all applicable laws, which plans shall have been approved by Landlord prior to commencement of the Tenant Improvement Work in accordance with Section 20, and which certification shall be subject to verification by Landlord;

(b) Copies of all invoices for labor and materials for the Tenant Improvement Work in an aggregate amount not less than the amount of the disbursement which Tenant is requesting from the Tenant Improvement Allowance;

(c) Evidence of the satisfactory completion of all required inspections and issuance of any required approvals and signoffs of public authorities with respect thereto, if any; and

(d) An executed and acknowledged release of mechanic's liens with respect to the Premises executed by Tenant's general contractor and by every subcontractor and supplier of labor and/or materials engaged in or supplying materials for the Tenant Improvement Work.

Notwithstanding anything set forth above, when the conditions set forth above for payment of the Tenant Improvement Allowance have been satisfied, Landlord shall have the right, at Landlord's sole option, to either (A) pay the Tenant Improvement Allowance to Tenant or (B) apply the Tenant Improvement Allowance to the next due installment of Base Rent.

61. Patriot Act. Tenant represents, warrants and covenants that neither Tenant nor any of its partners, officers, directors, members or shareholders (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury ("OFAC") pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 23, 2001) ("Order") and all applicable provisions of Title III of the USA Patriot Act (Public Law No. 107-56 (October 26, 2001)); (ii) is listed on the Denied Persons List and Entity List maintained by the United States Department of Commerce; (iii) is listed on the List of Terrorists and List of Disbarred Parties maintained by the United States Department of State, (iv) is listed on any list or qualification of "Designated Nationals" as defined in the Cuban Assets Control Regulations 31 C.F.R. Part 515; (v) is listed on any other publicly available list of terrorists, terrorist organizations or narcotics traffickers maintained by the United States Department of State, the United States Department of Commerce or any other governmental authority or pursuant to the Order, the rules and regulations of OFAC (including without limitation the Trading with the Enemy Act, 50 U.S.C. App. 1-44; the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06; the unrepealed provision of the Iraq Sanctions Act, Publ. L. No. 101-513; the United Nations Participation Act, 22 U.S.C. § 2349 aa-9; The Cuban Democracy Act, 22 U.S.C. §§ 6001-10; The Cuban Liberty and Democratic Solidarity Act, 22 U.S.C. §§ 6021-6091; and The Foreign Narcotic Kingpin Designation Act, 22 U.S.C. §§ 1901-1908, 8 U.S.C. § 1182, all as may be amended from time to time); or any other applicable requirements contained in any enabling legislation or other Executive Orders in respect of the Order (the Order and such other rules, regulations, legislation or orders are collectively called the

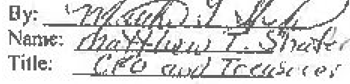
"Orders"); (vi) is engaged in activities prohibited in the Orders; or (vii) has been convicted, pleaded nolo contendere, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes or in connection with the Bank Secrecy Act (31 U.S.C. §§ 5311 et seq.). This Section 61 shall not apply to any person or entity to the extent that such person's or entity's interest in Tenant is as a stockholder of a U.S. Publicly-Traded Entity. As used in this Agreement, "U.S. Publicly-Traded Entity" means an entity whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES APPEAR ON NEXT PAGE.]

IN WITNESS WHEREOF, intending to be legally bound, Landlord and Tenant have executed this Lease as of the Effective Date.

Tenant:

OCEAN POWER TECHNOLOGIES, INC.,
a Delaware corporation



By: ______________
Name: ______________
Title: ______________

Landlord:

PPF INDUSTRIAL 28 ENGELHARD, LLC, a Delaware limited liability company

By: PPF Industrial, LLC, a Delaware limited liability company, its sole member

By: PPF OP, LP, a Delaware limited partnership, its sole member

By: PPF OPGP, LLC, a Delaware limited liability company, its general partner

By: Prime Property Fund, LLC, a Delaware limited liability company, its sole member

By: Morgan Stanley Real Estate Advisor, Inc., a Delaware corporation, its Investment Adviser

By: ______________
Name: ______________
Title: ______________

EXHIBIT "A"

LAND

BLOCK 47.01, LOT 3.03, Monroe

BEGINNING AT A POINT IN THE WESTERLY RIGHT OF WAY LINE OF ENGELHARD DRIVE, SAID POINT BEING LOCATED NORTHERLY DISTANT 2210.93 FEET ALONG SAME FROM THE INTERSECTION OF THE SOUTHERLY PROLONGATION OF SAID WESTERLY RIGHT OF WAY LINE OF ENGELHARD DRIVE WITH THE

EASTERLY PROLONGATION OF THE NORTHERLY RIGHT OF WAY LINE OF PROSPECT PLAINS-HALF ACRE ROAD AND FROM SAID BEGINNING POINT RUNNING;

1. NORTH 76 DEGREES 54 MINUTES 30 SECONDS WEST ALONG THE COMMON LINE BETWEEN LOTS 3.03 AND 2.01 IN BLOCK 47.01 AS SHOWN ON THE CURRENT MONROE TOWNSHIP TAX MAP, 1057.26 FEET TO A POINT IN THE EASTERLY LINE OF LANDS NOW OR FORMERLY OF THE PENN CENTRAL RAILROAD; THENCE

2. NORTH 33 DEGREES 25 MINUTES 16 SECONDS EAST ALONG SAME, 54.95 FEET TO A POINT; THENCE

3. SOUTH 76 DEGREES 54 MINUTES 30 SECONDS EAST ALONG THE COMMON LINE BETWEEN TAX MAP LOTS 3.02 & 3.01 IN BLOCK 47.01, 319.93 FEET TO A POINT; THENCE

4. NORTH 33 DEGREES 25 MINUTES 16 SECONDS EAST ALONG SAME, 836.89 FEET TO A POINT; THENCE

5. SOUTH 56 DEGREES 34 MINUTES 44 SECONDS EAST ALONG A NEW LINE THROUGH TAX MAP LOT 4.03 IN BLOCK 47.01, 345.74 FEET TO A POINT; THENCE

6. SOUTH 11 DEGREES 40 MINUTES 21 SECONDS EAST, ALONG SAME, 411.43 FEET TO A POINT; THENCE

7. SOUTH 37 DEGREES 05 MINUTES 35 SECONDS EAST ALONG THE COMMON LINE BETWEEN TAX MAP LOTS 3.02 AND 4.03 IN BLOCK 47.01, 55.00 FEET TO A POINT IN THE AFOREMENTIONED WESTERLY RIGHT OF WAY LINE OF ENGELHARD DRIVE; THENCE

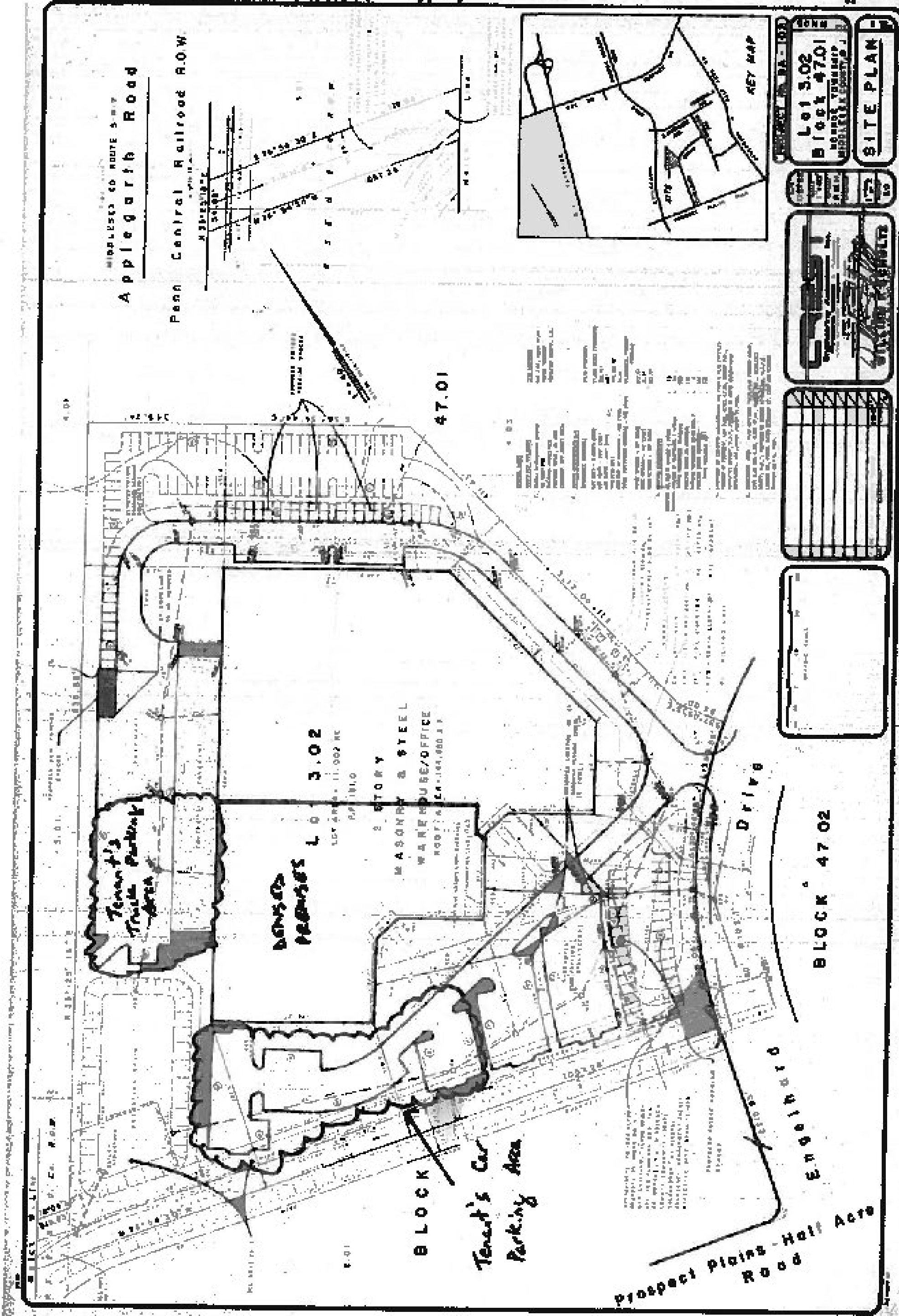
8. SOUTHWESTERLY, ALONG SAME, ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 480.00 FEET, AN ARC LENGTH OF 333.56 FEET TO THE POINT AND PLACE OF BEGINNING.

EXHIBIT "A-1"

BUILDING/PREMISES

[ATTACH PLAN SHOWING BUILDING/PREMISES]

EXHIBIT A-1



1 of 2

EXHIBIT A-1

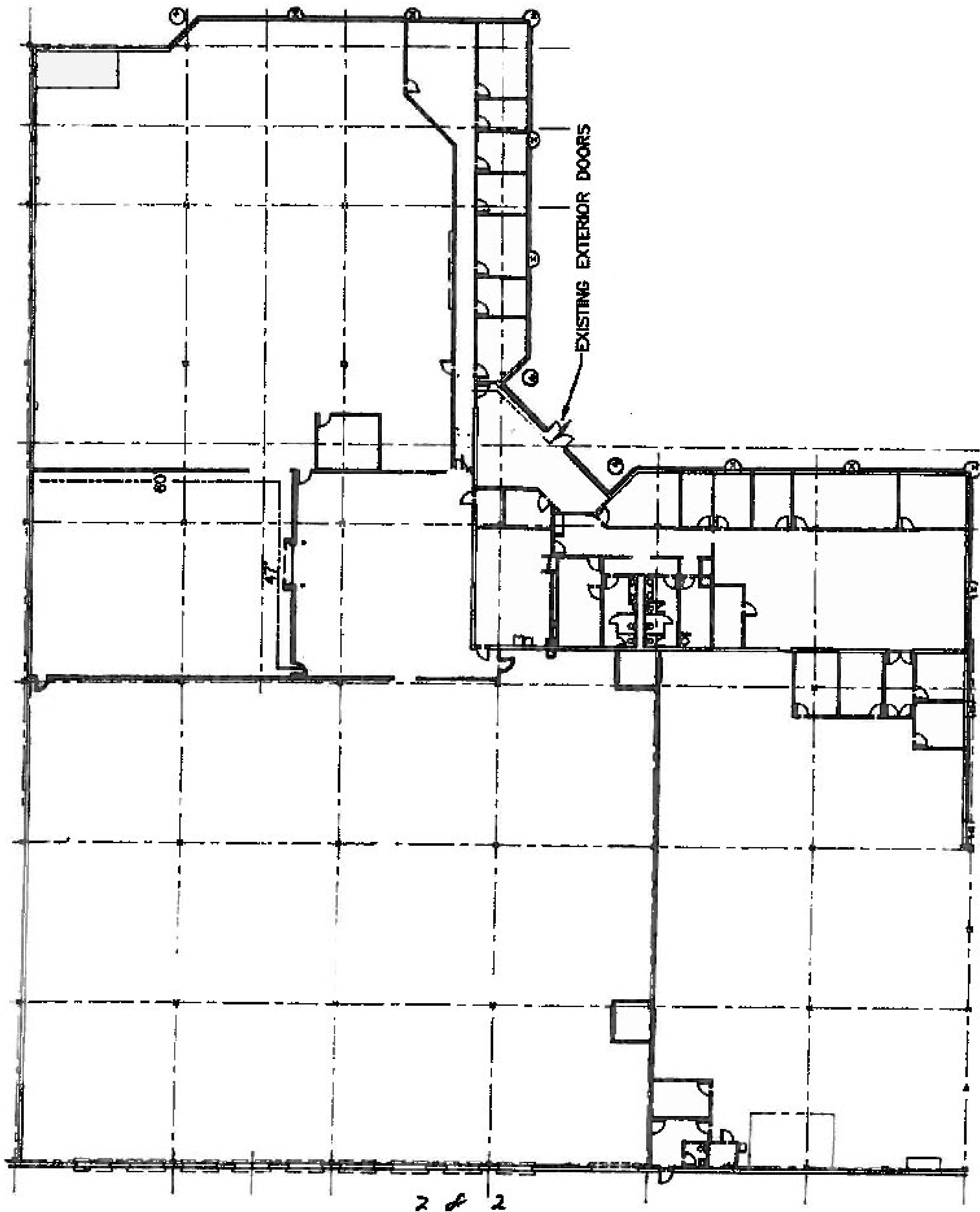


EXHIBIT "B"
WORK LETTER

To induce Tenant to enter into the Lease (to which this Exhibit "B" is attached) and in consideration of the mutual covenants hereinafter contained, Landlord and Tenant agree as follows:

1. a. Tenant shall construct, using a contractor approved by Landlord (such approval not to be unreasonably withheld) at Tenant's expense (subject to Landlord's obligation to provide Tenant with the Tenant Improvement Allowance in accordance with Section 60 of the Lease), the leasehold improvements to the Premises described on Exhibit "B-1" hereto (the "Tenant Improvement Work") in substantial accordance with the Plans. Notwithstanding the foregoing, any items set forth on Exhibit "B-1" shall be subject to Landlord's review and approval in connection with Landlord's review of the Plans, which approval may be withheld in Landlord's sole discretion if they affect the Building structure or Building systems.

b. Tenant shall cause a preliminary layout to be prepared with Landlord's cooperation and for Landlord's approval. Landlord's failure to approve or disapprove the layout within five (5) business days of its submission shall be deemed an approval. Upon approval of the layout, Tenant shall prepare, or cause to be prepared, working drawings and/or specifications for the construction of the building items and improvements to be included in the Tenant Improvement Work, adequate in detail to perform the Tenant Improvement Work (together with the preliminary layout, the drawings and/or specifications are referred to as the "Plans"). The Plans (and any modifications thereof) shall be subject to Landlord's approval (which approval shall not be unreasonably withheld, provided that Landlord may withhold its approval to any aspect of the Plans which affect this Building systems or structures in its sole discretion). Landlord's failure to approve or disapprove the Plans within five (5) business days of submission shall be deemed an approval. If Landlord disapproves of the Plans, then Landlord shall notify Tenant thereof specifying in reasonable detail the reasons for such disapproval, in which case Tenant shall, within ten (10) days after such notice, either revise such Plans in accordance with Landlord's objections to the extent that such are acceptable to Tenant and submit the revised Plans to Landlord for its review and approval or notify Landlord that Tenant does not approve Landlord's objections specifying in reasonable detail the reasons for such disapproval, in which event the parties shall reasonably cooperate to determine an alternative solution. Landlord shall notify Tenant in writing whether it approves of the resubmitted Plans within five (5) business days after its receipt thereof (and specifying in reasonable detail the reason for any disapproval), and, if Tenant has disapproved of Landlord's prior objections, whether Landlord is willing to modify or withdraw such objections. This process shall be repeated until the Plans have been finally approved by Landlord.

2. (a) Tenant shall be responsible for the cost of preparing the Plans and costs necessary to file the Plans with, and obtain the necessary permits and approvals of, any governmental authority having jurisdiction thereof, which costs shall be reimbursed from the applicable Tenant Improvement Allowance to the extent the Tenant Improvement Allowance is not exhausted.

(b) Any costs of the Tenant Improvement Work in excess of the Tenant Improvement Allowance shall be paid by Tenant.

3. Tenant agrees to pay to Landlord as a construction management fee an amount equal to 2% of the costs of the Tenant Improvement Work. Such amount shall be payable from the Tenant Improvement Allowance, to the extent not exhausted, and if the Tenant Improvement Allowance is exhausted, within thirty (30) days after an invoice therefore is delivered by Landlord to Tenant.

4. Tenant shall obtain all governmentally required building and construction permits and arrange for all governmentally required progress and final inspections related to the Tenant Improvement Work.

EXHIBIT "B-1"

Tenant Improvement Work

The following Tenant Improvement Work is anticipated to be effected in the Premises:

- Replace/install large overhead door and associated ramp
- Build floor to ceiling partitioning walls in the warehouse/shop floor area to segregate between the different areas as needed;
- Move, install new, and/or remove partitioning walls in the office area and warehouse/shop floor area, including sound proofing, as needed
- Relocate and/or install power distribution system (e.g., drops, outlets, conduit or like systems) as needed in the warehouse/shop floor and office areas
- Move and/or install telecom system (e.g., outlets/ports, drops, conduit for phone, internet, cable TV, projectors or like systems) as needed in the warehouse/shop floor and office areas
- Build and/or expand additional bathrooms as needed
- Install low pressure air and/or water plumbing in the warehouse/shop floor as needed
- Patch walls and floor throughout office and warehouse/shop floor areas
- Paint all walls throughout warehouse/shop floor and office areas
- Clean and seal the entire floor (warehouse/shop floor area) using industrial grade sealant
- Replace interior doors and windows as needed
- Upgrade server room
- Install/replace drop ceilings including sound proofing as needed
- Change lighting fixtures throughout entire facility to increase lumens, including external lighting as needed
- Install/upgrade facility security system
- Install workstations and cubicles as needed

EXHIBIT "C"

COMMENCEMENT LETTER

Date ____ ______________

Re: Lease dated as of __________, 2017, by and between PPF Industrial 28 Engelhard, LLC, as Landlord, and Ocean Powers Technology, Inc., as Tenant, for 55,958 rentable square feet at the Building located at 28 Engelhard Drive, Monroe Township, New Jersey.

Dear __________:

In accordance with the terms and conditions of the above referenced Lease, Tenant accepts possession of the Premises and agrees:

1. The Commencement Date of the Term of the Lease is __________;

2. The Expiration Date of the Term of the Lease is __________.

3. Base Rent payable for Lease Years ______________ and the first _____________ (__) months of Lease Year __ is as set forth in the Lease Summary.

Please acknowledge your acceptance of possession and agreement to the terms set forth above by signing all 3 counterparts of this Commencement Letter in the space provided and returning 2 fully executed counterparts to my attention.

Sincerely,

____
Property Manager

Agreed and Accepted:

Tenant: ________________________________

By: ________________________
Name: ________________________
Title: ________________________

EXHIBIT "D"

RULES AND REGULATIONS

1. Tenant will not place any signs on the Property without Landlord's prior written consent, which may not be unreasonably, withheld, and delayed. All signage must comply with all applicable laws, codes and regulations, including, without limitation, zoning and building codes. No advertisements, pictures or signs of any sort may be displayed on or outside the Premises without the prior written consent of Landlord which may not be unreasonably, withheld, and delayed. . This consent requirement includes any portable signs or vehicles placed within the parking lot, Common Areas or on streets adjacent thereto for the purpose of advertising or display. Landlord has the right to remove any such unapproved item at Tenant's expense if Tenant fails to do so after reasonable notice from Landlord.

2. Except as is provided in Section 1(d) of the Lease, Tenant may not park or store motor vehicles, trailers or containers outside the Premises after the conclusion of normal daily business activity except in approved areas specifically designated by Landlord.

3. Tenant may not use any method of heating or air-conditioning other than that supplied by Landlord without the prior written consent of Landlord.

4. All window coverings and window films or coatings installed by Tenant and visible from outside of the Building require the prior written approval of Landlord. Except for dock shelters and seals as may be expressly permitted by Landlord, no awnings or other projections may be attached to the outside walls of the Building.

5. Tenant may not use, keep or permit to be used or kept any foul or noxious gas or substance on, in or around the Premises unless approved by Landlord. Tenant may not use, keep or permit to be used or kept any flammable or combustible materials without proper governmental permits and approvals.

6. Tenant may not use, keep or permit to be used or kept food or other edible materials in or around the Premises in such a manner as to attract rodents, vermin or other pests. Tenant may not permit cooking in or about the Premises other than in microwave ovens.

7. Tenant may not use or permit the use of the Premises for lodging or sleeping, for public assembly, or for any illegal or immoral purpose.

8. Tenant may not alter any lock or install any new locks or bolts on any door at the Premises without prior notice to Landlord. .

9. Except as is provided in Section 1(d) of the Lease, Tenant will park motor vehicles only in those general parking areas as designated by Landlord except for active loading and unloading. During loading and unloading of vehicles or containers, Tenant will not unreasonably interfere with traffic flow within the Property and loading and unloading areas of other tenants.

10. Storage of propane tanks, whether interior or exterior, will be in secure and protected storage enclosures approved by the local fire department and, if exterior, shall be located in areas specifically designated by Landlord. Safety equipment, including eye wash stations and approved neutralizing agents, will be provided in areas used for the maintenance and charging of lead-acid batteries. Tenant will protect electrical panels and building mechanical equipment from damage from forklift trucks.

11. Tenant will not disturb, solicit or canvas any occupant of the Building or Property and will cooperate to prevent same.

12. No person may go on the roof of the Building without Landlord's permission except to perform obligations under its lease.

13. No animals (other than seeing eye dogs and fish in a fish tank) or birds of any kind may be brought into or kept in or about the Premises.

14. Machinery, equipment and apparatus belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building to such a degree as to be objectionable to Landlord or other tenants or to cause harm to the Building will be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate the transmission of such noise and vibration. Tenant will cease using any such machinery which causes objectionable noise and vibration which cannot be sufficiently mitigated.

15. Except as is provided in Section 1(d) of the Lease, all goods, including material used to store goods, delivered to the Premises of Tenant will be immediately moved into the Premises and will not be left in parking or exterior loading areas overnight.

16. Tractor trailers which must be unhooked or parked with dolly wheels beyond the concrete loading areas must use steel plates or wood blocks of sufficient size to prevent damage to the asphalt paving surfaces. Except as is provided in Section 1(d) of the Lease, no parking or storing of such trailers will be permitted in the auto parking areas of the industrial park or on streets adjacent thereto.

17. Forklifts which operate on asphalt paving areas may not have solid rubber tires and may use only tires that do not damage the asphalt.

18. Tenant will be responsible for the safe storage and removal of all pallets. Pallets will be stored behind screened enclosures at locations approved by Landlord.

19. Tenant will be responsible for the safe storage and removal of all trash and refuse. All such trash and refuse will be contained in suitable receptacles stored behind screened enclosures at locations approved by Landlord. Landlord reserves the right to remove, at Tenant's expense and without further notice, any trash or refuse left elsewhere outside of the Premises or by Tenant elsewhere on the Property.

20. Tenant may not store or permit the storage or placement of goods or merchandise in or around the Common Areas surrounding the Premises. No displays or sales of merchandise are allowed in the parking lots or other Common Areas.

21. Tenant will appoint an Emergency Coordinator who shall be responsible for assuring notification of the local fire department in the event of an emergency, assuring that sprinkler valves are kept open and implementing the Factory Mutual "Red Tag Alert" system including weekly visual inspection of all sprinkler system valves on or within the Premises. Tenant will provide Landlord access to fire protection and any related communications equipment in the Premises at all times.

22. Smoking is prohibited in the Building and within twenty-five (25) feet of any entries, outdoor air intakes and operable windows.

23. The use of CFC-based refrigerants is prohibited in the Building and in the Premises.

24. The use of any products or insulation containing urea formaldehyde or urea formaldehyde resin is prohibited in the Building and in the Premises.

25. Before closing and leaving its premises at any time, Tenant shall use reasonable efforts to turn off all lights, electrical appliances and mechanical equipment that are not otherwise required to remain on. The use of space heaters is prohibited. Notwithstanding anything to the contrary herein, any space conditioning equipment that is placed in the Premises for the purpose of increasing comfort to Tenant shall be operated on sensors or timers that limit operation of equipment to hours of occupancy in the areas immediately adjacent to the occupying personnel. Tenant agrees to comply with all mandatory and voluntary energy, water or other conservation controls or requirements applicable to industrial buildings issued by the federal, state, county, municipal or other applicable governments, or any public utility or insurance carrier including, without limitation, controls on the permitted range of temperature settings in office buildings or requirements necessitating curtailment of the volume of energy consumption or the hours of operation of the Building. Any terms or conditions of the Lease that conflict or interfere with compliance by Landlord with such controls or requirements shall be suspended for the duration of such controls or requirements. It is further agreed that compliance with such controls or requirements shall not be considered an eviction, actual or constructive, of Tenant from the Premises and shall not entitle Tenant to terminate this Lease or to an abatement or reduction of any rent payable hereunder.

26. Tenant covenants and agrees, at its sole cost and expense to comply with Landlord's recycling policy. Tenant shall dispose of in an environmentally sustainable manner any equipment, furnishings, or materials no longer needed by Tenant and shall recycle or re-use in accordance with landlord standards adopted for the Building.

27. Tenant (at its cost) shall install occupancy sensors on all overhead light fixtures so that they automatically switch off when an area is unoccupied. Tenant (at its cost) shall install occupancy sensors on all built-in or fixed task lighting fixtures so that they automatically switch off when an area is unoccupied. Such sensors may be installed with manual overrides for areas that are normally occupied, such as individual offices and conference rooms.

EXHIBIT "E-1"

Approved Tenant items to be located in truck parking areas

- Buoy parts (all metal)
- Buoy stands (current and past projects, all metal)
- Buoys (marker and cable float, all plastic)
- Large safety equipment (sand and concrete barriers, scaffolding)
- Storage containers containing items which are not Hazardous Materials
- Forklift, 10T, LP-powered

EXHIBIT "E-2"

Approved Tenant substances to be used or kept on, in or around the Premises

- Lithium iron phosphate
- Lithium titanate
- Lead acid batteries
- Electric forklift battery pack
- Food-grade Teflon grease
- Denatured alcohol for cleaning.
- Acetone as needed
- Paint in quantities of no more than 5 gallons
- Propane (small canisters)
- Oxygen/Acetylene (small quantity for cutting torch)

EXHIBIT 21.1

Subsidiary	Jurisdiction of Incorporation
Ocean Power Technologies Ltd	United Kingdom
Ocean Power Technologies (Australasia) Pty Ltd	Australia
Reedsport OPT Wave Park LLC	Oregon
Oregon Wave Energy Partners I, LLC	Delaware
Victorian Wave Partners Pty Ltd	Australia

EXHIBIT 23.1

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Ocean Power Technologies, Inc.:

We consent to the incorporation by reference in the registration statements (No. 333-217209, No. 333-213519, No. 333-226820 and No. 333-230199) on Form S-1, registration statements (No. 333-208522, No. 333-214316, and No. 333-224436) on Form S-8, and the registration statement (No. 333-221867) on Form S-3 of Ocean Power Technologies, Inc. of our report dated July 22, 2019, with respect to the consolidated balance sheets of Ocean Power Technologies, Inc. and subsidiaries as of April 30, 2019 and 2018, the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows for each of the years in the two-year period ended April 30, 2019, and the related notes, which report appears in the April 30, 2019 annual report on Form 10-K of Ocean Power Technologies, Inc.

Our report dated July 22, 2019 contains an explanatory paragraph that states that the Company's cash balance, recurring losses from operations, and accumulated deficit raise substantial doubt about the Company's ability to continue as a going concern, as discussed in Note 1(b) to the consolidated financial statements. The consolidated financial statements do not include any adjustments that might result from the outcome of that uncertainty.

Our report on the consolidated financial statements also refers to the Company's adoption of Accounting Standards Update (ASU) 2014-09, *Revenue from Contracts with Customers*.

(signed) KPMG LLP

Philadelphia, Pennsylvania
July 22, 2019

EXHIBIT 31.1

CERTIFICATIONS

I, George H. Kirby III, 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/ George H. Kirby III

George H. Kirby III
President and Chief Executive Officer

Dated: July 22, 2019

EXHIBIT 31.2

CERTIFICATIONS

I, Matthew T. Shafer, 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/ Matthew T. Shafer

Matthew T. Shafer
Chief Financial Officer and Treasurer

Dated: July 22, 2019

EXHIBIT 32.1

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

In connection with the Annual Report on Form 10-K of Ocean Power Technologies, Inc. (the “Company”) for the year ended April 30, 2019 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, George H. Kirby III, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, that:

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

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

/s/ George H. Kirby III

George H. Kirby III
President and Chief Executive Officer

Date: July 22, 2019

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

EXHIBIT 32.2

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

In connection with the Annual Report on Form 10-K of Ocean Power Technologies, Inc. (the "Company") for the year ended April 30, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Matthew T. Shafer, Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, 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/ Matthew T. Shafer
Matthew T. Shafer
Chief Financial Officer and Treasurer

Date: July 22, 2019

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.