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

Form 8-K

Current Report Pursuant to Section 13 or 15(d) of
the Securities Act of 1934

Date of Report (Date of earliest event reported): **January 19, 2018**

Ocean Power Technologies, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-33417
(Commission
File Number)

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

28 Engelhard Drive
Monroe Township, New Jersey
(Address of principal executive offices)

08831
(Zip Code)

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.133-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR 230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR 240.12b-2).

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.

Item 5.02 Departure of Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

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 500,000 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 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.

A copy of the Inducement Plan and related form agreement under the Inducement Plan are attached as Exhibits 10.1 and 10.2 hereto and incorporated by reference herein. The above description of the Inducement Plan does not purport to be complete and is qualified in its entirety by reference to such exhibit.

Item 8.01 Other Events

On January 16, 2018, the Company issued a press release announcing the appointment of Christopher Phebus as Vice President of Engineering. A copy of the press release is furnished as Exhibit 99.2 to this report and is incorporated herein by reference. In addition, on January 19, 2018, as required by the rules of the NASDAQ Stock Market, the Company issued a press release announcing an inducement award made to Mr. Phebus under the Inducement Plan. A copy of the press release is furnished as Exhibit 99.1 to this report and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

Exhibits

[* 10.1 Employment Inducement Incentive Award Plan.](#)

[* 10.2 Form of Restricted Stock Agreement for Employment Inducement Incentive Award Plan.](#)

[** 99.1 Press release dated January 19, 2018 announcing Employment Inducement Incentive Award Plan and restricted share grant from the Company's Employment Inducement Incentive Award Plan.](#)

[** 99.2 Press release dated January 16, 2018 regarding appointment of Christopher Phebus as Vice President of Engineering.](#)

* Filed herewith.

**Furnished herewith.

SIGNATURE

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

Date: January 19, 2018

OCEAN POWER TECHNOLOGIES, INC.

/s/ George H. Kirby III

George H. Kirby III

President and Chief Executive Officer

Exhibit Index

[* 10.2 Form of Restricted Stock Agreement for Employment Inducement Incentive Award Plan.](#)

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OCEAN POWER TECHNOLOGIES, INC.
EMPLOYMENT INDUCEMENT INCENTIVE AWARD PLAN

ARTICLE 1
PURPOSE

The purpose of the Ocean Power Technologies, Inc. Employment Inducement Incentive Award Plan (the “Plan”) is to promote the success and enhance the value of Ocean Power Technologies, Inc., a Delaware corporation (the “Company”) by linking the individual interests of Eligible Individuals to those of the Company’s stockholders and by providing such individuals with an incentive for outstanding performance to generate superior returns to the Company’s stockholders. The Plan is further intended to provide flexibility to the Company and its subsidiaries in their ability to motivate, attract, and retain the services of Eligible Individuals upon whose judgment, interest, and special effort the successful conduct of the Company’s operation is largely dependent. Only Eligible Individuals may receive Awards under the Plan.

ARTICLE 2
DEFINITIONS AND CONSTRUCTION

Wherever the following terms are used in the Plan they shall have the meanings specified below, unless the context clearly indicates otherwise. The singular pronoun shall include the plural where the context so indicates.

2.1 “Administrator” means the entity that conducts the general administration of the Plan as provided in Article 8 hereof.

2.2 “Affiliate” means any Subsidiary.

2.3 “Applicable Accounting Standards” means Generally Accepted Accounting Principles in the United States, International Financial Reporting Standards or such other accounting principles or standards as may apply to the Company’s financial statements under United States federal securities laws from time to time.

2.4 “Applicable Law” means any applicable law, including without limitation, (a) provisions of the Code, the Securities Act, the Exchange Act and any rules or regulations thereunder; (b) corporate, securities, tax or other laws, statutes, rules, requirements or regulations, whether federal, state, local or foreign; and (c) rules of any securities exchange, national market system or automated quotation system on which the Shares are listed, quoted or traded.

2.5 “Award” means a Performance Share Award, Restricted Stock award, a Restricted Stock Unit award or a Stock Payment award which may be awarded or granted under the Plan.

2.6 “Award Agreement” means any written notice, agreement, contract or other instrument or document evidencing an Award, including through electronic medium, which shall contain such terms and conditions with respect to an Award as the Administrator shall determine, consistent with the Plan.

2.7 “Board” means the Board of Directors of the Company.

2.8 “Change in Control” means the occurrence of any of the following events:

(a) a “Person” or “group” (within the meaning of Sections 13(d) and 14(d)(2) of the Exchange Act) becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of more than fifty percent (50%) of the total voting power of the voting Stock of the Company, on a fully diluted basis;

(b) individuals who on the Effective Date constitute the Board (together with any new Directors whose election by such Board or whose nomination by such Board for election by the stockholders of the Company was approved by a vote of at least a majority of the members of such Board then in office who either were members of such Board on the Effective Date or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the members of such Board then in office;

(c) the Company consolidates with, or merges with or into, any Person, or any Person consolidates with, or merges with or into, the Company, other than any such transaction in which the holders of securities that represented one hundred percent (100%) of the voting Stock of the Company immediately prior to such transaction (or other securities into which such securities are converted as part of such merger or consolidation transaction) own directly or indirectly at least a majority of the voting power of the voting Stock of the surviving Person in such merger or consolidation transaction immediately after such transaction; or

(d) there is consummated any direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one transaction or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any “Person” or “group” (within the meaning of Sections 13(d) and 14(d)(2) of the Exchange Act).

Notwithstanding the foregoing, if a Change in Control constitutes a payment event with respect to any Award (or any portion of an Award) that provides for the deferral of compensation that is subject to Section 409A of the Code, to the extent required to avoid the imposition of additional taxes under Section 409A of the Code, the transaction or event described in subsection (a), (b), (c) or (d) with respect to such Award (or portion thereof) shall only constitute a Change in Control for purposes of the payment timing of such Award if such transaction also constitutes a “change in control event” (within the meaning of Code Section 409A). Consistent with the terms of this Section 2.8, the Administrator shall have full and final authority to determine conclusively whether a Change in Control of the Company has occurred pursuant to the above definition, the date of the occurrence of such Change in Control and any incidental matters relating thereto.

2.9 “Code” means the Internal Revenue Code of 1986, as amended from time to time, together with the regulations and official guidance promulgated thereunder, whether issued prior or subsequent to the grant of any Award.

2.10 “Committee” means the Compensation Committee of the Board, or another committee or subcommittee of the Board described in Article 8 hereof.

2.11 “Common Stock” means the common stock of the Company, par value \$0.001 per share.

2.12 “Company” has the meaning provided in Article 1.

2.13 “Director” means a member of the Board, as constituted from time to time.

2.15 “DRO” means a “domestic relations order” as defined by the Code or Title I of the Employee Retirement Income Security Act of 1974, as amended from time to time, or the rules thereunder.

2.16 “Effective Date” means the date on which the Plan is approved by the Board.

2.17 “Eligible Individual” means any prospective Employee who is commencing employment with the Company or a Subsidiary, or is being rehired following a bona fide period of non-employment by the Company or a Subsidiary, if he or she is granted an Award in connection with his or her commencement of employment with the Company or a Subsidiary and such grant is an inducement material to his or her entering into employment with the Company or a Subsidiary (within the meaning of NASDAQ Stock Market Rule IM-5636-1 or any successor rule, if the Company’s securities are traded on the NASDAQ Stock Market, and/or the applicable requirements of any other established stock exchange on which the Company’s securities are traded, as applicable, as such rules and requirements may be amended from time to time). Notwithstanding the foregoing, if the Company’s securities are traded on the NASDAQ Stock Market, an “Eligible Individual” shall not include any prospective Employee who has previously been an Employee or Director of the Company unless following a bona fide period of non-employment by the Company or a Subsidiary. The Administrator may in its discretion adopt procedures from time to time to ensure that a prospective Employee is eligible to participate in the Plan prior to the granting of any Awards to such individual under the Plan (including without limitation a requirement that each such prospective Employee certify to the Company prior to the receipt of an Award under the Plan that he or she has had a bona fide period of non-employment, and that the grant of Awards under the Plan is an inducement material to his or her agreement to enter into employment with the Company or a Subsidiary).

2.18 “Employee” means any officer or other employee (within the meaning of Section 3401(c) of the Code) of the Company or any Subsidiary.

2.19 “Equity Restructuring” means the following within the meaning of FASB ASC Topic 718: a nonreciprocal transaction between the Company and its stockholders, such as a stock dividend, stock split, reverse stock split, spin-off, rights offering or recapitalization through a large, nonrecurring cash dividend, that affects the number or kind of Shares (or other securities of the Company) or the share price of Common Stock (or other securities) and causes a change in the per share value of the Common Stock underlying outstanding stock-based Awards.

2.20 “Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time.

2.21 “Expiration Date” has the meaning provided in Section 9.1 hereof.

2.22 “Fair Market Value” means the fair market value of a share of Stock for purposes of the Plan, which shall be determined as of any Grant Date or other date as follows:

(a) If on such Grant Date or such other date for determinations under this Plan the shares of Stock are listed on a Stock Exchange, or are publicly traded on another established securities market (a “Securities Market”), the Fair Market Value of a share of Stock shall be the closing price of the Stock on the Grant Date or the other determination date as reported on such Stock Exchange or such Securities Market (provided that, if there is more than one such Stock Exchange or Securities Market, the Administrator shall designate the appropriate Stock Exchange or Securities Market for purposes of the Fair Market Value determination). If there is no such reported closing price on such Grant Date or the other date of determination under this Plan, the Fair Market Value of a share of Stock shall be the closing price of the Stock on the next preceding day on which any sale of Stock shall have been reported on such Stock Exchange or such Securities Market.

(b) If on such Grant Date or such other determination date the shares of Stock are not listed on a Stock Exchange or publicly traded on a Securities Market, the Fair Market Value of a share of Stock shall be the value of the Stock as determined by the Administrator by the reasonable application of a reasonable valuation method, and if applicable, in a manner consistent with Code Section 409A.

2.23 “Grant Date” means, as determined by the Administrator, the latest to occur of: the date as of which the Committee approves the Award or such later date as specified by the Committee in its approval.

2.24 “Independent Director” means a Director of the Company who is not an Employee of the Company and who qualifies as “independent” within the meaning of NASDAQ Stock Market Rule 5605(a)(2), or any successor rule, if the Company’s securities are traded on the NASDAQ Stock Market, and/or the applicable requirements of any other established stock exchange on which the Company’s securities are traded, as applicable, as such rules and requirements may be amended from time to time.

2.25 “Other Incentive Award” means an Award denominated in, linked to or derived from Shares or value metrics related to Shares, granted pursuant to Section 6.4 hereof.

2.26 “Participant” means an Eligible Individual who has been granted an Award pursuant to the Plan.

2.27 “Performance Share” means a contractual right awarded under Section 6.1 hereof to receive a number of Shares based on the attainment of specified performance goals or other criteria determined by the Administrator.

2.28 “Permitted Transferee” means, with respect to a Participant, any “family member” of the Participant, as defined under the General Instructions to Form S-8 Registration Statement under the Securities Act or any successor Form thereto, or any other transferee specifically approved by the Administrator, after taking into account Applicable Law.

2.29 “Plan” means this Ocean Power Technologies, Inc. Employment Inducement Incentive Award Plan, as it may be amended from time to time.

2.30 “Program” means any program adopted by the Administrator pursuant to the Plan containing the terms and conditions intended to govern a specified type of Award granted under the Plan and pursuant to which such type of Award may be granted under the Plan.

2.31 “Restricted Stock” means an award of Shares made under Article 5 hereof that is subject to certain restrictions on transfer and subject to risk of forfeiture.

2.32 “Restricted Stock Unit” means a contractual right awarded under Section 6.2 hereof to receive in the future a Share.

2.33 “Securities Act” means the Securities Act of 1933, as amended.

2.34 “Securities Market” has the meaning provided in Section 2.22 hereof.

2.35 “Share Limit” has the meaning provided in Section 3.1(a) hereof.

2.36 “Shares” means shares of Common Stock.

2.37 “Stock Payment” shall mean a payment in the form of Shares awarded under Section 6.3 hereof.

2.38 “Subsidiary” shall mean (a) a corporation, association or other business entity of which fifty percent (50%) or more of the total combined voting power of all classes of capital stock is owned, directly or indirectly, by the Company and/or by one or more Subsidiaries, (b) any partnership or limited liability company of which fifty percent (50%) or more of the equity interests are owned, directly or indirectly, by the Company and/or by one or more Subsidiaries, and (c) any other entity not described in clauses (a) or (b) above of which fifty percent (50%) or more of the ownership and the power (whether voting interests or otherwise), pursuant to a written contract or agreement, to direct the policies and management or the financial and the other affairs thereof, are owned or controlled by the Company and/or by one or more Subsidiaries; notwithstanding the foregoing, if any Award is deferred compensation subject to Code Section 409A, a higher than 50% ownership by the Company or Subsidiary will be used if so required under Code Section 409A.

2.39 “Successor Entity” shall have the meaning provided in Section 2.8(c)(i) hereof.

2.40 “Termination of Service” shall mean a Participant’s termination of employment with the Company or Subsidiary, and notwithstanding the foregoing, to the extent required by Code Section 409A, it shall mean a separation from service within the meaning of Code Section 409A. Unless the Administrator otherwise provides in an Award Agreement, in another agreement with the Participant or otherwise in writing after such Award Agreement is entered into, but prior to termination of Participant’s Service, upon the termination of such Participant’s service to the Company or its Subsidiaries, any Award held by such Participant that has not vested, or with respect to which all applicable restrictions and conditions has not lapsed, shall immediately be deemed forfeited. Upon forfeiture of such Award, the Participant thereof shall have no further rights with respect thereto, including any right to vote such Restricted Stock or any right to receive dividends with respect to such Restricted Stock or Stock Units.

The Administrator, in its sole discretion, shall determine the effect of all matters and questions relating to any Termination of Service, including, without limitation, whether a Termination of Service has occurred, whether any Termination of Service resulted from a discharge for cause and whether any particular leave of absence constitutes a Termination of Service. For purposes of the Plan, a Participant's employee-employer relationship shall be deemed to be terminated in the event that the Subsidiary employing such Participant ceases to remain an Subsidiary following any merger, sale of stock or other corporate transaction or event (including, without limitation, a spin-off).

ARTICLE 3
SHARES SUBJECT TO THE PLAN

3.1 Number of Shares

(a) Subject to Sections 3.1(b), 9.1 and 9.2 hereof, the aggregate number of Shares which may be issued or transferred pursuant to Awards under the Plan shall be equal to 500,000 (the "Share Limit"). Notwithstanding the foregoing, to the extent permitted under Applicable Law and applicable stock exchange rules, Awards that provide for the delivery of Shares subsequent to the applicable grant date may be granted in excess of the Share Limit if such Awards provide for the forfeiture or cash settlement of such Awards to the extent that insufficient Shares remain under the Share Limit at the time that Shares would otherwise be issued in respect of such Award.

(b) To the extent permitted by Applicable Law or the applicable stock exchange rules, if any Shares subject to an Award are forfeited or expire or such Award is settled for cash (in whole or in part), the Shares subject to such Award shall, to the extent of such forfeiture, expiration or cash settlement, again be available for future grants of Awards under the Plan and shall be added back to the Share Limit in the same number of Shares as were debited from the Share Limit in respect of the grant of such Award (as may be adjusted in accordance with Section 9.2 hereof). Notwithstanding anything to the contrary contained herein, Shares tendered by the Participant or withheld by the Company to satisfy any tax withholding obligation with respect to an Award shall not be added back to the Share Limit and will not be available for future grants of Awards. Any Shares repurchased by the Company under Section 5.4 hereof at the same price paid by the Participant so that such Shares are returned to the Company will again be available for Awards.

3.2 Stock Distributed

Any Shares distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Common Stock, treasury Common Stock or Common Stock purchased on the open market.

ARTICLE 4
GRANTING OF AWARDS

4.1 Participation

The Administrator may, from time to time, select from among all Eligible Individuals, those to whom one or more Awards shall be granted and shall determine the nature and amount of each Award, which shall not be inconsistent with the requirements of the Plan to be inducement Awards under the applicable stock exchange rules and Applicable Law. No Eligible Individual shall have any right to be granted an Award pursuant to the Plan.

4.2 Award Agreement

Each Award shall be evidenced by an Award Agreement stating the terms and conditions applicable to such Award, consistent with the requirements of the Plan and any applicable Program.

4.3 Limitations Applicable to Section 16 Persons

Notwithstanding anything contained herein to the contrary, with respect to any Award granted or awarded to any individual who is then subject to Section 16 of the Exchange Act, the Plan, any applicable Program and the applicable Award Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including Rule 16b-3 of the Exchange Act and any amendments thereto) that are requirements for the application of such exemptive rule, and such additional limitations shall be deemed to be incorporated by reference into such Award to the extent permitted by Applicable Law.

4.4 At-Will Service

Nothing in the Plan or in any Program or Award Agreement hereunder shall confer upon any Participant any right to continue as an Employee, or shall interfere with or restrict in any way the rights of the Company or any Subsidiary, which rights are hereby expressly reserved, to discharge any Participant at any time for any reason whatsoever, with or without cause, and with or without notice, or to terminate or change all other terms and conditions of any Participant's employment or engagement, except to the extent expressly provided otherwise in a written agreement between the Participant and the Company or any Subsidiary.

4.5 Foreign Participants

Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in other countries in which the Company and its Subsidiaries operate or have Employees, or in order to comply with the requirements of any foreign securities exchange, the Administrator, in its sole discretion, shall have the power and authority to:

- (a) determine which Subsidiaries shall be covered by the Plan;
- (b) determine which Eligible Individuals outside the United States are eligible to participate in the Plan;

(c) modify the terms and conditions of any Program or any Award granted to Eligible Individuals outside the United States to comply with applicable foreign laws or listing requirements of any such foreign securities exchange;

(d) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable; provided, however, that no such subplans and/or modifications shall increase the Share Limit; and

(e) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals or listing requirements of any such foreign securities exchange. Notwithstanding the foregoing, the Administrator may not take any actions hereunder, and no Awards shall be granted, that would violate Applicable Law.

4.6 Stand-Alone and Tandem Awards

Awards granted pursuant to the Plan may, in the sole discretion of the Administrator, be granted either alone, in addition to, or in tandem with, any other Award granted pursuant to the Plan. Awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

ARTICLE 5 RESTRICTED STOCK

5.1 Award of Restricted Stock

(a) The Administrator is authorized to grant Restricted Stock to Eligible Individuals, and shall determine the terms and conditions, including the restrictions applicable to each award of Restricted Stock, which terms and conditions shall not be inconsistent with the Plan, and may impose such conditions on the issuance of such Restricted Stock as it deems appropriate.

(b) The Administrator shall establish the purchase price, if any, and form of payment for Restricted Stock; provided, however, that if a purchase price is charged, such purchase price shall be no less than the par value of the Shares to be purchased, unless otherwise permitted by Applicable Law. In all cases, legal consideration shall be required for each issuance of Restricted Stock to the extent required by Applicable Law.

5.2 Rights as Stockholders

Subject to Section 5.4 hereof, upon issuance of Restricted Stock, the Participant shall have, unless otherwise provided by the Administrator, all the rights of a stockholder with respect to said Shares, subject to the restrictions in an applicable Program or in the applicable Award Agreement, including voting rights and the right to receive all dividends and other distributions paid or made with respect to the Shares; provided, however, that, in the sole discretion of the Administrator as provided in the Award Agreement, any extraordinary distributions with respect to the Shares shall be subject to the restrictions set forth in Section 5.3 hereof.

5.3 Restrictions

All shares of Restricted Stock (including any shares received by Participants thereof with respect to shares of Restricted Stock as a result of stock dividends, stock splits or any other form of recapitalization) shall, in the terms of an applicable Program or the applicable Award Agreement, be subject to such restrictions and vesting requirements as the Administrator shall provide. Such restrictions may include, without limitation, restrictions concerning voting rights and transferability and such restrictions may lapse separately or in combination at such times and pursuant to such circumstances or based on such criteria as selected by the Administrator, including, without limitation, criteria based on the Participant's continued service with the Company, any performance criteria, Company or Subsidiary performance, individual performance or other criteria selected by the Administrator. By action taken after the Restricted Stock is issued, the Administrator may, on such terms and conditions as it may determine to be appropriate, accelerate the vesting of such Restricted Stock by removing any or all of the restrictions imposed by the terms of any Program or by the applicable Award Agreement. Restricted Stock may not be sold, transferred or encumbered until all restrictions are terminated or expire.

5.4 Repurchase or Forfeiture of Restricted Stock

If no purchase price was paid by the Participant for the Restricted Stock, upon a Termination of Service, the Participant's rights in unvested Restricted Stock then subject to restrictions shall lapse, and such Restricted Stock shall be surrendered to the Company and cancelled without consideration. If a purchase price was paid by the Participant for the Restricted Stock, upon a Termination of Service the Company shall have the right to repurchase from the Participant the unvested Restricted Stock then-subject to restrictions at a cash price per share equal to the price paid by the Participant for such Restricted Stock or such other amount as may be specified in an applicable Program or the applicable Award Agreement. The Administrator in its sole discretion may provide in the Award Agreement that, upon certain events, including without limitation a Change in Control, the Participant's death, retirement or disability, any other specified Termination of Service or any other event, the Participant's rights in unvested Restricted Stock shall not terminate, such Restricted Stock shall vest and cease to be forfeitable and, if applicable, the Company shall cease to have a right of repurchase.

5.5 Certificates for Restricted Stock

Restricted Stock granted pursuant to the Plan may be evidenced in such manner as the Administrator shall determine. Certificates or book entries evidencing shares of Restricted Stock must include an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock, and the Company may, in its sole discretion, retain physical possession of any stock certificate until such time as all applicable restrictions lapse.

5.6 Section 83(b) Election

If a Participant makes an election under Section 83(b) of the Code to be taxed with respect to the Restricted Stock as of the Grant Date of the Restricted Stock rather than as of the date or dates upon which the Participant would otherwise be taxable under Section 83(a) of the Code, the Participant shall be required to deliver a copy of such election to the Company promptly after filing such election with the Internal Revenue Service. Notwithstanding the foregoing, the Participant shall be solely responsible for any tax consequences of such election, including, without limitation, the timeliness of such election.

ARTICLE 6
PERFORMANCE SHARE AWARDS; RESTRICTED STOCK UNITS
STOCK PAYMENTS; and OTHER INCENTIVE AWARDS

6.1 Performance Share Awards

Any Eligible Individual selected by the Administrator may be granted one or more Performance Share Awards which shall be denominated in a number of Shares and the vesting of which may be linked to any specific performance criteria (in each case on a specified date or dates or over any period or periods determined by the Administrator) and/or time-vesting or other criteria, as determined by the Administrator.

6.2 Restricted Stock Units

The Administrator is authorized to grant Restricted Stock Units to any Eligible Individual. The number and terms and conditions of Restricted Stock Units shall be determined by the Administrator. The Administrator shall specify the date or dates on which the Restricted Stock Units shall become fully vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate, including conditions based on any specific criteria, including service to the Company or any Subsidiary and/or the attainment of any performance goals, in each case, on a specified date or dates or over any period or periods, as determined by the Administrator. The Administrator shall specify, or permit the Participant to elect, the conditions and dates upon which the Shares underlying the Restricted Stock Units shall be issued, which dates shall not be earlier than the date as of which the Restricted Stock Units vest and become nonforfeitable and which conditions and dates shall be consistent with the applicable provisions of Section 409A of the Code or an exemption therefrom. On the distribution dates, the Company shall issue to the Participant one unrestricted, fully transferable Share (or the Fair Market Value of one such Share in cash) for each vested and nonforfeitable Restricted Stock Unit.

6.3 Stock Payments

The Administrator is authorized to make one or more Stock Payments to any Eligible Individual. The number or value of Shares of any Stock Payment shall be determined by the Administrator and may be based upon any specific criteria, including service to the Company or any Subsidiary, and/or the attainment of any performance goals, determined by the Administrator. Stock Payments may, but are not required to be made in lieu of base salary, bonus, fees or other cash compensation otherwise payable to such Eligible Individual.

6.4 Other Terms and Conditions

All applicable terms and conditions of each Award described in this Article 6, including without limitation, as applicable, the term, vesting conditions and exercise/purchase price applicable to the Award, shall be set by the Administrator in its sole discretion, provided, however, that the value of the consideration paid by a Participant for an Award shall not be less than the par value of a Share, unless otherwise permitted by Applicable Law.

6.5 Exercise upon Termination of Service

Awards described in this Article 6 are exercisable or distributable, as applicable, only while the Participant is an Employee. The Administrator, however, in its sole discretion may provide that such Award may be exercised or distributed subsequent to a Termination of Service as provided under an applicable Program, Award Agreement, payment deferral election and/or in certain events, including without limitation, a Change in Control, the Participant's death, retirement or disability or any other specified Termination of Service; provided that it is in accordance with Code Section 409A to the extent Code Section 409A applies to the Award or in accordance with Code Section 83 to the extent Code Section 83 applies to the Award.

ARTICLE 7 ADDITIONAL TERMS OF AWARDS

7.1 Payment

The Administrator shall determine the methods by which payments by any Participant with respect to any Awards granted under the Plan shall be made, including, without limitation:

(a) cash or check;

(b) Shares (including, in the case of payment of the exercise price of an Award, Shares issuable pursuant to the exercise of the Award) held for such period of time as may be required by the Administrator in order to avoid adverse accounting consequences, in each case, having a Fair Market Value on the date of delivery equal to the aggregate payments required;

(c) other form of legal consideration acceptable to the Administrator.

The Administrator shall also determine the methods by which Shares shall be delivered or deemed to be delivered to Participants. Notwithstanding any other provision of the Plan to the contrary, no Participant who is a Director or an "executive officer" of the Company within the meaning of Section 13(k) of the Exchange Act shall be permitted to make payment with respect to any Awards granted under the Plan, or continue any extension of credit with respect to such payment with a loan from the Company or a loan arranged by the Company in violation of Section 13(k) of the Exchange Act.

7.2 Tax Withholding

The Company and its Subsidiaries shall have the authority and the right to deduct or withhold, or require a Participant to remit to the Company or a Subsidiary, an amount sufficient to satisfy federal, state, local and foreign taxes (including the Participant's social security, Medicare and any other employment tax obligation) required by Applicable Law to be withheld with respect to any taxable event concerning a Participant arising in connection with any Award. The Administrator may in its sole discretion and in satisfaction of the foregoing requirement allow a Participant to satisfy such obligations by any payment means described in Section 7.1 hereof, including without limitation, by allowing such Participant to elect to have the Company or a Subsidiary withhold Shares otherwise issuable under an Award (or allow the surrender of Shares). The number of Shares which may be so withheld or surrendered shall be limited to the number of Shares which have a fair market value on the date of withholding or repurchase no greater than the aggregate amount of such liabilities based on the minimum statutory withholding rates for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such supplemental taxable income.

7.3 Transferability of Awards.

(a) Except as otherwise provided in Section 7.3(b) or (c) hereof:

(i) No Award under the Plan may be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution or, subject to the consent of the Administrator, pursuant to a DRO, unless and until such Award has been exercised, or the Shares underlying such Award have been issued, and all restrictions applicable to such Shares have lapsed, and no Award shall be transferred pursuant to a DRO if it would violate Applicable Law, including the applicable stock exchange rules and Code Sections 409A and 83;

(ii) No Award or interest or right therein shall be subject to the debts, contracts or engagements of the Participant or his/her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, hypothecation, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy) unless and until such Award has been exercised, or the Shares underlying such Award have been issued, and all restrictions applicable to such Shares have lapsed, and any attempted disposition of an Award prior to the satisfaction of these conditions shall be null and void and of no effect, except to the extent that such disposition is permitted by clause (i) of this provision; and

(iii) During the lifetime of the Participant, only the Participant may exercise an Award (or any portion thereof) granted to him/her under the Plan, unless it has been disposed of pursuant to a DRO; after the death of the Participant, any exercisable portion of an Award may, prior to the time when such portion becomes unexercisable under the Plan or the applicable Program or Award Agreement, be exercised by his/her personal representative or by any person empowered to do so under the deceased Participant's will or under the then-applicable laws of descent and distribution.

(b) Notwithstanding Section 7.3(a) hereof, a Permitted Transferee of such Participant to transfer an Award to any one or more Permitted Transferees of such Participant, subject to the following terms and conditions:

(i) an Award transferred to a Permitted Transferee shall not be assignable or transferable by the Permitted Transferee (other than to another Permitted Transferee of the applicable Participant) other than by will or the laws of descent and distribution;

(ii) an Award transferred to a Permitted Transferee shall continue to be subject to all the terms and conditions of the Award as applicable to the original Participant (other than the ability to further transfer the Award); and

(iii) the Participant (or transferring Permitted Transferee) and the Permitted Transferee shall execute any and all documents requested by the Administrator, including without limitation, documents to (A) confirm the status of the transferee as a Permitted Transferee, (B) satisfy any requirements for an exemption for the transfer under applicable federal, state and foreign securities laws and (C) evidence the transfer.

(c) Notwithstanding Section 7.3(a) hereof, a Participant may, in the manner determined by the Administrator, designate a beneficiary to exercise the rights of the Participant and to receive any distribution with respect to any Award upon the Participant's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights pursuant to the Plan is subject to all terms and conditions of the Plan and any Program or Award Agreement applicable to the Participant, except to the extent the Plan, the Program and the Award Agreement may otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Administrator. If the Participant is married or a domestic partner in a domestic partnership qualified under Applicable Law and resides in a "community property" state, a designation of a person other than the Participant's spouse or domestic partner, as applicable, as his or her beneficiary with respect to more than fifty percent (50%) of the Participant's interest in the Award shall not be effective without the prior written or electronic consent of the Participant's spouse or domestic partner. If no beneficiary has been designated or survives the Participant, payment shall be made to the person entitled thereto pursuant to the Participant's will or the laws of descent and distribution. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Participant at any time provided the change or revocation is delivered to the Administrator prior to the Participant's death.

7.4 Conditions to Issuance of Shares

(a) Notwithstanding anything herein to the contrary, neither the Company nor its Affiliates shall be required to issue or deliver any certificates or make any book entries evidencing Shares pursuant to the exercise of any Award, unless and until the Administrator has determined, with advice of counsel, that the issuance of such Shares is in compliance with Applicable Law, and the Shares are covered by an effective registration statement or applicable exemption from registration. In addition to the terms and conditions provided herein, the Administrator may require that a Participant make such reasonable covenants, agreements, and representations as the Administrator, in its discretion, deems advisable in order to comply with any such laws, regulations, or requirements.

(b) All Share certificates delivered pursuant to the Plan and all Shares issued pursuant to book entry procedures are subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with Applicable Law. The Administrator may place legends on any Share certificate or book entry to reference restrictions applicable to the Shares.

(c) The Administrator shall have the right to require any Participant to comply with any timing or other restrictions with respect to the settlement, distribution or exercise of any Award, including a window-period limitation, as may be imposed in the sole discretion of the Administrator.

(d) No fractional Shares shall be issued and, including for tax purposes, the Administrator shall round down to avoid the issuance of fractional Shares.

(e) Notwithstanding any other provision of the Plan, unless otherwise determined by the Administrator or required by Applicable Law, the Company and/or its Affiliates may, in lieu of delivering to any Participant certificates evidencing Shares issued in connection with any Award, record the issuance of Shares in the books of the Company (or, as applicable, its transfer agent or stock plan administrator).

7.5 Forfeiture and Claw-Back Provisions

(a) Pursuant to its general authority to determine the terms and conditions applicable to Awards under the Plan, the Administrator shall have the right to provide, in the terms of Awards made under the Plan, or to require a Participant to agree by separate written or electronic instrument, that:

(i) any proceeds, gains or other economic benefit actually or constructively received by the Participant upon any receipt or exercise of the Award, or upon the receipt or resale of any Shares underlying the Award, must be paid to the Company, and

(ii) the Award shall terminate and any unexercised portion of the Award (whether or not vested) shall be forfeited, if (x) a Termination of Service occurs prior to a specified date, or within a specified time period following receipt or exercise of the Award, (y) the Participant at any time, or during a specified time period, engages in any activity in competition with the Company, or which is inimical, contrary or harmful to the interests of the Company, as further defined by the Administrator or (z) the Participant incurs a Termination of Service for cause; and

(b) All Awards (including any proceeds, gains or other economic benefit actually or constructively received by the Participant upon any receipt or exercise of any Award or upon the receipt or resale of any Shares underlying the Award) shall be subject to the applicable provisions of any claw-back policy implemented by the Company, whether implemented prior to or after the grant of such Award, including without limitation, any claw-back policy adopted to comply with the requirements of Applicable Law.

7.6 Limits on Amending Outstanding Awards

Subject to Section 9.2 hereof, the Administrator shall not have the authority, without the approval of the stockholders of the Company, to amend any outstanding award or to cancel and replace an Award.

7.7 Cash Settlement

Without limiting the generality of any other provision of the Plan, the Administrator may provide, in an Award Agreement or subsequent to the grant of an Award, in its discretion, that any Award may be settled in cash, Shares or a combination thereof.

7.8 Leave of Absence

Unless the Administrator provides otherwise, vesting of Awards granted hereunder shall be suspended during any unpaid leave of absence in accordance with Applicable Law. A Participant shall not cease to be considered an Employee in the case of any bona fide leave of absence approved by the Company, provided that such leave of absence does not affect the specific terms applying to the Participant's Award, including compliance with the Code or other Applicable Law.

7.9 Terms May Vary Between Awards

The terms and conditions of each Award shall be determined by the Administrator in its sole discretion and the Administrator shall have complete flexibility to provide for varied terms and conditions as between any Awards, whether of the same or different Award type and/or whether granted to the same or different Participants (in all cases, subject to the terms and conditions of the Plan).

**ARTICLE 8
ADMINISTRATION**

8.1 Administrator

The Committee (or another committee or a subcommittee of the Board assuming the functions of the Committee under the Plan) shall administer the Plan (except as otherwise permitted herein) and, unless otherwise determined by the Board, shall consist solely of two or more Independent Directors appointed by and holding office at the pleasure of the Board, each of whom is intended to qualify as a "non-employee director" as defined by Rule 16b-3 of the Exchange Act and an "independent director" under the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded, in each case, to the extent required under such provision; provided, however, that any action taken by the Committee shall be valid and effective, whether or not members of the Committee at the time of such action are later determined not to have satisfied the requirements for membership set forth in this Section 8.1 or otherwise provided in the Company's charter or Bylaws or in any charter of the Committee. Except as may otherwise be provided in any charter of the Committee, appointment of Committee members shall be effective upon acceptance of appointment, Committee members may resign at any time by delivering written or electronic notice to the Board, and vacancies in the Committee may only be filled by the Board.

8.2 Duties and Powers of Administrator

It shall be the duty of the Administrator to conduct the general administration of the Plan in accordance with its provisions. The Administrator shall have the power to interpret the Plan and all Programs and Award Agreements, provide omitted definitions or terms, and to adopt such rules for the administration, interpretation and application of the Plan and any Program as are not inconsistent with the Plan, to interpret, amend or revoke any such rules and to amend any Program or Award Agreement provided that the rights or obligations of the holder of the Award that is the subject of any such Program or Award Agreement are not affected adversely by such amendment, unless the consent of the Participant is obtained or such amendment is otherwise permitted under Section 9.9 hereof. Any such grant or award under the Plan need not be the same with respect to each Participant. In its sole discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan except with respect to matters which under Rule 16b-3 under the Exchange Act or the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded are required to be determined in the sole discretion of the Committee.

8.3 Action by the Committee

Unless otherwise established by the Board, in the Company's charter or Bylaws, in any charter of the Committee or as required by Applicable Law, a majority of the Committee shall constitute a quorum and the acts of a majority of the members present at any meeting at which a quorum is present, and acts approved in writing by all members of the Committee in lieu of a meeting, shall be deemed the acts of the Committee. To the greatest extent permitted by Applicable Law, each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Subsidiary, the Company's independent certified public accountants, or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

8.4 Authority of Administrator

Subject to any specific designation in the Plan and Applicable Law, the Administrator has the exclusive power, authority and sole discretion to:

- (a) Adopt procedures from time to time intended to ensure that an individual is an Eligible Individual prior to the granting of any Awards to such individual under the Plan (including without limitation a requirement, if any, that each such individual certify to the Company prior to the receipt of an Award under the Plan that he or she has not been previously employed, has had a bona fide period of non-employment, and that the grant of Awards under the Plan is an inducement material to his or her agreement to enter into employment with the Company or a Subsidiary);
- (b) Designate Eligible Individuals to receive Awards;
- (c) Determine the type or types of Awards to be granted to each Eligible Individual;

(d) Determine the number of Awards to be granted and the number of Shares to which an Award will relate;

(e) Determine the terms and conditions of any Award granted pursuant to the Plan, including, but not limited to, the exercise price, grant price, or purchase price, any performance criteria, any restrictions or limitations on the Award, any schedule for vesting, lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, and any provisions related to non-competition and recapture of gain on an Award, based in each case on such considerations as the Administrator in its sole discretion determines;

(f) Determine whether, to what extent, and under what circumstances an Award may be settled in, or the exercise price of an Award may be paid in cash, Shares, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;

(g) Prescribe the form of each Award Agreement, which need not be identical for each Participant;

(h) Decide all other matters that must be determined in connection with an Award;

(i) Establish, adopt, or revise any rules and regulations as it may deem necessary or advisable to administer the Plan;

(j) Interpret the terms of, and any matter arising pursuant to, the Plan, any Program or any Award Agreement;

(k) Accelerate wholly or partially the vesting or lapse of restrictions of any Award or portion thereof at any time after the grant of an Award, subject to whatever terms and conditions it selects and Section 9.2; and

(l) Make all other decisions and determinations that may be required pursuant to the Plan or as the Administrator deems necessary or advisable to administer the Plan.

8.5 Actions Required Upon Grant of Award

Following the issuance of any Award under the Plan, the Company shall comply with any applicable announcement and notification requirements set forth in the listing requirements of the applicable securities exchange.

8.6 Decisions Binding

The Administrator's interpretation of the Plan, any Awards granted pursuant to the Plan, any Program, any Award Agreement and all decisions and determinations by the Administrator with respect to the Plan are final, binding, and conclusive on all parties.

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 Amendment, Suspension or Termination of the Plan

Except as otherwise provided in this Section 9.1, and if in compliance with applicable rules of the NASDAQ Stock Market, the Plan may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Administrator. However, without approval of the Company's stockholders given within twelve (12) months before or after the action by the Administrator, no action of the Administrator may, except as provided in Section 9.2 hereof, amend the Plan or any Award in any material respect. Except as provided in Section 9.9 hereof, no amendment, suspension or termination of the Plan shall, without the consent of the Participant, impair any rights or obligations under any Award theretofore granted or awarded, unless the Award itself otherwise expressly so provides. 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 (the "Expiration Date"). 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.

9.2 Effect of Changes in Capitalization

(a) If the number of outstanding shares of Stock is increased or decreased or the shares of Stock are changed into or exchanged for a different number of shares or kind of capital stock or other securities of the Company on account of any recapitalization, reclassification, stock split, reverse stock split, spin-off, combination of stock, exchange of stock, stock dividend or other distribution payable in capital stock, or other increase or decrease in shares of Stock effected without receipt of consideration by the Company occurring after the Effective Date, the number and kinds of shares of stock for Awards may be made under the Plan, including the share limits set forth in Section 3.1, shall be adjusted proportionately and accordingly by the Administrator. In addition, the number and kind of shares of stock for which Awards are outstanding shall be adjusted proportionately and accordingly by the Administrator so that the proportionate interest of the Participant therein immediately following such event shall, to the extent practicable, be the same as immediately before such event. The conversion of any convertible securities of the Company shall not be treated as an increase in shares effected without receipt of consideration. Notwithstanding the foregoing, in the event of any distribution to the Company's stockholders of securities of any other entity or other assets (including an extraordinary dividend, but excluding a non-extraordinary dividend, declared and paid by the Company) without receipt of consideration by the Company, the Administrator shall, in such manner as the Administrator deems appropriate, adjust the number and kind of shares of stock subject to outstanding Awards as required to reflect such distribution.

(b) Subject to Section 9.2(c), if the Company shall be the surviving entity in any reorganization, merger or consolidation of the Company with one or more other entities which does not constitute a Change in Control, any Award theretofore granted pursuant to the Plan shall pertain to and apply to the securities to which a holder of the number of shares of Stock subject to such Award would have been entitled immediately following such reorganization, merger or consolidation. Subject to any contrary language in an Award Agreement or in another agreement with the Participant, or otherwise set forth in writing, any restrictions applicable to such Award shall apply as well to any replacement shares received by the Participant as a result of such reorganization, merger or consolidation. In the event of any reorganization, merger or consolidation of the Company referred to in this Section 9.2(b), Performance Awards shall be adjusted so as to apply to the securities that a holder of the number of shares of Stock subject to the Performance Awards would have been entitled to receive immediately following such reorganization, merger or consolidation.

(c) Except as otherwise provided in the applicable Award Agreement or in another agreement with the Participant, or as otherwise set forth in writing, upon the occurrence of a Change in Control in which outstanding Awards are not being assumed or continued, which such continuation or assumption shall be determined by the Administrator in its sole discretion, the following provisions shall apply to such Award, to the extent not assumed or continued:

(i) in each case with the exception of Performance Awards, all outstanding Restricted Stock shall be deemed to have vested, all Restricted Stock Units shall be deemed to have vested and the shares of Stock subject thereto shall be delivered, immediately prior to the occurrence of such Change in Control subject to the following. The Administrator may elect, in its sole discretion, to cancel any outstanding Restricted Stock and/or Restricted Stock Units and pay or deliver, or cause to be paid or delivered, to the holder thereof an amount in cash or securities having a value (as determined by the Administrator acting in good faith) equal to the formula or fixed price per share paid to holders of shares of Stock pursuant to such Change in Control.

(ii) For Performance Awards denominated in Stock, if less than half of the performance period has lapsed, such Awards shall be treated as though target performance has been achieved. If at least half the performance period has lapsed, actual performance to date shall be determined as of a date reasonably proximal to the date of consummation of the Change in Control as determined by the Administrator in its sole discretion, and that level of performance thus determined shall be treated as achieved immediately prior to occurrence of the Change in Control. For purposes of the preceding sentence, if, based on the discretion of the Administrator, actual performance is not determinable, the Awards shall be treated as though target performance has been achieved. After application of this Section 9.2(c)(ii), if any Awards arise from application of this Article 9, such Awards shall be settled under the applicable provision of Section 9.2(c)(i).

(iii) Other Awards shall be governed by the terms of the applicable Award Agreement.

(d) Except as otherwise provided in the applicable Award Agreement or in another agreement with the Participant, or as otherwise set forth in writing, upon the occurrence of a Change in Control in which outstanding Restricted Stock, Restricted Stock Units, or other Awards are being assumed or continued, which such continuation or assumption shall be determined by the Administrator in its sole discretion, the following provisions shall apply to such Award, to the extent assumed or continued:

(i) The Plan and the Restricted Stock, Restricted Stock Units, and other Awards granted under the Plan shall continue in the manner and under the terms so provided in the event of any Change in Control to the extent that provision is made in writing in connection with such Change in Control for the assumption or continuation of such Restricted Stock, Restricted Stock Units, and other Awards, or for the substitution for such Restricted Stock, Restricted Stock Units, and other Awards of new restricted stock, common stock units, and other equity-based awards relating to the stock of a successor entity, or a parent or subsidiary thereof, with appropriate adjustments as to the number of shares disregarding any consideration that is not common stock. In the event an Award is assumed, continued or substituted upon the consummation of any Change in Control and the employment of such Participant with the Company or a Subsidiary is terminated without cause within one year following the consummation of such Change in Control, such Award shall be fully vested and may be exercised in full, to the extent applicable, beginning on the date of such termination and for the one-year period immediately following such termination or for such longer period as the Administrator shall determine.

9.3 No Stockholders Rights

Except as otherwise provided herein or in an applicable Program or Award Agreement, a Participant shall have none of the rights of a stockholder with respect to Shares covered by any Award until the Participant becomes the record owner of such Shares.

9.4 Paperless Administration

In the event that the Company establishes, for itself or using the services of a third party, an automated system for the documentation, granting or exercise of Awards, such as a system using an internet website or interactive voice response, then the paperless documentation, granting or exercise of Awards by a Participant may be permitted through the use of such an automated system.

9.5 Effect of Plan upon Other Compensation Plans

The adoption of the Plan shall not affect any other compensation or incentive plans in effect for the Company or any Affiliate. Nothing in the Plan shall be construed to limit the right of the Company or any Subsidiary: (a) to establish any other forms of incentives or compensation for Employees of the Company or any Subsidiary or (b) to grant or assume options or other rights or awards otherwise than under the Plan in connection with any proper corporate purpose including without limitation, the grant or assumption of options in connection with the acquisition by purchase, lease, merger, consolidation or otherwise, of the business, stock or assets of any corporation, partnership, limited liability company, firm or association.

9.6 Compliance with Laws

The Plan, the granting and vesting of Awards under the Plan, the issuance and delivery of Shares and the payment of money under the Plan or under Awards granted or awarded hereunder are subject to compliance with all Applicable Law and to such approvals by any listing, regulatory or governmental authority as may, in the opinion of counsel for the Company, be necessary or advisable in connection therewith. Any securities delivered under the Plan shall be subject to such restrictions, and the person acquiring such securities shall, if requested by the Company, provide such assurances and representations to the Company as the Company may deem necessary or desirable to assure compliance with all Applicable Law. To the extent permitted by Applicable Law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such Applicable Law.

9.7 Titles and Headings, References to Sections of the Code or Exchange Act

The titles and headings of the sections in the Plan are for convenience of reference only and, in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control. References to sections of the Code or the Exchange Act shall include any amendment or successor thereto.

9.8 Governing Law

The Plan and any Programs or Award Agreements hereunder shall be administered, interpreted and enforced under the internal laws of the State of Delaware without regard to conflicts of laws thereof.

9.9 Section 409A

To the extent that the Administrator determines that any Award granted under the Plan is subject to Section 409A of the Code, the Plan, any applicable Program and the Award Agreement covering such Award shall be interpreted in accordance with Section 409A of the Code. If a Participant is a "specified employee" as defined under Code Section 409A and the Participant's Award is to be settled on account of the Participant's separation from service (for reasons other than death) and such Award constitutes "deferred compensation" as defined under Code Section 409A, then any portion of the Participant's Award that would otherwise be settled during the six-month period commencing on the Participant's separation from service shall be settled as soon as practicable following the conclusion of the six-month period (or following the Participant's death if it occurs during such six-month period). Notwithstanding any provision of the Plan to the contrary, in the event that, following the Effective Date, the Administrator determines that any Award may be subject to Section 409A of the Code, the Administrator may adopt such amendments to the Plan, any applicable Program and the Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Administrator determines are necessary or appropriate to avoid the imposition of taxes on the Award under Section 409A of the Code, either through compliance with the requirements of Section 409A of the Code or with an available exemption therefrom, provided, however, that this Section 9.9 shall not create an obligation on the part of the Company to adopt any such amendment, policy or procedure or take any such other action, nor shall the Company have any liability for failing to do so.

9.10 No Rights to Awards

No Eligible Individual or other person shall have any claim to be granted any Award pursuant to the Plan, and neither the Company nor the Administrator is obligated to treat Eligible Individuals, Participants or any other persons uniformly.

9.11 Unfunded Status of Awards

The Plan is intended to be an “unfunded” plan for incentive compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Program or Award Agreement shall give the Participant any rights that are greater than those of a general creditor of the Company or any Subsidiary.

9.12 Indemnification

To the extent allowable pursuant to Applicable Law and the Company’s charter and Bylaws, each member of the Board and any officer or other employee to whom authority to administer any component of the Plan is delegated shall be indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to the Plan and against and from any and all amounts paid by him or her in satisfaction of judgment in such action, suit, or proceeding against him or her; provided, however, that he or she gives the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled pursuant to the Company’s Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

9.13 Relationship to other Benefits

No payment pursuant to the Plan shall be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or other benefit plan of the Company or any Subsidiary except to the extent otherwise expressly provided in writing in such other plan or an agreement thereunder.

9.14 Expenses

The expenses of administering the Plan shall be borne by the Company and its Subsidiaries.

9.15 No Representations or Warranties Regarding Tax Effect

Notwithstanding any provision of the Plan to the contrary, neither the Company, any Subsidiary, nor any of their employees, the Board, the Committee, any shareholder or any of their agents represent or warrant the tax treatment under any federal, state, local or foreign laws and regulations thereunder (individually and collectively referred to as the “Tax Laws”) of any Award granted or any amounts paid to any Participant under the Plan including, but not limited to, when and to what extent such Awards or amounts may be subject to tax, penalties and interest under the Tax Laws

ARTICLE 10
STOCKHOLDER APPROVAL

10.1 It is expressly intended that approval of the Company's stockholders not be required as a condition of the effectiveness of the Plan, and the Plan's provisions shall be interpreted in a manner consistent with such intent for all purposes. Specifically, NASDAQ Stock Market Rule 5635(c) generally requires stockholder approval for stock option plans or other equity compensation arrangements adopted by companies whose securities are listed on the NASDAQ Stock Market pursuant to which stock awards or stock may be acquired by officers, directors, employees or consultants of such companies. NASDAQ Stock Market Rule 5635(c)(4) provides an exemption in certain circumstances for "employment inducement" awards (within the meaning of NASDAQ Stock Market Rule 5635(c)(4)). Notwithstanding anything to the contrary herein, if the Company's securities are traded on the NASDAQ Stock Market, then Awards under the Plan may only be made to Employees who have not previously been an Employee or Director of the Company or a Subsidiary, in each case as an inducement material to the Employee's entering into employment with the Company or a Subsidiary. Awards under the Plan will be approved by (a) the Committee, comprised of a majority of the Company's Independent Directors, or (b) a majority of the Company's Independent Directors. Accordingly, pursuant to NASDAQ Stock Market Rule 5635(c)(4), the issuance of Awards and the shares of Stock issuable upon exercise or vesting of such Awards pursuant to the Plan are not subject to the approval of the Company's stockholders.

[signature page follows]

I hereby certify that the foregoing Plan was duly adopted by the Board of Directors of Ocean Power Technologies, Inc. on January 18, 2018.

* * * * *

Executed on this 18th day of January 2018.

/s/ George H. Kirby III

George H. Kirby III
President and CEO

/s/ John W. Lawrence

John W. Lawrence
General Counsel & Secretary

OCEAN POWER TECHNOLOGIES, INC.

Service Based - Restricted Stock Agreement and Recipient's Acceptance

Name of Recipient:
Number of shares of restricted common stock awarded:
Grant Date:

Ocean Power Technologies, Inc. (the "Company") has selected you to receive the restricted stock award described above, which is subject to the provisions of the Company's Employment Inducement Incentive Award Plan (the "Plan"), and the terms and conditions contained in this Restricted Stock Agreement.

A copy of the Plan is attached hereto, for your information.

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

Ocean Power Technologies, Inc.

By: _____
Signature

Printed Name

Title

Accepted and Agreed:

Signature of Recipient

Printed Name of Recipient

OCEAN POWER TECHNOLOGIES, INC.

Service Based - Restricted Stock Agreement granted under the Employment Inducement Incentive Award Plan

The terms and conditions of the award of shares of restricted common stock of the Company (the “Restricted Shares”) made to the Recipient, as set forth on the cover page of this Agreement, are as follows:

1. Issuance of Restricted Shares.

(a) The Restricted Shares are issued to the Recipient, effective as of the Grant Date (as set forth on the cover page of this Agreement), as inducement to accept employment with the Company.

(b) The Restricted Shares will initially be issued by the Company in book entry form only, in the name of the Recipient. The Recipient agrees that the Restricted Shares shall be subject to the forfeiture provisions set forth in Section 3 of this Agreement and the restrictions on transfer set forth in Section 4 of this Agreement. Following the vesting of any Restricted Shares pursuant to Section 2 below, the Company shall, if requested by the Recipient, issue and deliver to the Recipient a certificate representing the vested unrestricted shares of common stock of the Company.

2. Vesting.

(a) Vesting Schedule. Unless otherwise provided in this Agreement or the Plan, the Restricted Shares shall vest in accordance with the following vesting schedule:

(BASED ON THE PASSAGE OF TIME OR THE ATTAINMENT OF PERFORMANCE STANDARDS, AS DETERMINED BY THE BOARD OF DIRECTORS)

(b) Acceleration of Vesting. Notwithstanding the foregoing vesting schedule, all unvested Restricted Shares shall vest effective immediately prior to or upon (i) a Change in Control Event, (ii) the death or Disability (as defined below) of the Recipient, or (iii) upon circumstances described in any employment offer letter or agreement with Recipient, and 50% of all unvested Restricted Shares shall vest effective immediately upon Qualifying Retirement (as defined below) of the Recipient.

(c) Definitions. For purposes of this Agreement:

(i) “Disability” means: (A) if the Recipient’s employment or other service with the Company is subject to the terms of an employment or other service agreement between the Recipient and the Company, which employment or other service agreement includes a definition of “Disability”, the term “Disability” as used in this Agreement shall have the meaning set forth in such employment or other service agreement during the period that such employment or other service agreement remains in effect; (B) in the absence of such an agreement, the term “Disability” as used in the Company’s long-term disability plan, if any; or (C) if neither clause (A) nor clause (B) is applicable, a physical or mental infirmity which impairs the Recipient’s ability to substantially perform his or her duties for a period of 90 consecutive days.

(ii) 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.

(iii) A “Change in Control” has the meaning given such term in the Plan.

3. Forfeiture of Unvested Restricted Shares upon Employment Termination.

In the event that the Recipient ceases to be employed by or provide services to the Company for any reason or no reason, with or without cause (except as provided in Section 2(b) above), all of the Restricted Shares that are unvested as of the time of such employment termination shall be forfeited immediately and automatically to the Company, without the payment of any consideration to the Recipient, effective as of such termination of employment or service relationship. The Recipient shall have no further rights with respect to any Restricted Shares that are so forfeited. If the Recipient is employed by or provides services to a subsidiary of the Company, any references in this Agreement to employment or service relationship with the Company shall instead be deemed to refer to employment or service relationship with such subsidiary.

4. Restrictions on Transfer.

The Recipient shall not sell, assign, transfer, pledge, hypothecate or otherwise dispose of, by operation of law or otherwise (collectively “transfer”) any Restricted Shares, or any interest therein, until such Restricted Shares have vested, except that the Recipient may transfer such Restricted Shares: (a) to or for the benefit of any spouse, children, parents, uncles, aunts, siblings, grandchildren and any other relatives approved by the Compensation Committee (collectively, “Approved Relatives”) or to a trust established solely for the benefit of the Recipient and/or Approved Relatives, provided that such Restricted Shares shall remain subject to this Agreement (including without limitation the forfeiture provisions set forth in Section 3 and the restrictions on transfer set forth in this Section 4) and such permitted transferee shall, as a condition to such transfer, deliver to the Company a written instrument confirming that such transferee shall be bound by all of the terms and conditions of this Agreement; or (b) as part of the sale of all or substantially all of the shares of capital stock of the Company (including pursuant to a merger or consolidation). The Company shall not be required (i) to transfer on its books any of the Restricted Shares which have been transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such Restricted Shares or to pay dividends to any transferee to whom such Restricted Shares have been transferred in violation of any of the provisions of this Agreement.

5. Restrictive Legends.

All certificates, if any, representing Restricted Shares that are not vested shall have affixed thereto a legend in substantially the following form, in addition to any other legends that may be required under applicable law, and the book entry account, if any, reflecting the issuance of the Restricted Shares in the name of the Recipient shall bear a legend or other notation upon substantially the following terms:

“These shares of stock are subject to forfeiture provisions and restrictions on transfer set forth in a certain Restricted Stock Agreement between the corporation and the registered owner of these shares (or his or her predecessor in interest), and such Agreement is available for inspection without charge at the office of the Secretary of the corporation.”

6. Rights as a Shareholder.

Except as otherwise provided in this Agreement, for so long as the Recipient is the registered owner of the Restricted Shares, the Recipient shall have all rights as a shareholder with respect to the Restricted Shares, whether vested or unvested, including, without limitation, any rights to receive dividends and distributions with respect to the Restricted Shares and to vote the Restricted Shares and act in respect of the Restricted Shares at any meeting of shareholders. Notwithstanding the foregoing, any dividends, whether in cash, stock or property, declared and paid by the Company with respect to unvested Restricted Shares (“Accrued Dividends”) shall be paid to the Recipient, without interest, only if and when such Restricted Shares vest.

7. Provisions of the Plan.

This Agreement is subject to the provisions of the Plan, a copy of which is furnished to the Recipient with this Agreement.

8. Tax Matters.

(a) Acknowledgments; Section 83(b) Election. The Recipient acknowledges that he or she is responsible for obtaining the advice of the Recipient’s own tax advisors with respect to the acquisition of the Restricted Shares and the Recipient is relying solely on such advisors and not on any statements or representations of the Company or any of its agents with respect to the tax consequences relating to the Restricted Shares. The Recipient understands that the Recipient (and not the Company) shall be responsible for the Recipient’s tax liability that may arise in connection with the acquisition, vesting and/or disposition of the Restricted Shares. The Recipient acknowledges that he or she has been informed of the availability of making an election under Section 83(b) of the Internal Revenue Code, as amended, with respect to the issuance of the Restricted Shares. Following the execution of this Agreement, the Recipient has thirty (30) days following such execution to file the 83(b) election with the Internal Revenue Service. A copy of such notification should be delivered to the Company in writing. The recipient shall also notify the Company in writing if the Recipient has not filed a Section 83(b) election.

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

9. Miscellaneous.

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

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

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

(d) Recipient's Acknowledgments. The Recipient acknowledges that he or she has read this Agreement, has received and read the Plan, and understands the terms and conditions of this Agreement and the Plan.



NEWS RELEASE

OCEAN POWER TECHNOLOGIES ANNOUNCES ADOPTION OF NEW EMPLOYMENT INDUCEMENT INCENTIVE AWARD PLAN AND GRANT OF INDUCEMENT AWARD

MONROE TOWNSHIP, NJ, January 19, 2018 – **Ocean Power Technologies, Inc.** (Nasdaq: OPTT) today announced that the Company’s Board of Directors adopted the Ocean Power Technologies, Inc. Employment Inducement Incentive Award Plan (the “Plan”) and, subject to the adjustment provisions of the Plan, reserved 500,000 shares of Company common stock for issuance pursuant to equity awards granted under the Plan. The Plan was adopted without stockholder approval pursuant to Rule 5653(c)(4) and Rule 5653(c)(3) of the Nasdaq Listing Rules.

In addition, on the same date, the Compensation Committee of the Company’s Board of Directors granted an inducement award to Christopher Phebus, the Company’s newly hired Vice President of Engineering, pursuant to Rule 5653(c)(4) of the Nasdaq Listing Rules, consisting of 97,297 restricted shares of the Company’s common stock vesting equally over three years. The award is subject to the same terms and conditions as the equity awards to other officers under the Company’s 2015 Omnibus Incentive Plan.

About Ocean Power Technologies

Headquartered in New Jersey, Ocean Power Technologies (Nasdaq:OPTT) is a pioneer in renewable wave-energy technology that converts ocean wave energy into electricity. OPT has developed and is commercializing its proprietary PowerBuoy technology, which has undergone periodic ocean testing since 1997. OPT specializes in designing cost-effective, and environmentally sound ocean wave based power generation and management technology for industries such as oil & gas, maritime security, defense, and telecommunications.

For additional information:

www.oceanpowertechnologies.com

<https://www.facebook.com/oceanpowertechnologies/?ref=bookmarks>

<https://www.linkedin.com/company/413774/>

<https://twitter.com/OceanPowerTech?lang=en>

<https://www.instagram.com/oceanpowertechnologies/?hl=en>

Investor Relations Contact:

Andrew Barwicki

Barwicki Investor Relations Inc.

Phone: 516-662-9461

Media Contact:

Marilyn Vollrath

Reputation Partners LLC

Phone: 414-376-8834



NEWS RELEASE

***CHRISTOPHER PHEBUS JOINS OCEAN POWER TECHNOLOGIES AS
VICE PRESIDENT OF ENGINEERING***

Monroe Township, N.J., January 16, 2018 – **Ocean Power Technologies, Inc.** (Nasdaq: OPTT) today announced that Christopher Phebus, a highly regarded technology executive with extensive experience in subsea systems and engineering, has joined the company as Vice President of Engineering. In his new role, Phebus will assume responsibility for the continued enhancement of the company’s PowerBuoy wave-energy technology and will also lead the company’s multi-disciplinary engineering team.

Prior to joining OPT, Phebus served the General Electric Company for 16 years in positions including the GM and Executive Engineering Director for GE Subsea Products and Projects in Norway and the U.K., and the GM and Lean-Six Sigma Quality Leader for Global Engineering at GE Energy. Most recently he was the Head of Global Engineering and Technology for the Flow and Process Technology and Reciprocating Compression division at GE Oil & Gas. He began his career at Pratt & Whitney, where he worked as a systems engineer directly with the U.S. Air Force on the F100 aircraft engine.

“Chris has a proven track record as a leader in setting a strategic direction for global product development, delivering industry-leading technology innovation and driving performance through disciplined process management. His extensive subsea and engineering experience will further strengthen our capabilities as we continue to scale the business. His deep experience in operations, design, manufacturing, systems engineering and quality will enable us to continue to advance our proprietary technology to meet the needs of global customers and strategic partners,” said George Kirby, President and Chief Executive Officer of Ocean Power Technologies. “We are pleased and excited to welcome Chris to our leadership team.”

Phebus holds a Bachelor of Science degree in Mechanical Engineering from Clemson University, and an Masters in Management from Embry-Riddle Aeronautical University.

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