

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

**Form 10-Q**

(Mark One)

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

**For the Quarterly Period Ended October 31, 2013**

**Or**

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

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

**Commission file number: 001-33417**

**OCEAN POWER TECHNOLOGIES, INC.**

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

**Delaware**

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

**22-2535818**

*(I.R.S. Employer Identification No.)*

**1590 REED ROAD, PENNINGTON, NJ 08534**

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

**(609) 730-0400**

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes  No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a smaller reporting  
company)

Smaller reporting company

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

As of November 30, 2013, the number of outstanding shares of common stock of the registrant was 12,160,045.

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**OCEAN POWER TECHNOLOGIES, INC.**  
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**FOR THE THREE AND SIX MONTHS ENDED OCTOBER 31, 2013**

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PowerBuoy® is a registered trademark of Ocean Power Technologies, Inc. and the Ocean Power Technologies logo is a trademark of Ocean Power Technologies, Inc. All other trademarks appearing in this report are the property of their respective holders.

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### **Special Note Regarding Forward-Looking Statements**

We have made statements in this Quarterly Report on Form 10-Q that are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements convey our current expectations or forecasts of future events. Forward-looking statements include statements regarding our future financial position, business strategy, budgets, projected costs, plans and objectives of management for future operations. The words "may," "continue," "estimate," "intend," "plan," "will," "believe," "project," "expect," "anticipate", "goal" 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 report may turn out to be inaccurate. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. They may be affected by inaccurate assumptions we might make or unknown risks and uncertainties, including the risks, uncertainties and assumptions described in Item 1A "Risk Factors" of our Annual Report on Form 10-K for the year ended April 30, 2013 and elsewhere in this report. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this report may not occur as contemplated and actual results could differ materially from those anticipated or implied by the forward-looking statements.

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

**PART I — FINANCIAL INFORMATION**

**Item 1. FINANCIAL STATEMENTS**

**Ocean Power Technologies, Inc. and Subsidiaries**

**Consolidated Balance Sheets**

	<u>October 31, 2013</u>	<u>April 30, 2013</u>
	<u>(Unaudited)</u>	
<b>ASSETS</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 10,032,284	6,372,788
Marketable securities	6,498,171	13,996,705
Accounts receivable, net	—	796,332
Unbilled receivables	178,083	127,598
Other current assets	274,812	152,962
Total current assets	<u>16,983,350</u>	<u>21,446,385</u>
Property and equipment, net	612,612	700,968
Patents, net	938,402	1,044,902
Accounts receivable	212,018	—
Restricted cash	2,159,856	1,366,256
Other noncurrent assets	418,551	272,548
Total assets	<u>\$ 21,324,789</u>	<u>24,831,059</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>Current liabilities</b>		
Accounts payable	\$ 502,439	510,031
Accrued expenses	4,328,550	3,900,623
Unearned revenues	783,062	1,117,115
Current portion of long-term debt	100,000	100,000
Total current liabilities	<u>5,714,051</u>	<u>5,627,769</u>
Long-term debt	200,000	250,000
Long-term unearned revenues	51,276	232,033
Deferred credits	600,000	600,000
Total liabilities	<u>6,565,327</u>	<u>6,709,802</u>
<b>Commitments and contingencies (note 8)</b>		
<b>Ocean Power Technologies, Inc. stockholders' equity:</b>		
Preferred stock, \$0.001 par value; authorized 5,000,000 shares, none issued or outstanding	—	—
Common stock, \$0.001 par value; authorized 105,000,000 shares, issued 11,726,883 and 10,403,215 shares, respectively	11,727	10,403
Treasury stock, at cost; 37,852 and 33,771 shares, respectively	(130,707)	(123,893)
Additional paid-in capital	162,961,343	159,155,365
Accumulated deficit	(147,691,838)	(140,671,311)
Accumulated other comprehensive loss	(151,476)	(79,786)
Total Ocean Power Technologies, Inc. stockholders' equity	<u>14,999,049</u>	<u>18,290,778</u>
Noncontrolling interest in Ocean Power Technologies (Australasia) Pty Ltd	(239,587)	(169,521)
Total equity	<u>14,759,462</u>	<u>18,121,257</u>
Total liabilities and stockholders' equity	<u>\$ 21,324,789</u>	<u>24,831,059</u>

See accompanying notes to consolidated financial statements (unaudited).

Ocean Power Technologies, Inc. and Subsidiaries

Consolidated Statements of Operations  
(Unaudited)

	Three Months Ended October 31,		Six Months Ended October 31,	
	2013	2012	2013	2012
Revenues	\$ 463,608	1,360,299	924,535	2,342,695
Cost of revenues	462,336	1,246,277	922,712	2,226,137
Gross profit	1,272	114,022	1,823	116,558
Operating expenses:				
Product development costs	1,610,089	2,937,567	2,881,034	4,864,994
Selling, general and administrative costs	1,808,892	2,104,628	4,356,651	4,488,966
Total operating expenses	3,418,981	5,042,195	7,237,685	9,353,960
Operating loss	(3,417,709)	(4,928,173)	(7,235,862)	(9,237,402)
Interest income, net	2,879	34,888	3,237	90,312
Foreign exchange gain (loss)	107,357	102,741	129,127	(5,582)
Net loss	(3,307,473)	(4,790,544)	(7,103,498)	(9,152,672)
Less: Net loss attributable to the noncontrolling interest in Ocean Power Technologies (Australasia) Pty Ltd.	36,916	39,004	82,971	65,079
Net loss attributable to Ocean Power Technologies, Inc.	\$ (3,270,557)	(4,751,540)	(7,020,527)	(9,087,593)
Basic and diluted net loss per share	\$ (0.31)	(0.46)	(0.67)	(0.88)
Weighted average shares used to compute basic and diluted net loss per share	10,510,214	10,301,601	10,416,021	10,298,800

See accompanying notes to consolidated financial statements (unaudited).

**Ocean Power Technologies, Inc. and Subsidiaries**

**Consolidated Statements of Comprehensive Loss  
(Unaudited)**

	<b>Three Months Ended October 31,</b>		<b>Six Months Ended October 31,</b>	
	<b>2013</b>	<b>2012</b>	<b>2013</b>	<b>2012</b>
Net loss	\$ (3,307,473)	(4,790,544)	\$ (7,103,498)	(9,152,672)
Foreign currency translation adjustment	(52,900)	(13,476)	(71,690)	(23,960)
Total comprehensive loss	<u>(3,360,373)</u>	<u>(4,804,020)</u>	<u>(7,175,188)</u>	<u>(9,176,632)</u>
Comprehensive loss attributable to the noncontrolling interest in Ocean Power Technologies (Australasia) Pty Ltd.	(9,214)	38,416	12,905	65,552
Comprehensive loss attributable to Ocean Power Technologies, Inc.	<u>\$ (3,369,587)</u>	<u>(4,765,604)</u>	<u>(7,162,283)</u>	<u>(9,111,080)</u>

See accompanying notes to consolidated financial statements (unaudited).

Ocean Power Technologies, Inc. and Subsidiaries

Consolidated Statements of Cash Flows  
(Unaudited)

	Six Months Ended October 31,	
	2013	2012
Cash flows from operating activities:		
Net loss	\$ (7,103,498)	(9,152,672)
Adjustments to reconcile net loss to net cash used in operating activities:		
Foreign exchange (gain) loss	(129,127)	5,582
Depreciation and amortization	217,079	245,382
Treasury note premium amortization	5,391	26,023
Compensation expense related to stock option grants and restricted stock	369,503	617,200
Changes in operating assets and liabilities:		
Accounts receivable	357,244	482,671
Long-term receivables	212,018	—
Unbilled receivables	(50,484)	(434,090)
Other current assets	(122,169)	387,395
Other noncurrent assets	(138,734)	(14,121)
Accounts payable	(7,040)	82,601
Accrued expenses	421,744	910,155
Unearned revenues	(334,630)	542,993
Long-term unearned revenues	(180,757)	—
Net cash used in operating activities	<u>(6,483,460)</u>	<u>(6,300,881)</u>
Cash flows from investing activities:		
Purchases of marketable securities	(9,497,707)	(10,041,162)
Maturities of marketable securities	16,990,850	20,753,357
Restricted cash	(745,000)	75,000
Purchases of equipment	(21,191)	(340,248)
Net cash provided by investing activities	<u>6,726,952</u>	<u>10,446,947</u>
Cash flows from financing activities:		
Proceeds from the sale of common stock, net of issuance costs	3,429,799	—
Proceeds from the exercise of stock options	8,000	—
Repayment of debt	(50,000)	(50,000)
Acquisition of treasury stock	(6,814)	(9,122)
Net cash provided by (used in) financing activities	<u>3,380,985</u>	<u>(59,122)</u>
Effect of exchange rate changes on cash and cash equivalents	35,019	6,127
Net increase in cash and cash equivalents	3,659,496	4,093,071
Cash and cash equivalents, beginning of period	6,372,788	9,353,460
Cash and cash equivalents, end of period	<u>\$ 10,032,284</u>	<u>13,446,531</u>
Supplemental disclosure of noncash investing and financing activities:		
Capitalized purchases of equipment financed through accounts payable and accrued expenses	—	3,336

See accompanying notes to consolidated financial statements (unaudited).

Ocean Power Technologies, Inc. and Subsidiaries

Consolidated Statements of Stockholders' Equity  
(Unaudited)

	Common Shares		Treasury Shares		Additional	Accumulated	Other	Noncontrolling	Total
	Shares	Amount	Shares	Amount	Paid-In Capital	Deficit	Comprehensive Loss	Interest	Equity
Balance, April 30, 2012	10,407,389	\$ 10,407	(23,544)	\$ (102,388)	158,296,458	(125,989,474)	(78,990)	(28,632)	32,107,381
Net loss	—	—	—	—	—	(9,087,593)	—	(65,079)	(9,152,672)
Stock based compensation	—	—	—	—	590,344	—	—	—	590,344
Issuance of restricted stock, net	8,159	9	—	—	26,849	—	—	—	26,858
Acquisition of treasury stock	—	—	(4,274)	(9,122)	—	—	—	—	(9,122)
Other comprehensive loss	—	—	—	—	—	—	(23,487)	(473)	(23,960)
Balance, October 31, 2012	<u>10,415,548</u>	<u>\$ 10,416</u>	<u>(27,818)</u>	<u>\$ (111,510)</u>	<u>158,913,651</u>	<u>(135,077,067)</u>	<u>(102,477)</u>	<u>(94,184)</u>	<u>23,538,829</u>
Balance, April 30, 2013	10,403,215	\$ 10,403	(33,771)	\$ (123,893)	159,155,365	(140,671,311)	(79,786)	(169,521)	18,121,257
Net loss	—	—	—	—	—	(7,020,527)	—	(82,971)	(7,103,498)
Stock based compensation	—	—	—	—	348,016	—	—	—	348,016
Issuance of restricted stock, net	19,822	20	—	—	21,467	—	—	—	21,487
Stock issued upon exercise of stock options	4,000	4	—	—	7,996	—	—	—	8,000
Acquisition of treasury stock, net	—	—	(4,081)	(6,814)	—	—	—	—	(6,814)
Sale of stock, net	1,299,846	1,300	—	—	3,428,499	—	—	—	3,429,799
Other comprehensive loss	—	—	—	—	—	—	(71,690)	12,905	(58,785)
Balance, October 31, 2013	<u>11,726,883</u>	<u>\$ 11,727</u>	<u>(37,852)</u>	<u>\$ (130,707)</u>	<u>162,961,343</u>	<u>(147,691,838)</u>	<u>(151,476)</u>	<u>(239,587)</u>	<u>14,759,462</u>

See accompanying notes to consolidated financial statements (unaudited).



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

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

**a) Background**

Ocean Power Technologies, Inc. (the "Company") was incorporated in 1984 in New Jersey, commenced business operations in 1994 and re-incorporated in Delaware in 2007. The Company develops and is seeking to commercialize proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. The Company markets its products in the United States and internationally. Since fiscal 2002, the US Navy and other government agencies have accounted for a significant portion of the Company's revenues. These revenues were largely for the support of product development efforts. The Company's goal is that an increased portion of its revenues be from the sale of products and maintenance services, as compared to revenue to support its product development efforts. As the Company continues to advance its proprietary technologies, it expects to continue to have a net decrease in cash from operating activities unless and until it achieves positive cash flow from the planned commercialization of its products and services.

**b) Basis of Presentation**

The accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. The interim operating results are not necessarily indicative of the results for a full year or for any other interim period. Further information on potential factors that could affect the Company's financial results can be found in the Company's Annual Report on Form 10-K for the year ended April 30, 2013 filed with the Securities and Exchange Commission ("SEC") and elsewhere in this Form 10-Q.

**c) Liquidity**

The Company has incurred net losses and negative operating cash flows since inception. As of October 31, 2013, the Company had an accumulated deficit of \$147.7 million. As of October 31, 2013, the Company's cash and cash equivalents, marketable securities and restricted cash balance was approximately \$18.7 million. Based upon the Company's cash and cash equivalents and marketable securities balance as of October 31, 2013, the Company believes that it will be able to finance its capital requirements and operations into the first calendar quarter of 2015.

During fiscal 2014 and 2013, 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 competition, new products, technological change, recent economic activity and dependence on key personnel. In order to complete its future growth strategy, the Company will require additional equity and/or debt financing. There is no assurance that additional equity and/or debt financing will be available to the Company as needed. If financing is not achieved, the Company may be required to further curtail or limit certain product development costs, and/or selling, general and administrative, activities in order to reduce its cash expenditures.

In January 2013, the Company filed with the SEC a shelf registration statement on Form S-3 registering the sale of up to \$40,000,000 of debt, equity and other securities (the "S-3 Shelf"). The S-3 Shelf was declared effective in February 2013. On June 6, 2013, the Company entered into an At the Market Offering Agreement (the "Offering Agreement") with Ascendant Capital Markets, LLC (the "Manager"). Pursuant to the Offering Agreement, the Company may offer and sell shares of its common stock having an aggregate offering price of up to \$10,000,000 from time to time over the three-year term of the Offering Agreement, through or to the Manager, acting as sales agent and/or principal. Subject to certain limited exceptions, these sales will be made in ordinary brokerage transactions at prevailing market prices.

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

During the six months ended October 31, 2013, the Company sold approximately 1,300,000 shares pursuant to the Offering Agreement for net proceeds of approximately \$3,429,800 and subsequently sold approximately 471,000 shares in November 2013 for net proceeds of approximately \$1,236,900. Sales of shares under the Offering Agreement are made pursuant to the Company's instructions (including any price, time or size limits or other customary conditions or parameters that it may impose) and are registered on the S-3 Shelf in reliance on, and subject to the limitations of, General Instruction I.B.6 of Form S-3 and other applicable law and regulations. In particular, Form S-3 limits the aggregate market value of securities that the Company is permitted to offer in any 12-month period under Form S-3, whether under the Offering Agreement or otherwise, to one third of the Company's public float. The Company is under no obligation to sell, and the Manager is under no obligation to purchase or place, securities under the Offering Agreement, and there can be no assurance that the Company will continue to do so or will be able to do so on favorable terms or at all.

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

***(a) Consolidation and Cost Method Investment***

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. Participation of stockholders other than the Company in the net assets and in the earnings or losses of a consolidated subsidiary is reflected as a noncontrolling interest in the Company's Consolidated Balance Sheets and Statements of Operations, which adjusts the Company's consolidated results of operations to reflect only the Company's share of the earnings or losses of the consolidated subsidiary. As of October 31, 2013, there was one noncontrolling interest, consisting of 11.8% of the Company's Australian subsidiary, Ocean Power Technologies (Australasia) Pty. Ltd.

In addition, the Company 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 October 31, 2013, there were no such entities.

The Company has a 10% investment in Iberdrola Energias Marinas de Cantabria, S.A. ("Iberdrola Cantabria") and certain outstanding receivables from Iberdrola Cantabria. The investment in Iberdrola Cantabria and net accounts receivable and unbilled receivables from Iberdrola Cantabria were \$0 as of April 30, 2012. See Note 8.

***(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 the recoverability of the carrying amount of property and equipment and patents; valuation allowances for receivables and deferred income tax assets; 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***

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. Currently, 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. 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.

Generally, the Company recognizes revenue using the percentage-of-completion method based on the ratio of costs incurred to total estimated costs at completion. In certain circumstances, revenue under contracts that have specified milestones or other performance criteria may be recognized only when the customer acknowledges that such criteria have been satisfied. In addition, recognition of revenue (and the related costs) may be deferred for fixed-price contracts until contract completion if the Company is unable to reasonably estimate the total costs of the project prior to completion. Because the Company has a small number of contracts, revisions to the percentage-of-completion determination or delays in meeting performance criteria or in completing projects may have a significant effect on revenue for the periods involved. Upon anticipating a loss on a contract, the Company recognizes the full amount of the anticipated loss in the current period.

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

Under cost plus and firm fixed price contracts, a profit or loss on a project is recognized depending on whether actual costs are more or less than the agreed upon amount. 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.

Unbilled receivables represent expenditures on contracts, plus applicable profit margin (if applicable), not yet billed. Unbilled receivables are normally billed and collected within one year. Billings made on contracts are recorded as a reduction of unbilled receivables, and to the extent that such billings and cash collections exceed costs incurred plus applicable profit margin, they are recorded as unearned revenues.

**(d) Cash and Cash Equivalents**

Cash equivalents consist of investments in short-term financial instruments with initial maturities of three months or less from the date of purchase. Cash and cash equivalents include the following:

	<b>October 31, 2013</b>	<b>April 30, 2013</b>
Checking and savings accounts	\$ 5,344,339	2,184,322
Money market funds	1,688,000	4,188,466
Treasury bills	2,999,945	—
	\$ 10,032,284	6,372,788

**(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 October 31, 2013 and April 30, 2013, all of the Company's investments were classified as held-to-maturity.

**(f) Restricted Cash and Credit Facility**

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

One agreement is between Ocean Power Technologies, Inc. and Barclays Bank. Under this agreement, the cash is on deposit at Barclays Bank and serves as security for letters of credit that are expected to be issued by Barclays Bank on behalf of Ocean Power Technologies Ltd., one of the Company's subsidiaries, under a €800,000 (\$989,856) credit facility established by Barclays Bank for Ocean Power Technologies Ltd. The credit facility is for the issuance of letters of credit and bank guarantees and carries a fee of 1% per annum of the amount of any such obligations issued by Barclays Bank. As of October 31, 2013, there were €544,828 (\$749,551) in letters of credit outstanding under this agreement. The credit facility does not have an expiration date, but is cancelable at the discretion of the bank.

The second agreement is between Ocean Power Technologies, Inc. and the New Jersey Board of Public Utilities (NJBP). The Company received a \$500,000 recoverable grant award from the NJBP. Under this agreement, the Company annually assigns to the NJBP a certificate of deposit in an amount equal to the outstanding grant balance. See Note 5.

The third agreement concerns two letters of credit issued by Ocean Power Technologies, Inc. for the benefit of Oregon Department of State Lands. The two letters of credit relate to the removal of certain of the Company's anchoring and mooring equipment from the seabed off the coast of Oregon. These letters of credit are secured by two certificates of deposit with PNC Bank. The first letter of credit for \$375,000 has a term through August 31, 2014 and the second letter of credit for \$470,000 has a term through October 16, 2014.

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

Cash restricted under security agreements is as follows:

	<u>October 31, 2013</u>	<u>April 30, 2013</u>
Barclays Bank agreement	\$ 989,856	941,256
NJBPU agreement	325,000	425,000
Oregon Department of State Lands	845,000	—
	<u>\$ 2,159,856</u>	<u>1,366,256</u>

**(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 gains and losses are included in foreign exchange loss in the accompanying consolidated statements of operations.

	<u>Three Months Ended October 31,</u>		<u>Six Months Ended October 31,</u>	
	<u>2013</u>	<u>2012</u>	<u>2013</u>	<u>2012</u>
Foreign exchange gain (loss)	\$ 107,357	102,741	129,127	(5,582)

	<u>October 31, 2013</u>	<u>April 30, 2013</u>
Foreign currency denominated certificates of deposit and cash accounts:		
Restricted	\$ 989,856	941,256
Unrestricted	1,078,961	1,550,458
	<u>\$ 2,068,817</u>	<u>2,491,714</u>

**(h) Long-Lived Assets**

Long-lived assets, such as property and equipment and patents subject to amortization, are 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. The Company reviewed its long-lived assets for impairment and determined there was no impairment for the six months ended October 31, 2013.

**(i) Concentration of Credit Risk**

Financial instruments that potentially subject the Company to concentration of credit risk consist principally of cash balances, bank certificates of deposit and trade receivables. The Company invests its excess cash in highly liquid investments (principally, short-term bank deposits, Treasury bills, Treasury notes and money market funds) and does not believe that it is exposed to any significant risks related to its cash accounts, money market funds or certificates of deposit.

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

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:

<b>Customer</b>	<b>Three months ended October 31,</b>		<b>Six months ended October 31,</b>	
	<b>2013</b>	<b>2012</b>	<b>2013</b>	<b>2012</b>
European Union (WavePort project)	61%	13%	46%	15%
US Department of Energy	22%	49%	24%	55%
UK Government's Technology Strategy Board	—	1%	19%	3%
Mitsui Engineering & Ship Building	15%	31%	8%	20%
	98%	94%	97%	93%

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

**(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 outstanding during the period. Due to the Company's net losses, potentially dilutive securities, consisting of outstanding stock options and non-vested performance-based shares, were excluded from the diluted loss per share calculation due to their anti-dilutive effect.

In computing diluted net loss per share, outstanding options to purchase shares of common stock and non-vested restricted stock held by employees and non-employee directors, totaling 1,493,353 during the three and six months ended October 31, 2013 and 1,618,371 during the three and six months ended October 31, 2012, were excluded from the computations as the effect would be anti-dilutive due to the Company's losses.

**(k) Recently Issued Accounting Standards**

There were no Accounting Standards issued during the quarter ended October 31, 2013 for the Company's consideration.

**(3) Marketable Securities**

Marketable securities with initial maturities longer than three months but that mature within one year from the balance sheet date are classified as current assets and are summarized as follows:

	<b>October 31, 2013</b>	<b>April 30, 2013</b>
US Treasury obligations	\$ 6,498,171	13,996,705

**Ocean Power Technologies, Inc. and Subsidiaries**  
**Notes to Consolidated Financial Statements**  
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**(4) Balance Sheet Detail**

	<u>October 31, 2013</u>	<u>April 30, 2013</u>
<b>Accounts Receivable, net</b>		
Accounts receivable	\$ 528,230	1,086,847
Allowance for doubtful accounts	(316,212)	(290,515)
	<u>\$ 212,018</u>	<u>796,332</u>
<b>Property and Equipment</b>		
Property and Equipment	\$ 2,236,605	2,212,991
Accumulated depreciation	(1,623,993)	(1,512,023)
	<u>\$ 612,612</u>	<u>700,968</u>
<b>Patents</b>		
Patents	\$ 1,560,250	1,558,630
Accumulated amortization	(621,848)	(513,728)
	<u>\$ 938,402</u>	<u>1,044,902</u>
<b>Accrued Expenses</b>		
Project costs	\$ 2,379,701	1,698,959
Contract loss reserves	785,000	785,000
Employee incentive payments	100,416	249,469
Accrued salary and benefits	405,686	547,404
Investment in joint venture	182,821	173,842
Legal and accounting fees	303,941	214,891
Other	170,985	231,058
	<u>\$ 4,328,550</u>	<u>3,900,623</u>

**(5) Debt**

The Company was awarded a recoverable grant totaling \$500,000 from the NJBPU under the Renewable Energy Business Venture Assistance Program. Under the terms of this agreement, the amount to be repaid is a fixed monthly amount of principal only, repayable over a five-year period beginning in November 2011. The terms also required the Company to assign to the NJBPU a certificate of deposit in an amount equal to the outstanding grant balance. The Company updates the certificate of deposit outstanding balance annually. See Note 2(f).

	<u>October 31, 2013</u>	<u>April 30, 2013</u>
Total debt	\$ 300,000	350,000
Current portion of long-term debt	(100,000)	(100,000)
Long-term debt	<u>\$ 200,000</u>	<u>250,000</u>

**Ocean Power Technologies, Inc. and Subsidiaries**  
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(Unaudited)

**(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 \$600,000 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 \$600,000, 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. As of October 31, 2013, the Company has not generated any emissions credits eligible for purchase under the agreement. The \$600,000 has been classified as a noncurrent liability as of October 31, 2013.

**(7) Stock-Based Compensation**

Costs resulting from all stock-based payment transactions are recognized in the consolidated financial statements at their fair values. Compensation cost for the portion of the awards for which the requisite service had not been rendered that were outstanding as of May 1, 2006 is being recognized in the consolidated statements of operations over the remaining service period after such date based on the award's original estimated fair value. The aggregate stock-based compensation expense related to all stock-based transactions recorded in the consolidated statements of operations was approximately \$370,000 and \$617,000 for the six months ended October 31, 2013 and 2012, respectively.

**(a) Stock Options**

**Valuation Assumptions for Options Granted During the Six Months Ended October 31, 2013 and 2012**

The fair value of each stock option granted, for both service-based and performance-based vesting requirements, during the six months ended October 31, 2013 and 2012 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 following table. The risk-free rate is based on the US Treasury yield curve in effect at the time of grant. The expected life (estimated period of time outstanding) of the stock options granted was estimated using the "simplified" method as permitted by the SEC's Staff Accounting Bulletin No. 107, *Share-Based Payment*. Expected volatility was based on the Company's historical volatility for the six months ended October 31, 2013 and historical volatility for a peer group of companies for the six months ended October 31, 2012 for a period equal to the stock option's expected life, calculated on a daily basis.

	<b>Six Months Ended October 31,</b>	
	<b>2013</b>	<b>2012</b>
Risk-free interest rate	1.6%	0.9%
Expected dividend yield	0.0%	0.0%
Expected life (years)	6.0	6.1
Expected volatility	74.61%	86.15%

The above assumptions were used to determine the weighted average per share fair value of \$1.11 and \$1.60 for stock options granted during the six months ended October 31, 2013 and 2012, respectively.

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

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

	Shares Underlying Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (In Years)
Outstanding as of April 30, 2013	1,305,988	\$ 7.43	
Forfeited	(195,716)	5.87	
Exercised	(4,000)	2.00	
Granted	334,471	1.53	
Outstanding as of October 31, 2013	<u>1,440,743</u>	6.29	6.2
Exercisable as of October 31, 2013	<u>915,839</u>	8.53	4.7

As of October 31, 2013, the total intrinsic value of outstanding options was approximately \$246,000 and the total intrinsic value of exercisable options was approximately \$55,000. As of October 31, 2013, approximately 916,000 additional options are expected to vest in the future, which options had approximately \$191,000 of intrinsic value and a weighted average remaining contractual term of 8.9 years. There was approximately \$348,000 and \$590,000 of total recognized compensation cost related to stock options for the six months ended October 31, 2013 and 2012, respectively. As of October 31, 2013, there was approximately \$614,000 of total unrecognized compensation cost related to non-vested stock options granted under the plans. This cost is expected to be recognized over a weighted-average period of 2.5 years. The Company normally issues new shares to satisfy option exercises under these plans. During the six months ended October 31, 2013, stock options granted included 30,520 stock options which are subject to performance-based vesting requirements. Stock options outstanding as of October 31, 2013 included 50,092 stock options subject to performance-based vesting requirements.

**(b) Restricted Stock**

Compensation expense for non-vested restricted stock was historically recorded based on its market value on the date of grant and recognized over the associated service and performance period. During the six months ended October 31, 2013, there were 7,000 shares of non-vested restricted stock granted to employees with performance-based vesting requirements. During the six months ended October 31, 2013, 16,417 shares of non-vested restricted stock subject to performance-based vesting requirements were forfeited in accordance with performance objectives. Restricted stock issued and unvested at October 31, 2013 included 12,331 shares of non-vested restricted stock subject to performance-based vesting requirements.

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

	Number of Shares	Weighted Average Price per Share
Issued and unvested at April 30, 2013	54,802	\$ 4.52
Granted	36,239	1.70
Forfeited	(16,417)	5.75
Vested	(22,014)	4.96
Issued and unvested at October 31, 2013	<u>52,610</u>	2.01

There was approximately \$21,000 and \$27,000 of total recognized compensation cost related to restricted stock for the six months ended October 31, 2013 and 2012, respectively. As of October 31, 2013, there was approximately \$71,000 of total unrecognized compensation cost related to non-vested restricted stock granted under the plans. This cost is expected to be recognized over a weighted average period of 2.5 years.



**Ocean Power Technologies, Inc. and Subsidiaries**  
**Notes to Consolidated Financial Statements**  
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***(c) Treasury Stock***

During the six months ended October 31, 2013 and 2012, 4,081 and 4,274 shares, respectively, of common stock were purchased by the Company from employees to pay taxes related to the vesting of restricted stock.

**(8) Commitments and Contingencies**

***(a) Litigation***

The Company is involved from time to time in certain legal actions arising in the ordinary course of business. Management believes that the outcome of such actions will not have a material adverse effect on the Company's financial position or results of operations.

***(b) Spain Construction Agreement***

The Company is currently engaged with Iberdrola Cantabria in discussions regarding modifications to its agreement for the first phase of the construction of a wave power project off the coast of Spain. This first phase was due to be completed by December 31, 2009. If no modification is agreed to by the parties, the customer may, subject to certain conditions in the agreement, terminate the agreement and would not be obligated to make any more milestone payments. The agreement also provides that the customer may seek reimbursement for direct damages only, limited to amounts specified in the agreement, if the Company is in default of its obligations under the agreement. As of October 31, 2013, the Company does not believe that the outcome of this matter will have a material adverse effect on the Company's financial position or results of operations.

***(c) Spain IVA (sales tax)***

The Company received notice that the Spanish tax authorities are inquiring into its 2010 IVA (value-added tax) filing for which the Company benefitted from the offset of approximately \$250,000 of input tax. The Company believes that the inquiry will find that the tax credit was properly claimed and, therefore, no liability has been recorded. The Company issued two letters of credit under the credit facility with Barclays Bank in the amount of €278,828 (\$383,333) at the request of the Spanish tax authorities. This is a customary request during the inquiry period.

***(d) Commercial Dispute***

The Company is subject to certain claims filed by a contractor and subcontractor in connection with a dispute over a contract to perform certain work for the Company related to the deployment of an anchor/mooring system off the Oregon coast. The Company has claimed that the contractor and subcontractor were responsible for damage to the system during the deployment process. The parties are currently involved in ongoing settlement discussions. As of October 31, 2013 and April 30, 2013, the Company has accounted for the outcome of this matter in its financial statements.

**(9) Income Taxes**

The Company did not recognize any consolidated income tax benefit (expense) for the six month periods ended October 31, 2013 and 2012. The Company has recorded a valuation allowance to reduce its net deferred tax asset to an amount that is more likely than not to be realized in future years. Accordingly, the benefit of the net operating loss that would have been recognized was offset by changes in the valuation allowance.

During the six months ended October 31, 2013, the Company had no material changes in uncertain tax positions.

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

**(10) Operating Segments and Geographic Information**

The Company views its business as one segment, which is the development and sale of its PowerBuoy product for wave energy applications. The Company operates on a worldwide basis with one operating company in the US, one operating subsidiary in the UK and one operating subsidiary in Australia, which are categorized below as North America, Europe, and Asia and Australia, respectively. Revenues are generally attributed to the operating unit that bills the customers.

Geographic information is as follows:

	North America	Europe	Asia and Australia	Total
<b>Three months ended October 31, 2013</b>				
Revenues from external customers	\$ 460,837	2,771	—	463,608
Operating loss	(2,714,747)	(396,523)	(306,439)	(3,417,709)
<b>Three months ended October 31, 2012</b>				
Revenues from external customers	1,353,928	6,371	—	1,360,299
Operating loss	(4,337,988)	(266,004)	(324,181)	(4,928,173)
<b>October 31, 2013</b>				
Long-lived assets	595,341	16,499	772	612,612
Total assets	20,002,947	1,247,749	74,093	21,324,789
<b>April 30, 2013</b>				
Long-lived assets	675,354	24,128	1,486	700,968
Total assets	\$ 23,097,183	1,518,496	215,380	24,831,059
<b>Six months ended October 31, 2013</b>				
Revenues from external customers	748,589	175,946	—	924,535
Operating loss	(5,837,346)	(711,925)	(686,591)	(7,235,862)
<b>Six months ended October 31, 2012</b>				
Revenues from external customers	\$ 2,284,831	57,864	—	2,342,695
Operating loss	(8,189,708)	(500,978)	(546,716)	(9,237,402)

**(11) Subsequent Event**

On November 5, 2013, the Company sold an additional 471,000 shares of common stock pursuant to the Offering Agreement for total net proceeds of approximately \$1,236,900.

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

The following discussion and analysis should be read in conjunction with the accompanying unaudited consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q. Some of the information contained in this discussion and analysis or set forth elsewhere in this Form 10-Q, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section of our Annual Report on Form 10-K for fiscal 2013 for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis. References to a fiscal year in this Form 10-Q refer to the year ended April 30 of that year (e.g., fiscal 2013 refers to the year ended April 30, 2013).

### Overview

We develop and are seeking to commercialize proprietary systems that generate electricity by harnessing the renewable energy of ocean waves. Our PowerBuoy® systems use proprietary technologies to convert the mechanical energy created by the rising and falling of ocean waves into electricity. We currently offer and continue to develop two PowerBuoy product lines, which consist of our utility PowerBuoy system and our autonomous PowerBuoy system. We also offer operations and maintenance services for our PowerBuoy systems. In addition, we continue to develop and expect to market our undersea substation pod product and undersea power connection infrastructure services to other companies in the marine energy sector. Since fiscal 2002, the US Navy and other government agencies have accounted for a significant portion of our revenues. These revenues were largely for the support of our product development efforts. Our goal is that an increased portion of our revenues be from the sale of products and maintenance services, as compared to revenue to support our product development efforts. As we continue to advance our proprietary technologies, we expect to have a net decrease in cash from operating activities unless or until we achieve positive cash flow from the planned commercialization of our products and services.

We market our utility PowerBuoy system, which is designed to supply electricity to a local or regional power grid, to utilities and other electrical power producers seeking to add electricity generated by wave energy to their existing electricity supply. We market our autonomous PowerBuoy system, 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 autonomous PowerBuoy system, including sonar and radar surveillance, offshore oil and gas operations, tsunami warning, oceanographic data collection, and offshore aquaculture.

We were incorporated in New Jersey in 1984, began business operations in 1994, and were re-incorporated in Delaware in 2007. We currently have three wholly-owned subsidiaries: Ocean Power Technologies Ltd., organized under the laws of the United Kingdom and Reedsport OPT Wave Park LLC and Oregon Wave Energy Partners I, LLC, each organized under the laws of Delaware. We also own approximately 88% of the ordinary shares of Ocean Power Technologies (Australasia) Pty Ltd ("OPTA"), organized under the laws of Australia.

The development of our technology has been funded by capital we raised and by development engineering contracts we received starting in fiscal 1995. In fiscal 1996, we received the first of several research contracts with the US Navy to study the feasibility of wave energy. As a result of those research contracts, we entered into our first development and construction contract with the US Navy in fiscal 2002 under a project for the development and testing of our wave power systems at the US Marine Corps Base in Oahu, Hawaii. This project included the grid-connection of one of our utility-grade PowerBuoys at the Marine Corps Base. We generated our first revenue relating to our autonomous PowerBuoy system from contracts with Lockheed Martin Corporation ("Lockheed Martin"), in fiscal 2003, and we entered into our first development and construction contract with Lockheed Martin in fiscal 2004 for the development and construction of a prototype demonstration autonomous PowerBuoy system. Subsequently, we received a contract from the US Navy to test our autonomous PowerBuoy system as a power source for the Navy's Deep Water Active Detection System ("DWADS"). In 2011, an autonomous PowerBuoy was deployed for ocean trials off the coast of New Jersey under a contract from the US Navy under its Littoral Expeditionary Autonomous PowerBuoy ("LEAP") program. The LEAP PowerBuoy, or APB-350, incorporates a unique power take-off and on-board storage system, and is significantly smaller and more compact than our standard utility PowerBuoy. It is designed to provide persistent, off-grid clean energy in remote ocean locations for a wide variety of maritime security, monitoring and other commercial applications. Also, in 2011, ocean trials of our first Mark 3 PowerBuoy were conducted. These ocean trials were conducted at a site approximately 33 nautical miles from Invergordon, off Scotland's northeast coast. During the ocean trials, our Mark 3 PowerBuoy produced power in excess of our expectations of performance. Our utility scale Mark 3 PowerBuoy structure and mooring system achieved independent certification from Lloyd's Register in December 2010. This certification confirms that the Mark 3 PowerBuoy design complies with the requirements of Lloyd's 1999 Rules and Regulations for the Classification of Floating Offshore Installations at Fixed Locations.

We have established an at the market offering facility (the "ATM Facility") with Ascendant Capital Markets, LLC (the "Manager") via an At the Market Offering Agreement entered into in June 2013 (the "Offering Agreement"). Under the Offering Agreement, we may offer and sell shares of our common stock from time to time through or to the Manager, acting as sales agent and /or principal. Subject to certain limited exceptions, these sales are made in ordinary brokerage transactions at prevailing market prices. We have registered offerings under the ATM Facility on an effective Form S-3 shelf registration statement (the "S-3 Shelf").

During the six months ended October 31, 2013, we sold approximately 1,300,000 shares pursuant to the Offering Agreement for net proceeds of approximately \$3,429,800 and subsequently sold approximately 471,000 shares in November 2013 for net proceeds of approximately \$1,236,900. Sales of shares under the Offering Agreement are made pursuant to our instructions (including any price, time or size limits or other customary conditions or parameters that we may impose) and are registered on the S-3 Shelf in reliance on, and subject to the limitations of, General Instruction I.B.6 of Form S-3 and other applicable law and regulations. In particular, Form S-3 limits the aggregate market value of securities that we are permitted to offer in any 12-month period under Form S-3, whether under the Offering Agreement or otherwise, to one third of our public float. We are under no obligation to sell, and the Manager is under no obligation to purchase or place, securities under the Offering Agreement, and there can be no assurance that we will continue to do so or will be able to do so on favorable terms or at all.

During fiscal 2013, we worked on projects with Mitsui Engineering & Shipbuilding (“MES”) and the US Department of Homeland Security, as well as our WavePort project in Spain and our Mark 3 PowerBuoy project in Oregon. We also worked on developing our Mark 4 PowerBuoy.

During the three months ended October 31, 2013 we received a \$2.6 million contract from MES to provide design services and supply key components of a PowerBuoy system intended for deployment off the coast of Japan. In addition, we signed a new agreement with MES to cooperate in the development and commercialization of OPT’s PowerBuoy technology. Further, we were selected for a \$1.0 million award from the US Department of Energy (“DOE”). The receipt of funds under this award is subject to the negotiation of a definitive contract and confirmation of cost sharing sources. This award is not included in our negotiated backlog. We continued work on projects with the US Department of Energy and our WavePort project in Spain. We also continued our efforts to increase the power output and reliability of our utility and autonomous PowerBuoy systems.

The prospective deployment and commissioning of our Mark 3 PowerBuoy, which would be located off the coast of Oregon, must take into consideration various regulatory, business, and financial factors, including requirements of regulatory agencies and a significant use of funds.

In conjunction with this project in Oregon, we received a license from the Federal Energy Regulatory Commission (“FERC”) in August 2012 which authorized installation and operation of a grid connected wave energy array (the “License”). In addition, we signed a comprehensive settlement agreement among us and 13 federal and state agencies and non-governmental agencies in July 2010 (the “Settlement Agreement”).

The FERC staff informed us in February 2013 of their view that the License’s various planning, reporting and other pre- and post-deployment requirements may extend to this first, non-grid connected buoy. We had understood that because the first buoy would not be grid-connected until a full array of 10 PowerBuoys was deployed, the first buoy would not be subject to the requirements of the License. Accordingly, in May 2013, we filed a Motion for Extensions to Comply with License Requirements with FERC. This motion sought to clarify this understanding by moving those various requirements into the future, aligning them with deployment of the full array of 10 PowerBuoys, so that they would not apply to the first non-grid connected buoy. In June 2013, FERC issued an order extending certain requirements for one year rather than aligning those requirements with the 10-buoy array as requested. By separate letter, we were informed by the FERC staff that the agency’s position remains that the License’s various requirements extend to the deployment of this initial buoy. We have chosen not to further contest this decision by FERC, and would be required to submit certain reports and perform additional studies associated with the deployment of the first buoy. This process would result in significant delay of the prospective deployment of the first Oregon PowerBuoy, as well as impose additional costs on us. Deployment and commissioning of the first buoy would need to take into consideration various regulatory requirements, business and financial factors, including the need to raise additional funding directly related to this project. As a result, we have suspended activity on this project as we assess these factors and consider the best path forward.

Our efforts continue toward development of the planned 19 megawatt (MW) (62.5MW peak generator rating) wave power project off the coast of Victoria, Australia. Funding for this project includes a grant of A\$66.5 million (approximately US\$61 million) awarded by the Commonwealth of Australia. The grant is subject to certain terms, including achievement of significant external funding milestones, in order to enable our receipt of the grant funds. We have engaged a financial advisor to lead efforts to structure power purchase agreements and assist us to secure appropriate financing for this project. The Board of Directors of the Australian Renewable Energy Agency, the Commonwealth agency, that manages the grant, is reviewing the status of the grant, including progress toward funding milestones and amendments to the grant as proposed by us.

At October 31, 2013, our total negotiated backlog was \$5.8 million compared with \$5.2 million at October 31, 2012. We anticipate that the majority of our backlog will be recognized as revenue over a period exceeding 12 months. Approximately \$1.2 million of our backlog at October 31, 2013, is for our Oregon project; our continuation of work on this project and the prospective realization of that backlog as revenues would depend on certain factors, including the resolution of regulatory matters, the availability of additional funding to specifically enable completion of this project and the result of discussions with key project stakeholders. Most of our backlog at October 31, 2013 and 2012 consisted of cost-sharing contracts as described in the Financial Operations Overview section of this Management’s Discussion and Analysis. 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 (Congress, in the case of US Government agencies) and unfunded amounts, which are unfilled firm orders from the US Department of Energy (“DOE”) 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 contracts. Our backlog was fully funded at October 31, 2013 and 2012.

For the three months ended October 31, 2013, we generated revenues of \$0.5 million and incurred a net loss attributable to Ocean Power Technologies, Inc. of \$3.3 million, compared to revenues of \$1.4 million and a net loss attributable to Ocean Power Technologies, Inc. of \$4.8 million for the three months ended October 31, 2012. As of October 31, 2013, our accumulated deficit was \$147.7 million. We have not been profitable since inception, and we do not know whether or when we will become profitable because of the significant uncertainties with respect to our ability to successfully commercialize our PowerBuoy systems in the emerging renewable energy market.

The continued global economic uncertainty may have a negative effect on our business, financial condition and results of operations. Currently, the cost of electricity generated from wave energy, without the benefit of subsidies or other economic incentives, substantially exceeds the prevailing price of electricity in many significant markets in the world. As a result, the near-term growth of the market opportunity for our utility PowerBuoy systems, which are designed to feed electricity into a local or regional power grid, depends significantly on the availability and magnitude of government incentives and subsidies for wave energy. Federal, state and local governmental bodies in many countries have provided subsidies in the form of tariff subsidies, rebates, tax credits and other incentives to utilities, power generators and distributors using renewable energy. However, these incentives and subsidies generally decline over time, and many incentive and subsidy programs have specific expiration dates. The timing, scope and size of new government programs for renewable energy is uncertain, and there can be no assurances that we or our customers will be successful in obtaining any additional government funding. We do not believe that the continuing global economic uncertainty will have a material negative impact on our sources of supply, as our products incorporate what are substantially non-custom standard parts found in many regions of the world.

## **Financial Operations Overview**

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

### *Revenues*

Generally, we recognize revenue using the percentage-of-completion method based on the ratio of costs incurred to total estimated costs at completion. In certain circumstances, revenue under contracts that have specified milestones or other performance criteria may be recognized only when our customer acknowledges that such criteria have been satisfied. In addition, recognition of revenue (and the related costs) may be deferred for fixed-price contracts until contract completion if we are unable to reasonably estimate the total costs of the project prior to completion. Because we have a small number of contracts, revisions to the percentage-of-completion determination or delays in meeting performance criteria or in completing projects may have a significant effect on our revenue for the periods involved. Upon anticipating a loss on a contract, we recognize the full amount of the anticipated loss in the current period.

Generally our contracts are either cost plus or fixed price contracts. Under cost plus contracts, we bill the customer for actual expenses incurred plus an agreed-upon fee. Revenue is typically recorded using the percentage-of-completion method based on the maximum awarded contract amount. In certain cases, we may choose to incur costs in excess of the maximum awarded contract amounts resulting in a loss on the contract. Currently, we have two types of fixed price contracts, firm fixed price and cost-sharing. Under firm fixed price contracts, we receive an agreed-upon amount for providing products and services that are specified in the contract. Revenue is typically recorded using the percentage-of-completion method based on the contract amount. Depending on whether actual costs are more or less than the agreed-upon amount, there is a profit or loss on the project. 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. We fund the remainder of the costs as part of our product development efforts. Revenue is typically recorded using the percentage-of-completion method based on the amount agreed upon with the customer. An amount corresponding to the revenue is recorded in cost of revenues resulting in gross profit on these contracts of zero. Our share of the costs is recorded as product development expense. Most of our revenue in the three and six months ended October 31, 2013 and 2012 was from cost-sharing contracts.

The following table provides information regarding the breakdown of our revenues by customer for the three and six months ended October 31, 2013 and 2012:

<b>Customer</b> (\$ millions)	<b>Three months ended October 31,</b>		<b>Six months ended October 31,</b>	
	<b>2013</b>	<b>2012</b>	<b>2013</b>	<b>2012</b>
US Department of Energy	\$ 0.1	\$ 0.7	\$ 0.2	\$ 1.3
Mitsui Engineering & Shipbuilding	0.1	0.4	0.1	0.5
European Union (WavePort project)	0.3	0.2	0.4	0.3
US Navy	–	–	–	0.1
UK Government's Technology Strategy Board	–	–	0.2	0.1
Other	–	0.1	–	–
	<u>\$ 0.5</u>	<u>\$ 1.4</u>	<u>\$ 0.9</u>	<u>\$ 2.3</u>

We currently focus our sales and marketing efforts on North America, the west coast of Europe, Australia and Japan. The following table provides information regarding the breakdown of our revenues by geographical location of our customers for the six months ended October 31, 2013 and 2012:

<b>Customer Location</b>	<b>Six months ended October 31,</b>	
	<b>2013</b>	<b>2012</b>
United States	25%	63%
Europe	67%	17%
Asia and Australia	8%	20%
	<u>100%</u>	<u>100%</u>

#### *Cost of revenues*

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

Most of our revenue recorded for the six months ended October 31, 2013 and 2012 was generated from cost-sharing contracts, which result in zero gross profit. Our ability to generate a gross profit will depend on the nature of future contracts, our success at developing sales of our PowerBuoy systems and our ability to manage costs incurred on fixed price commercial contracts.

#### *Product development costs*

Our product development costs consist of salaries and other personnel-related costs and the costs of products, materials and outside services used in our product development and unfunded research activities. Our product development costs relate primarily to our efforts to increase the power output and reliability of our utility and autonomous PowerBuoy systems, and to our research and development of new products, product applications and complementary technologies. We expense all of our product development costs as incurred. Over the next several years, it is our intent to fund the majority of our research and development expenses, including cost-sharing arrangements, with sources of external funding. If we are unable to obtain external funding, we may curtail our product development expenses.

#### *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.

### *Interest income*

Interest income consists of interest received on cash and cash equivalents, investments in commercial bank-issued certificates of deposit and US Treasury bills and notes. Total cash, cash equivalents, restricted cash, and marketable securities were \$18.7 million as of October 31, 2013, compared to \$26.4 million as of October 31, 2012.

We anticipate that our interest income reported in fiscal 2014 will continue to be lower than the comparable periods of the prior fiscal year as a result of the decrease in invested cash.

### *Foreign exchange gain (loss)*

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

We invest in certificates of deposit and maintain cash accounts that are denominated in British pounds sterling, Euros and Australian dollars. These foreign-denominated certificates of deposit and cash accounts had a balance of \$2.1 million as of October 31, 2013 and \$3.6 million as of October 31, 2012, compared to our total cash, cash equivalents, restricted cash, and marketable securities balances of \$18.7 million as of October 31, 2013 and \$26.4 million as of October 31, 2012. 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. All of our international revenues for the three and six months ended October 31, 2013 and 2012 were recorded in Euros, British pounds sterling or Japanese yen.

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, cash equivalents and marketable securities 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

### Three Months Ended October 31, 2013 Compared to Three Months Ended October 31, 2012

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the three months ended October 31, 2013 and 2012:

	<b>Three Months Ended October 31, 2013</b>	<b>Three Months Ended October 31, 2012</b>	<b>% Change 2013 Period to 2012 Period</b>
	<b>Amount</b>	<b>Amount</b>	
Revenues	\$ 463,608	\$ 1,360,299	(66)%
Cost of revenues	462,336	1,246,277	(63)
Gross profit	1,272	114,022	(99)
Operating expenses:			
Product development costs	1,610,089	2,937,567	(45)
Selling, general and administrative costs	1,808,892	2,104,628	(14)
Total operating expenses	3,418,981	5,042,195	(32)
Operating loss	(3,417,709)	(4,928,173)	31
Interest income, net	2,879	34,888	(92)
Foreign exchange gain	107,357	102,741	4
Net loss	(3,307,473)	(4,790,544)	31
Less: Net loss attributable to the noncontrolling interest in Ocean Power Technologies (Australasia) Pty Ltd	36,916	39,004	(5)
Net loss attributable to Ocean Power Technologies, Inc	\$ (3,270,557)	\$ (4,751,540)	31%

#### Revenues

Revenues decreased by \$0.9 million, or 66%, to \$0.5 million in the three months ended October 31, 2013, as compared to \$1.4 million in the three months ended October 31, 2012. The decrease in revenue resulted from the suspension of our Mark 3 PowerBuoy project off the coast of Oregon, decreased billable work on our Mark 4 PowerBuoy development project and the completion of a project with MES in the prior fiscal year. These decreases were partially offset by increases related to our WavePort project off the coast of Spain and work performed under the \$2.6 million contract entered into in October 2013 with MES.

#### Cost of revenues

Cost of revenues decreased by \$0.7 million, or 63%, to \$0.5 million in the three months ended October 31, 2013, as compared to \$1.2 million in the three months ended October 31, 2012. The decrease in cost of revenues resulted from the suspension of our Mark 3 PowerBuoy project off the coast of Oregon, decreased billable work on our Mark 4 PowerBuoy development project and the completion of a project with MES in the prior fiscal year. These decreases were partially offset by increases related to our WavePort project off the coast of Spain and work performed under the \$2.6 million contract entered into in October 2013 with MES.

We operated at a slight gross profit in the three month periods ended October 31, 2013 and 2012. Most of our projects in the three month periods ended October 31, 2013 and 2012 were under cost-sharing contracts. Under cost-sharing contracts, we receive a fixed amount agreed upon with the customer that is only intended to fund a portion of the costs on a specific project. We fund the remainder of the costs primarily as part of our product development efforts. Revenue is typically recorded using the percentage-of-completion method applied to the contractual amount agreed upon with the customer. An equal amount corresponding to the revenue is recorded in cost of revenues resulting in gross profit on these contracts of zero. Our share of the costs is considered to be product development expense. Our ability to generate a gross profit will depend on the nature of future contracts, our success at increasing sales of our PowerBuoy systems and on our ability to manage costs incurred on our fixed price contracts.



### Product development costs

Product development costs decreased by \$1.3 million, or 45%, to \$1.6 million in the three months ended October 31, 2013, as compared to \$2.9 million in the three months ended October 31, 2012. Product development costs were attributable primarily to our efforts to increase the power output and reliability of our utility and autonomous PowerBuoy systems. The decrease in product development costs was related primarily to a decrease in activity related to our PowerBuoy project off the coast of Oregon. Over the next several years, it is our intent to fund the majority of our product development expenses, including cost-sharing arrangements, with sources of external funding. If we are unable to obtain external funding, we may curtail our product development expenses.

### Selling, general and administrative costs

Selling, general and administrative costs decreased by approximately \$0.3 million, or 14%, to \$1.8 million for the three months ended October 31, 2013 as compared to \$2.1 million for the three months ended October 31, 2012. The decrease was due primarily to decreased employee related costs and third party consultant costs partially offset by higher costs associated with our activities in Spain.

### Interest income

Interest income decreased approximately 92% to \$2,900 for the three months ended October 31, 2013, as compared to approximately \$35,000 in the three months ended October 31, 2012, due to a decrease in cash, cash equivalents and marketable securities and a decrease in average yield.

### Foreign exchange gain

Foreign exchange gain was \$107,000 for the three months ended October 31, 2013, compared to \$103,000 for the three months ended October 31, 2012. The difference was attributable primarily to the relative change in value of the British pound sterling, Euro, Australian dollar and Japanese yen compared to the US dollar during the two periods.

### Six Months Ended October 31, 2013 Compared to Six Months Ended October 31, 2012

The following table contains selected statement of operations information, which serves as the basis of the discussion of our results of operations for the six months ended October 31, 2013 and 2012:

	<u>Six Months Ended October 31, 2013</u>	<u>Six Months Ended October 31, 2012</u>	<u>% Change 2013 Period to 2012 Period</u>
	<u>Amount</u>	<u>Amount</u>	
Revenues	\$ 924,535	\$ 2,342,695	(61)%
Cost of revenues	922,712	2,226,137	(59)
Gross profit	1,823	116,558	(98)
Operating expenses:			
Product development costs	2,881,034	4,864,994	(41)
Selling, general and administrative costs	4,356,651	4,488,966	(3)
Total operating expenses	7,237,685	9,353,960	(23)
Operating loss	(7,235,862)	(9,237,402)	22
Interest income, net	3,237	90,312	(96)
Foreign exchange gain (loss)	129,127	(5,582)	(2,413)
Net loss	(7,103,498)	(9,152,672)	22
Less: Net loss attributable to the noncontrolling interest in Ocean Power Technologies (Australasia) Pty Ltd	82,971	65,079	27
Net loss attributable to Ocean Power Technologies, Inc	<u>\$ (7,020,527)</u>	<u>\$ (9,087,593)</u>	23%

## *Revenues*

Revenues decreased by \$1.4 million, or 61%, to \$0.9 million in the six months ended October 31, 2013, as compared to \$2.3 million in the six months ended October 31, 2012. The decrease in revenue related to the suspension of our Mark 3 PowerBuoy project off the coast of Oregon, decreased billable work on our Mark 4 PowerBuoy development project and the completion of a project with MES in the prior fiscal year. These decreases were partially offset by an increase in revenue related to our WavePort project off the coast of Spain and work performed under our new contract received in October 2013 from MES.

## *Cost of revenues*

Cost of revenues decreased by \$1.3 million, or 59%, to \$0.9 million in the six months ended October 31, 2013, as compared to \$2.2 million in the six months ended October 31, 2012. The decrease in cost of revenues related to the suspension of our Mark 3 PowerBuoy project off the coast of Oregon, decreased billable work on our Mark 4 PowerBuoy development project and the completion of a project with MES in the prior fiscal year. These decreases were partially offset by an increase related to our WavePort project off the coast of Spain and work performed under our new contract received in October 2013 from MES.

We operated at a slight gross profit in the six month periods ended October 31, 2013 and 2012. Most of our projects in the six month periods ended October 31, 2013 and 2012 were under cost-sharing contracts. Under cost-sharing contracts, we receive a fixed amount agreed upon with the customer that is only intended to fund a portion of the costs on a specific project. We fund the remainder of the costs primarily as part of our product development efforts. Revenue is typically recorded using the percentage-of-completion method applied to the contractual amount agreed upon with the customer. An equal amount corresponding to the revenue is recorded in cost of revenues resulting in gross profit on these contracts of zero. Our share of the costs is considered to be product development expense. Our ability to generate a gross profit will depend on the nature of future contracts, our success at increasing sales of our PowerBuoy systems and on our ability to manage costs incurred on our fixed price contracts.

## *Product development costs*

Product development costs decreased by \$2.0 million, or 41%, to \$2.9 million in the six months ended October 31, 2013, as compared to \$4.9 million in the six months ended October 31, 2012. Product development costs were attributable primarily to our efforts to increase the power output and reliability of our utility and autonomous PowerBuoy systems. The decrease in product development costs was related primarily to a decrease in activity related to our PowerBuoy project off the coast of Oregon. Over the next several years, it is our intent to fund the majority of our product development expenses, including cost-sharing arrangements, with sources of external funding. If we are unable to obtain external funding, we may curtail our product development expenses. During the six months ended October 31, 2013, the majority of funding for our Mark 4 PowerBuoy development project was from external sources.

## *Selling, general and administrative costs*

Selling, general and administrative costs decreased by approximately \$0.1 million, or 3%, to \$4.4 million for the six months ended October 31, 2013 as compared to \$4.5 million for the six months ended October 31, 2012. The decrease was due primarily to decreased employee related costs and third party consultant costs. These decreases were partially offset by fees associated with the establishment of an At the Market Offering Agreement and site development expenses related to a potential project in Australia.

## *Interest income*

Interest income decreased approximately 96% to \$3,200 for the six months ended October 31, 2013, as compared to approximately \$90,000 in the six months ended October 31, 2012, due to a decrease in cash, cash equivalents and marketable securities and a decrease in average yield.

## *Foreign exchange gain*

Foreign exchange gain was \$129,000 for the six months ended October 31, 2013, compared to a foreign exchange loss of \$6,000 for the six months ended October 31, 2012. The difference was attributable primarily to the relative change in value of the British pound sterling, Euro, Australian dollar and Japanese yen compared to the US dollar during the two periods.

## **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 the planned growth of our business. For the two years ended April 30, 2013, our net losses were \$30 million and our net cash used in operating activities was \$24.8 million.

Cash flows for the six months ended October 31, 2013 and 2012 were as follows:

	<b>Six Months Ended October 31,</b>	
	<b>2013</b>	<b>2012</b>
Net loss	\$ (7,103,498)	\$ (9,152,672)
Adjustments for noncash operating items	462,846	894,187
Net cash operating loss	(6,640,652)	(8,258,485)
Net change in operating assets and liabilities	157,192	1,957,604
Net cash used in operating activities	<u>\$ (6,483,460)</u>	<u>\$ (6,300,881)</u>
Net cash provided by investing activities	<u>\$ 6,726,952</u>	<u>\$ 10,446,947</u>
Net cash provided by (used in) financing activities	<u>\$ 3,380,985</u>	<u>\$ (59,122)</u>
Effect of exchange rates on cash and cash equivalents	<u>\$ 35,019</u>	<u>\$ 6,127</u>

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

Net cash used in operating activities was \$6.5 million and \$6.3million for the six months ended October 31, 2013 and 2012, respectively. The change was the result of a decrease in net loss of \$2.0 million, decreases in noncash operating items of \$0.4 million offset by a decrease in cash used by the net change in operating assets and liabilities of \$1.8 million.

The decrease in net loss for the six months ended October 31, 2013 compared to the six months ended October 31, 2012 reflects a decrease in product development costs of \$2.0 million relating primarily to a decrease in activity related to our PowerBuoy project off the coast of Oregon.

The decrease in noncash operating items reflects a decrease in equity compensation of \$0.3 million and a gain on foreign exchange of \$0.1 million.

The decrease in operating assets and liabilities reflects the collection of \$0.5 million in accounts receivable, a net increase in accounts payable and accrued expenses of \$0.4 million, offset by an increase of \$0.2 million for prepaid insurance and unbilled receivables, and a net decrease of \$0.5 million in unearned revenues, during the six months ended October 31, 2013.

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

Net cash provided by investing activities was \$6.7 million for the six months ended October 31, 2013 and \$10.4 million for the six months ended October 31, 2012. The change was primarily the result of a net increase in maturities of marketable securities during the six months ended October 31, 2013 as compared to the prior year period.

#### **Net cash provided by (used in) financing activities**

Net cash provided by financing activities was \$3.4 million for the six months ended October 31, 2013 compared to net cash used in financing activities of \$59,000 for the six months ended October 31, 2012. The change was primarily the result of proceeds received in the current year period from the sale of common stock pursuant to the ATM Facility.

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

The effect of exchange rates on cash and cash equivalents was an increase of \$35,000 and \$6,000 in the six months ended October 31, 2013 and 2012, 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

We expect to devote substantial resources to continue our development efforts for our PowerBuoy systems and to expand our sales, marketing and manufacturing programs associated with the planned commercialization of the PowerBuoy systems. Our future capital requirements will depend on a number of factors, including:

- the cost of development efforts for our PowerBuoy systems;
- our success in developing commercial relationships with major customers;
- the ability to obtain project-specific financing, grants, subsidies and other sources of funding for some of our projects;
- the cost of manufacturing activities;
- the cost of commercialization activities, including demonstration projects, product marketing and sales;
- our ability to establish and maintain additional customer relationships;
- the implementation of our expansion plans, including the hiring of new employees as our business increases;
- potential acquisitions of other products or technologies; and
- the costs involved in preparing, filing, prosecuting, maintaining and enforcing patent claims and other patent-related costs.

We have incurred negative operating cash flows since our inception. As of October 31, 2013, our cash and cash equivalents, marketable securities and restricted cash balance was approximately \$18.7 million. Based upon our cash and cash equivalents and marketable securities balance as of October 31, 2013, we believe that we will be able to finance our capital requirements and operations into the first calendar quarter of 2015.

During fiscal 2014 and 2013, we have continued to make investments in ongoing product development efforts in anticipation of future growth. Our future results of operations involve significant risks and uncertainties. Factors that could affect our future operating results and cause actual results to vary materially from expectations include, but are not limited to, risks from competition, new products, technological change, recent economic activity and dependence on key personnel. In order to complete our future growth strategy, we will require additional equity and/or debt financing. There is no assurance that additional equity and/or debt financing will be available to us as needed. If sufficient financing is not obtained, we may be required to further curtail or limit certain product development costs, and/or selling, general and administrative activities in order to reduce our cash expenditures.

In January 2013, we filed with the SEC a shelf registration statement on Form S-3 registering the sale of up to \$40,000,000 of debt, equity and other securities (the "S-3 Shelf"). The S-3 Shelf was declared effective in February 2013 and affords us additional financial flexibility. On June 6, 2013, we entered into an At the Market Offering Agreement (the "Offering Agreement") with Ascendant Capital Markets, LLC (the "Manager"). Pursuant to the Offering Agreement, we may offer and sell shares of our common stock having an aggregate offering price of up to \$10,000,000 from time to time over the three-year term of the Offering Agreement, through or to the Manager, acting as sales agent and/or principal. Subject to certain limited exceptions, these sales will be made in ordinary brokerage transactions at prevailing market prices.

During the six months ended October 31, 2013, we sold approximately 1,300,000 shares pursuant to the Offering Agreement for net proceeds of approximately \$3,429,800 and subsequently sold approximately 471,000 shares in November 2013 for net proceeds of approximately \$1,200,000. Sales of shares under the Offering Agreement are made pursuant to our instructions (including any price, time or size limits or other customary conditions or parameters that we may impose) and are registered on the S-3 Shelf in reliance on, and subject to the limitations of, General Instruction I.B.6 of Form S-3 and other applicable law and regulations. In particular, Form S-3 limits the aggregate market value of securities that we are permitted to offer in any 12-month period under Form S-3, whether under the Offering Agreement or otherwise, to one third of our public float. We are under no obligation to sell, and the Manager is under no obligation to purchase or place, securities under the Offering Agreement, and there can be no assurance that we will continue to do so or will be able to do so on favorable terms or at all.

## Off-Balance Sheet Arrangements

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

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

Not Applicable.

**Item 4. CONTROLS AND PROCEDURES**

*Evaluation of Disclosure Controls and Procedures*

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 Interim Chief Financial Officer, to allow timely decisions regarding required disclosure.

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Interim 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 October 31, 2013, our Chief Executive Officer and Interim Chief Financial Officer concluded that our disclosure controls and procedures were effective.

*Changes in Internal Control over Financial Reporting*

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the fiscal quarter ended October 31, 2013 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**PART II — OTHER INFORMATION**

**Item 1. LEGAL PROCEEDINGS**

We are subject to legal proceedings, claims and litigation arising in the ordinary course of business. While the outcome of these matters is currently not determinable, we do not expect that the ultimate costs to resolve these matters will have a material adverse effect on our financial position, results of operations or cash flows.

**Item 1A. RISK FACTORS**

The discussion of our business and operations should be read together with the risk factors contained in Item 1A of our Annual Report on Form 10-K for the year ended April 30, 2013. These risk factors describe various risks and uncertainties to which we are or may become subject. These risks and uncertainties have the potential to affect our business, financial condition, results of operations, cash flows, strategies or prospects in a material and adverse manner. There have been no material changes in our risk factors from those disclosed in our Annual Report on Form 10-K filed with the SEC on July 12, 2013.

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

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

**Item 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**Item 4. MINE SAFETY DISCLOSURES**

None.

**Item 5. OTHER INFORMATION**

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

Arrival of New Chief Financial Officer

On December 12, 2013, Mark A. Featherstone, age 52, commenced employment as Chief Financial Officer, Secretary and Treasurer of the Company.

Prior to joining the Company, Mr. Featherstone served from 2001 to 2012 in various finance roles for Quaker Chemical Corporation, an NYSE-listed multinational specialty chemical company, including most recently as Vice President, Chief Financial Officer and Treasurer, from 2007 to 2012. During his tenure as Chief Financial Officer of Quaker, Mr. Featherstone led the global functions of treasury, tax, corporate development, controllership, investor relations, financial planning and analysis, risk management, information technology and internal audit. During 2012 and 2013, Mr. Featherstone served as a consultant with the Pine Hill Group, during which he performed transactional consulting and advisory services for a number of companies, including Heat Transfer Products Group, a manufacturer of refrigeration and HVAC-related products. During 2013, Mr. Featherstone formally joined Heat Transfer Products Group as Chief Financial Officer and helped guide that company through its recent sale process to a strategic acquirer. Mr. Featherstone holds a bachelor's degree in accounting from the Pennsylvania State University and a Masters of Business Administration degree from Drexel University.

On December 2, 2013, the Company and Mr. Featherstone entered into an employment agreement (the "Agreement"). Mr. Featherstone's base salary under the Agreement is \$270,000 ("Base Salary"), subject to annual review and adjustment. Mr. Featherstone will also be eligible to participate in the Company's annual performance bonus program. Subject to approval by the Company's Board of Directors, Mr. Featherstone will also receive an award of 10,000 restricted shares of the Company's common stock and a grant of stock options to purchase 50,000 shares of the Company's common stock, both of which awards will be subject to the terms of the Company's 2006 Stock Incentive Plan, as amended. Both awards will vest over a three year period based on the attainment of certain performance goals, and the options have a 10-year term. In the event of Mr. Featherstone's termination, the Agreement provides for accelerated vesting of stock options and restricted stock in certain specified cases.

Mr. Featherstone is eligible to participate in the Company's 401(k) plan and all benefit plans made available to the Company's employees and senior executives.

The Agreement provides for severance in the event Mr. Featherstone terminates his employment with the Company for "Good Reason" (as defined in the Agreement) or Mr. Featherstone's employment is terminated other than for "Cause" (as defined in the Agreement) or the inability of Mr. Featherstone to perform required services as a result of physical or mental incapacitation. Severance will be in the form of continuation of Base Salary payments and continued participation in medical and dental plans for a specified period.

The Agreement also contains customary non-competition and confidentiality provisions.

There is no arrangement or understanding between Mr. Featherstone and any other person(s) pursuant to which he was selected as Chief Financial Officer. Mr. Featherstone does not have any family relationship with any director, executive officer, or person nominated or chosen by the Company to become a director or executive officer. Other than his employment relationship, Mr. Featherstone does not have a direct or indirect material interest in any transaction in which the Company is a participant.

#### Continuation of Salary Reduction Arrangements for Certain Officers

In December 2012, the Company amended the employment agreements of the Executive Vice Chairman, Dr. George W. Taylor, and the Chief Executive Officer, Charles F. Dunleavy (each, an "Officer") to provide for a temporary salary reduction for the period running from January 1, 2013 through July 31, 2013. In July 2013, the Company and each Officer agreed to extend his temporary salary reduction period through December 31, 2013. On December 11, 2013, the Company and each officer agreed to a further extension through July 31, 2014. The other terms of their employment agreements, as modified by the prior amendments, remain unchanged.

In consideration of his agreement to accept the Extension, each Officer will receive, at his election, incentive stock options or restricted stock equal in value to his aggregate salary reduction (an "Equity Grant"). Each Equity Grant will be fully vested on the grant date and will be issued pursuant to the terms of our 2006 Stock Incentive Plan, as amended.

**Item 6. EXHIBITS**

- 10.1\* Commercialization Agreement, dated October 23, 2013, by and between Ocean Power Technologies, Inc. and Mitsui Engineering & Shipbuilding Co. Ltd.
- 31.1 Certification of Chief Executive Officer and Interim Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- 32.1 Certification of Chief Executive Officer and Interim Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- 101 The following materials formatted in eXtensible Business Reporting Language (XBRL) from Ocean Power Technologies, Inc Quarterly Report on Form 10-Q for the quarter ended October 31, 2013, filed December 13, 2013: (i) Consolidated Balance Sheets – October 31, 2013 (unaudited) and April 30, 2013, (ii) Consolidated Statements of Operations (unaudited) – Three and Six Months Ended October 31, 2013 and 2012, (iii) Consolidated Statements of Comprehensive Loss (unaudited) – Three and Six Months Ended October 31, 2013 and 2012, (iv) Consolidated Statements of Cash Flows (unaudited) – Six Months Ended October 31, 2013 and 2012, (v) Consolidated Statements of Stockholders' Equity (unaudited) – Six Months Ended October 31, 2013 and 2012 and (vi) Notes to Consolidated Financial Statements.

\* Confidential treatment has been requested for portions of this exhibit.



## SIGNATURES

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

By: /s/ Charles F. Dunleavy  
Charles F. Dunleavy  
Chief Executive Officer  
(Principal Executive Officer)  
Interim Chief Financial Officer  
(Principal Financial Officer)

Date: December 13, 2013

## EXHIBITS INDEX

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- 31.1 Certification of Chief Executive Officer and Interim Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
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- 101 The following materials formatted in eXtensible Business Reporting Language (XBRL) from Ocean Power Technologies, Inc Quarterly Report on Form 10-Q for the quarter ended October 31, 2013, filed December 13, 2013: (i) Consolidated Balance Sheets – October 31, 2013 (unaudited) and April 30, 2013, (ii) Consolidated Statements of Operations (unaudited) – Three and Six Months Ended October 31, 2013 and 2012, (iii) Consolidated Statements of Comprehensive Loss (unaudited) – Three and Six Months Ended October 31, 2013 and 2012, (iv) Consolidated Statements of Cash Flows (unaudited) – Six Months Ended October 31, 2013 and 2012, (v) Consolidated Statements of Stockholders' Equity (unaudited) – Six Months Ended October 31, 2013 and 2012 and (vi) Notes to Consolidated Financial Statements.

\* Confidential treatment has been requested for portions of this exhibit.

\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

## COMMERCIALIZATION AGREEMENT

This Commercialization Agreement (“CA”) has been entered into this October 23, 2013 (“**Effective Date**”) by and between Ocean Power Technologies, Inc. (“**OPT**”) with a place of business at 1590 Reed Road, Pennington, New Jersey, USA and Mitsui Engineering & Shipbuilding Co., Ltd. (“**MES**”) with a place of business at 6-4, Tsukiji 5-chome, Chuo-ku, Tokyo 104-8439, Japan (each a “**Party**” and collectively, the “**Parties**”).

WHEREAS, OPT and MES have entered into the Joint Development Agreement between the Parties dated January 23, 2013 (“**JDA**”);

WHEREAS, MES has passed the [\*\*\*] test on March 4, 2013 with a good result using OPT’s PowerBuoy® technology;

WHEREAS, the Parties wish to cooperate with each other in commercializing OPT’s PowerBuoy® technology including its improvements by entering into CA; and

WHEREAS, the Parties have entered into the Letter of Intent regarding this CA, dated April 26, 2013;

NOW THEREFORE, the Parties hereby confirm and agree as follows:

### Article 1 (Purpose)

The purpose of this CA is (i) to confirm the joint development within the framework of [\*\*\*] Project by the Parties, (ii) to set out the terms of the licensing and other financial arrangements of the technologies of OPT’s PowerBuoy® technology and of its Improvement as envisioned in the JDA a copy of which is attached hereto as Appendix 1, and (iii) to set out the rules on licensing after this CA and/or JDA has ended.

### Article 2 (Definitions)

Capitalized terms used herein shall have the following meanings:

- 2.1 “**AIMS**” shall mean OPT’s wave capture optimization and control systems including algorithm and associated source code for wave capture optimization.
  - 2.2 “**Collection Amount**” shall mean the amount which MES actually receives from its customer, in total or in installments, as consideration for MES sale of Products and related services to the customer. If such customer becomes insolvent, the Collection Amount includes the amount which MES receives in accordance with the insolvency procedure, such as dividends.
  - 2.3 “**Documented Purchase Price of the High Voltage Power Cable**” shall mean the purchase price of such cable from the cable supplier excluding [\*\*\*].
  - 2.4 “[\*\*\*]” shall mean [\*\*\*] as referred to in Article 5.3 of JDA.
-

\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

- 2.5 “[\*\*\*] **Contract 2013**” shall mean a contract between [\*\*\*] and MES dated March 19, 2013 on a joint research of which the research period is expected to end on March 20, 2015.
- 2.6 “[\*\*\*] **Project**” shall mean the joint research concerning the wave energy power generation between [\*\*\*] and MES pursuant to the [\*\*\*] Contract 2013 and possible subsequent contract(s) between [\*\*\*] and MES, which is expected to last until 2017 or 2018, as the case may be.
- 2.7 “[\*\*\*] **OPT’s Trademarks**” shall mean “PowerBuoy®” and/or (*Japanese katakana for “PowerBuoy”*).
- 2.8 “[\*\*\*] **PTO**” shall mean the power take-off system with respect to wave energy, which includes (i) for hardware: single line diagrams, electricity drawings, mechanical drawings, and (ii) for software: the controlling system including algorithm and associated source code for power management. For the sake of precaution, Intellectual Property Rights of PTO shall solely be owned by OPT. K-Model and N-Model are not included in the PTO within this meaning.
- 2.9 “[\*\*\*] **Term**” shall mean the term of this CA.

Unless otherwise expressly defined hereunder, all defined terms in the JDA shall also apply to this CA.

### **Article 3 (Confidential Information)**

The Parties shall keep records of new Confidential Information disclosed by one Party to the other Party after January 23, 2013 in writing, materially in the form of Appendix 2.

### **Article 4 ([\*\*\*] Project)**

The Parties shall work together on [\*\*\*] Project, including the phases pursuant to [\*\*\*] Contract 2013.

### **Article 5 (Terms and Conditions of License)**

The following terms shall apply to the licenses granted under JDA.

1. OPT agrees to make up to [\*\*\*] PowerBuoys royalty-free throughout the entire experimental phases funded by [\*\*\*] which starts in April 2013 and is expected to last until 2017 or 2018 as the case may be, on condition that such deployment is a clear requirement documented by [\*\*\*] in their contract. If more than [\*\*\*] PowerBuoys (including any parts thereof) shall be manufactured within the framework of such [\*\*\*] Project, the Royalties are payable under the terms hereunder with respect to any PowerBuoys (including any parts thereof) except for the first [\*\*\*].
-

\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

2. MES shall have the sole authority to market, manufacture, sell and maintain the OPT System for use in the MES-Territory in accordance with the terms of this CA, subject to the obligation for MES to purchase PTO from OPT under applicable terms of the JDA, this CA and the PTO-Frame Sales Agreement (as defined below). MES shall be the prime contractor in all such contracts within the MES-Territory. However, MES may not make any commitments or warranties on behalf of OPT without OPT's prior written approval.
3. For Combined Utility Solution or APB including [\*\*\*] and related services sold by MES in the MES-Territory, MES shall purchase all of its requirements for PTO units from OPT. However, MES may use the K-Model or N-Model control system for wave capture optimization or OPT's control system for wave capture optimization in conjunction with OPT's PTO subject to the various related terms and provisions in the JDA, this CA and the PTO-Frame Sales Agreement.
4. OPT shall sell, or provide technology access to, the OPT System for use in the MES-Territory only in cooperation with MES and subject to the terms of this CA, and OPT shall not license or sell the OPT System into the MES-Territory or otherwise cooperate with any third party to distribute a wave energy based electrical power generation solution in the MES-Territory.
5. MES shall not license, sell or otherwise distribute, or cooperate with any third party to distribute, a wave energy based electrical power generation solution in the MES-Territory other than the OPT System and [\*\*\*].
6. Unless otherwise agreed in writing between the Parties, each Party shall be responsible for the support to its own customers within its own territory and shall be the primary point of contact with such customers with respect to the OPT System and any APB or Combined Utility Solution.
7. Pricing and Compensation.
- 7a. PTO.

The Parties shall execute a frame agreement that sets out the terms and conditions on the sale and purchase of PTO (the "**PTO-Frame Sales Agreement**") including the terms on price, invoicing, payment and warranty. The price of PTO shall not unreasonably adversely affect each Party's ability to conduct business in their respective territories. The Parties shall exert their best efforts to execute the PTO-Frame Sales Agreement until [\*\*\*].

- 7b. Technology License Fees.

The Parties agree that there will be no initial upfront payments to OPT for use of its wave energy technology, and that there is no minimum royalty payment arrangements. However, throughout the Term of this CA, MES shall demonstrate all best efforts to sell OPT System in the MES-Territory. Royalty rates due to OPT as noted below recognize the absence of such upfront and/or minimum royalty payments. Furthermore, the Royalty rates agreed hereunder already reflect all technical and financial contributions by both Parties made in the past and which may be made in the future during the Term of JDA and/or this CA. Accordingly, Royalty payments are not and will not be made by OPT to MES [\*\*\*].

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

7c. Technology License Fees regarding Combined Utility Solution.

Royalties shall be paid by MES to OPT for sales by MES in the MES-Territory related to the Combined Utility Solution at the flat rate of [\*\*\*], multiplied by the royalty base.

If MES uses OPT's advanced wave optimization control technology such as AIMS for wave capture optimization, Royalty payable by MES to OPT related to the Combined Utility Solution will be at [\*\*\*], multiplied by the royalty base.

For Combined Utility Solution sales, the royalty base amount ("RBA") shall be an amount equal to [\*\*\*].

If MES receives payment from its customer in installments (regardless of the reason), RBA for each of the installment payment shall be [\*\*\*].

7d. Technology License Fees regarding APB.

(1) General Rule

Royalties shall be paid by MES to OPT for sales by MES in the MES-Territory related to the APB at the following rates:

[***]	[***]	[***]
[***]	[***]	[***]

\*All of these amounts are Collection Amounts

multiplied by an amount equal to [\*\*\*]. If, in the future, MES chooses to use OPT's advanced wave optimization control technology such as AIMS for wave capture optimization, the Royalty rates shown in the table above will be increased by an amount of [\*\*\*] respectively.

If MES receives payment from its customer in installments (regardless of the reason), RBA for each of the installment payment shall be [\*\*\*].

(2) Rules on [\*\*\*]

Among the APBs sold by MES, the following special rules shall apply for the [\*\*\*]:

[***]	[***]	[***]
[***]	[***]	[***]

\*All of these amounts are Collection Amounts

multiplied by an amount equal to [\*\*\*]. For the sake of precaution, MES shall purchase PTO for [\*\*\*] from OPT, just like for other APBs. If in the future, MES chooses to use OPT's advanced wave optimization control technology such as AIMS for wave capture optimization, the Royalty rates shown in the table above will be increased by an amount of [\*\*\*], respectively.

If MES receives payment from its customer in installments (regardless of the reason), RBA for each of the installment payment shall be [\*\*\*].

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

7e. K-Model or N-Model.

In the case where OPT uses K-Model or N-Model control system for wave capture optimization, no Royalty is payable by OPT to MES, because such a situation is already reflected in the net Royalty payable as agreed hereunder to OPT as provided for in Paragraphs 7c and 7d above. If OPT uses the Confidential Information of K-Model or N-Model that does not relate to any Improvement, OPT shall pay Royalty to MES, which amount shall be agreed separately.

8. Each Party shall have the reasonable discretion to establish the sale prices for the Combined Utility Solution and APB and related maintenance contracts in their respective territories. Each Party shall not disproportionately or artificially allocate discounts and costs between and among revenues associated with the Combined Utility Solution /APB and the revenues associated with such Party's other products and services in the applicable customer sales, which could have unreasonable impact on the royalty calculation hereunder.
9. Payment of Royalty shall be made on a quarterly basis. The entire Royalty regarding the Collection Amount which MES received during a quarter and calculated in accordance with Paragraph 7 hereof, shall be made within thirty (30) calendar days after elapse of the relevant quarter to the bank account designated in writing by OPT by way of wire transfer. Bank commission shall be borne by MES. Royalty payments shall be accompanied by (i) a schedule showing the applicable customer name, all amounts billed to such customer, Collection Amount and the date of receipts for each invoice, list of the open invoices that were due during the relevant quarter but not paid, and the calculation of the Royalty amount ("**Schedule**"), and (ii) copy of all invoices (including all additional invoices regarding the project, if any) regarding the Products and related services issued by MES during the relevant quarter each indicating the payment date (the "**Invoices**"), and (iii) a certificate prepared by a director of MES, certifying that the calculation of the Royalty amount described in the Schedule is true and correct ("**Director's Certificate**"). Furthermore, MES shall submit a certificate prepared by MES's external CPA with international good standing every six months certifying that the calculation of the Royalty amount described in the Schedule for the last two quarters is true and correct ("**CPA's Certificate**"). MES shall bear the cost for these certificates.

If there is a reasonable doubt concerning the Schedule, the Invoices, Director's Certificate, CPA's Certificate, or payment situation, OPT may raise questions to MES and MES shall answer to such questions in good faith. If a situation occurs in which questions regarding the royalty calculation methods and payment information as set out in Paragraph 7 and in this Paragraph are not easily resolved, the Parties shall consult each other and agree on a solution.

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10. The Royalty amounts to be paid to OPT may not be paid with deduction for withholding for or on account of any taxes or similar governmental charge (“**Withholding Taxes**”). In case Withholding Taxes shall be deducted from the Royalty, the Royalty shall be automatically grossed-up so that OPT may receive the Royalty without deduction. Further, MES shall immediately send to OPT a certified tax receipt of the Withholding Taxes issued by a competent tax authority.

#### **Article 6 (Terms and Conditions of FRR)**

The following terms and conditions shall apply to the FRR granted by OPT to MES under Article 7.1 of JDA:

1. The FRR shall not apply to [\*\*\*] or the territorial waters related thereto.
  2. When OPT receives notice from MES of a Territorial Customer opportunity, and OPT decides to pursue the business opportunity with the Territorial Customer, OPT shall on a timely basis submit to MES a request for bid (“**Tender Request**”) for any of the following that may apply to the business opportunity and the hardware or services OPT decides to supply to the business opportunity:
    - Manufacture hardware of the Product, excluding PTO, and provide its transportation to project sites.
    - Deployment of hardware at the project site.
    - Operations and maintenance activity of the structure, but not the PTO.
  3. The Tender Request submitted to MES will be made at the same time and on the same terms (including timetable, design specifications, point of delivery of hardware and location of operations and maintenance services) as such Tender Request may be made to other prospective third party suppliers (“**Third Party**”).
  4. In making the selection of appropriate supplier for the Territorial Customer business opportunity, OPT shall take into consideration applicable mandatory laws and contractual requirements, and consider the following factors (“**Factors**”) in making its selection of the supplier:
    - Overall contribution to project
    - Price
    - Quality of work and prior applicable experience
    - Ability to scale up production volumes
    - Timeliness of fabrication and delivery
    - Risk of performance by supplier
    - Others as applicable
-



\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

5. OPT agrees that if:
  - (i) the price included in MES's tender ("**MES Tender**") is no higher than the lowest price included in any other response to the Tender Request submitted by a Third Party, and the terms and conditions of the MES Tender including the Factors other than price does not contain a clause which significantly adversely affects the interest of OPT (which such interest shall be determined by OPT acting reasonably and in good faith); or
  - (ii) the terms and conditions of the MES Tender (taken as a whole, including the Factors) are in the opinion of OPT (acting reasonably and in good faith) no more disadvantageous to OPT than the terms and conditions offered by a Third Party,then OPT, if it decides to proceed with the procurement of the hardware or services detailed in the Tender Request, will (aa) accept the MES Tender for the provision of that hardware and/or services, and (bb) not procure from any Third Party any of that hardware and/or services contemplated by the Tender Request for that specific customer.
6. If the MES Tender does not meet the requirements of the preceding Paragraphs 5(i) and 5(ii) above, OPT is free to contract with any Third Party for any of the services contemplated by the Tender Request on terms no less favorable than the terms and conditions offered in the MES Tender.
7. OPT will use best efforts to offer MES the FRR in OPT-Territory. This will be at OPT's discretion and subject to local laws, regulations and contractual obligations.

#### **Article 7 (Terms on Extraterritorial Commissions)**

The following terms and conditions shall apply to the application of extraterritorial commissions set forth in Article 7.1 of JDA:

1. The commission rate will be [\*\*\*] of commission base of cash actually received by the Territorial Party from the Territorial Customer from the sale of the Products. For [\*\*\*] sales, however, the commission base shall be an amount equal to [\*\*\*].
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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

2. On a [\*\*\*], within thirty (30) days of the end of each such [\*\*\*] period, the Territorial Party will pay the commissions due to the Extraterritorial Party related to cash received from Territorial Customer during that preceding [\*\*\*] period.
3. Commission payments made each [\*\*\*] shall be accompanied by a schedule showing the Territorial Customer name, amounts paid and subject to commission, and the calculation of the commission payment.
4. The commission shall not be payable if MES is the Extraterritorial Party and the relevant territory is located in the [\*\*\*] (including the territorial waters related thereto). The commission shall not be payable if OPT is the Extraterritorial Party and the relevant territory is located in Japan (including the territorial waters related thereto).

#### Article 8 (Improvements)

1. Ratio of Co-Ownership of Intellectual Property Rights.

The ratios of Intellectual Property Rights co-ownership of the Improvements listed below are as follows:

- (1) Combined Utility Solution / PowerBuoy® PB80:  
OPT: [\*\*\*] % MES: [\*\*\*]%
- (2) [\*\*\*]\*:  
OPT: [\*\*\*] % MES: [\*\*\*]%

\*For avoidance of doubt, Intellectual Property Rights ownership ratio of [\*\*\*] shall be OPT: [\*\*\*] / MES: [\*\*\*].

2. Detailed Rules on Determination of Ratio of Co-Ownership.

The Improvement Notice pursuant to Article 5.3 of JDA shall contain the outline of the relevant Improvement and relevant analyses (including, but not limited to, the completion date of the Improvement, the other Party's Background Information used, performance impacts of the Improvement on manufacturability, reliability and the operational and maintenance costs, etc.) and detailed drawings shall be attached thereto. Each Party shall review the outline of the Improvement, associated analyses and relevant testing data, if applicable; and attached detailed drawings and/or sketches, take into account the factors to be considered listed in Article 5.3 of JDA and notify its desired ratio of co-ownership and the reason thereof to the other Party within thirty (30) days after the Improvement Notice. Upon receipt of the Improvement Notices which contain the outline and relevant analyses for the Improvement by the receiving Party, both Parties shall start technical discussions to ensure validity of the Improvement. Once agreement is reached on such validity, negotiations shall start to determine the ratio of co-ownership of each Party for the Improvement. The days spent for discussions for such validity shall be counted as ninety (90) days within the meaning of Article 5.3(ii)(aa) of JDA. The ninety (90)-day period starts to run on the date when the Improvement Notice is issued. The receiving Party shall acknowledge receipt of such Improvement Notice without delay.

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3. Filing.

In case where application for patent rights, etc. in connection with the Improvement is made, regardless of countries in which such application is made, both Parties shall jointly file the application unless the Parties agree from time to time otherwise in writing. All costs associated with filing and maintaining the joint patent, etc. shall be borne by both Parties based on proportionate ownership. For the avoidance of doubt, the registration of patent rights, etc. shall not affect the Royalty rate, etc. stipulated in Article 5 above.

4. Further Improvements.

For avoidance of doubt, if both Parties, or either Party make/makes any further improvements or develop(s) any inventions based on or using the Improvement, such further improvement shall also be regarded the same way as any other Improvement within the meaning of Article 5.3 of JDA and the standard rules (including on the ownership ratio) on the Improvement shall apply.

**Article 9 (Termination of License)**

1. When JDA and/or this CA end(s) for any reason whatsoever, all licenses for the Background Information and the co-ownership interest in Improvement granted by each Party to the other Party shall automatically expire and unless otherwise agreed in writing, each Party must not use the Background Information and the co-ownership interest in Improvement of the other Party thereafter.
2. Notwithstanding the preceding Paragraph 1, when JDA and/or this CA end(s) for any reason whatsoever and the license for the Background Information required for the use of Improvement and the co-ownership interest in Improvement pursuant to JDA and/or this CA automatically expire(s), (i) each Party will grant to the other Party a non-sub-licensable (except for (aa) Subsidiary of the relevant Party, or (bb) where the other Party gives prior written consent which consent shall not be unreasonably withheld) and non-exclusive license for its own Background Information required for the use of Improvement and its co-ownership interest in the Improvement to the extent it is necessary to use the Improvement, and (ii) each Party may use the Improvements, regardless of whether the purpose of the application is wave energy or not, only if the royalty rate of (i) above and other terms such as the period and territory is agreed by the Parties in advance in writing.

**Article 10 (Trademark)**

MES shall indicate OPT's Trademarks on all references to OPT's devices or technology that relate to Combined Utility Solutions and/or APB in its web page, brochure and all other relevant marketing and presentation materials. MES shall use due care to maintain brand image and value of OPT's Trademarks.

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

#### **Article 11 (Currencies, Late Payment Charge)**

All payments hereunder to OPT shall be made in US Dollars and all payments hereunder to MES shall be made in Japanese Yen. If either Party fails to make payment hereunder by due date, such Party shall pay the other Party interest at a rate of [\*\*\*] per annum of the unpaid amount as a late payment charge for the period from the day on which the delay occurred to the day the payment is made, together with the payment hereunder.

#### **Article 12 (Press Release)**

In case where a Party wishes to make a press release regarding the Project, such Party shall consult with the other Party in advance.

#### **Article 13 (Disclaimer)**

OPT has not made any express or implied representation or warranty with respect to OPT's PTO, the Products or any parts thereof or the other matters set forth in this CA or JDA. Any additional representations or warranties to be made by OPT will be separately negotiated as part of the PTO-Frame Sales Agreement.

#### **Article 14 (Term)**

The Term of this CA shall end upon elapse of ten (10) years after entering into this CA.

This CA may be renewed upon mutual consultation.

If JDA ends for any reason whatsoever, CA automatically ends too, and vice versa.

#### **Article 15 (Termination and Acceleration)**

1. Either Party may terminate this CA (i) if the other Party materially breaches this CA and fails to cure such breach within thirty (30) days' written notice of such breach, or (ii) in the event that the other Party is adjudicated insolvent, consents or acquiesces to the appointment of a receiver or liquidator, takes any step towards dissolution or liquidation, voluntarily or involuntarily becomes a debtor subject to proceedings under bankruptcy law, company rehabilitation law, civil rehabilitation law or other comparable law, or otherwise ceases to do business in the ordinary course. If such termination is made, the liability of the other Party hereunder shall become immediately due and payable without demand.
  2. If for [\*\*\*] after the completion of verification test in the [\*\*\*] Project (i) there are no sales of Products by MES or (ii) MES does not purchase any PTO from OPT, either Party shall have the right to terminate this CA.
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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

**Article 16 (Miscellaneous)**

1. Articles 4, 6, 9.1, 9.2, 9.5 (second sentence) and 9.8 of JDA shall also apply to this CA.
2. Article 9.7 of JDA shall also apply to this CA. For the sake of precaution, the arbitration language shall be English.
3. Article 9.3 of JDA shall remain in full force and effect. If, however, there are any conflicts between JDA and this CA, this CA shall prevail.
4. The provisions contained in Article 5 Paragraphs 9 and 10, Article 8, Article 9, Article 11, Article 13, Article 15 and Article 16 Paragraphs 1, 2 and 4 shall survive without time limit after this CA ends for whatever reason.
5. All notices and certificates to be made under or in relation to this Agreement shall be made in English.

IN WITNESS WHEREOF, the Parties have executed this CA by their duly authorized representatives as of the Effective Date.

Ocean Power Technologies, Inc.

Mitsui Engineering & Shipbuilding Co., Ltd.

/s/ Charles F. Dunleavy

\_\_\_\_\_  
Charles F. Dunleavy  
Chief Executive Officer

/s/ Osamu NIHO

\_\_\_\_\_  
Osamu NIHO  
Managing Director  
General Manager  
Business Development & Innovation Hq.

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

**Appendix 1**

Copy of the executed JDA

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

Execution Copy

## Joint Development Agreement

This Joint Development Agreement (“**Agreement**”) is made this 23<sup>rd</sup> day of January, 2013, by and between **Ocean Power Technologies, Inc. (“OPT”)** with a place of business at 1590 Reed Road, Pennington, New Jersey, USA and **Mitsui Engineering & Shipbuilding Co., Ltd. (“MES”)** with a place of business at 6-4, Tsukiji 5-chome, Chuo-ku, Tokyo 104-8439, Japan (each a “**Party**” and collectively, the “**Parties**”).

WHEREAS, MES is a leading engineering company for power generation plant, wishes to seek opportunities to expand its business opportunities as to wave power generation. MES strength includes:

- 1) World class shipbuilder as a member of prestigious Mitsui Group;
- 2) Prominent achievement in both design and manufacturing of steel structure;
- 3) Sophisticated wave tank test facility and its proven R&D track record;
- 4) A wealth of engineering resources in the field of fluid dynamics, wave absorber/generator, steel structure design and manufacturing; and
- 5) Regular recipient of advanced R&D fund from various Japanese government bodies.

WHEREAS, OPT is a developer of a leading edge, ocean-tested, proprietary system integrating its patented technologies in hydrodynamics, electronics, energy conversion and power take-off units, computer control systems, wave energy converters, underwater substations and other infrastructure, equipment and know-how to extract the natural energy of ocean waves including its PowerBuoy® technology (the foregoing and all improvements thereto, the “**OPT System**”);

WHEREAS, the Parties entered into a Memorandum of Understanding on September 10, 2009 to cooperate to develop the business market in Japan for marine renewable energy generation (the “**2009 MoU**”);

WHEREAS, the Parties entered into “Confidential Information, Inventions and Trade Secrets Agreement” dated August 6, 2010 (the “**2010 NDA**”);

WHEREAS, in 2012 the Parties have started a test of the operational viability of the OPT System and/or Combined Utility Solution which integrates the OPT System or components thereof with products and services provided by MES in the Japanese territorial waters;

WHEREAS, the Parties desire to work together to develop, commercialize and sell the Combined Utility Solution in Japan, if the [\*\*\*] Project including Combined Utility Solution passes the evaluation by [\*\*\*] to be conducted in accordance with contract dated February 29, 2012 (“[\*\*\*] Contract”) between MES and [\*\*\*] (“[\*\*\*]”) (such evaluation is expected to take place by the end of March, 2013). If the [\*\*\*] Project passes the evaluation test, it is envisioned that a new contract may be agreed between MES and [\*\*\*]; and

WHEREAS, the Parties desire to work together on other projects.

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

NOW THEREFORE, the Parties hereby confirm and agree as follows:

## **Article 1 Definitions**

Capitalized terms used herein shall have the following meanings:

- 1.1 “APB” shall mean non-grid-connected power solutions utilizing wave energy buoys using the Confidential Information of any of the Parties and/or Improvement (as defined in Article 5.3 below).
  - 1.2 “Background Information” shall mean the Confidential Information based on which Improvement was made on or after the Project Commencement Date.
  - 1.3 “Combined Utility Solution” shall mean grid-connected power solutions utilizing wave energy buoys using the Confidential Information of any of the Parties and/or Improvement.
  - 1.4 “Confidential Information” shall mean specifications, techniques, designs, plans, drawings, data, know-how, prototypes, software, formulae, results of experiments, marketing plans or other technical or business information which is disclosed to the Receiving Party and conspicuously designated by the Disclosing Party as confidential and, in case of oral disclosure, summary of which is reduced to writings within thirty (30) days after such disclosure. If the Party who received such designated information does not raise objection to the alleged confidential nature within ten (10) days after receipt of such information, it shall be deemed that such Party has agreed with the confidential nature of such information. The terms shall also be deemed to include all notes, analyses, compilations, studies, interpretations or other documents prepared by the Receiving Party which contain, reflect or are based upon, in whole or in part, the information furnished to the Receiving Party pursuant hereto. Specifications, techniques, designs, plans, drawings, data, know-how, prototypes, software, formulae, results of experiments, marketing plans or other technical or business information with respect to the Improvement shall also fall under Confidential Information.
  - 1.5 “Disclosing Party” shall mean the Party which disclosed Confidential Information held by it to the other Party.
  - 1.6 “Employees, etc.” shall mean employees, directors, designated third parties, consultants, advisors and sub-contractors.
  - 1.7 “Intellectual Property Rights” shall mean patent rights, utility model rights, design rights, layout-design exploitation rights for semiconductor integrated circuit, copyrights (which shall mean any and all rights provided in Article 21 through Article 28 of the Japanese Copyright Law and any other rights in foreign countries equivalent to the same), rights to be registered for all such rights, and know-how (which shall mean technical information which can be kept confidential and which has property value).
  - 1.8 “K-Model” shall mean the software of the controlling system including algorithm and source code developed and co-owned by MES and [\*\*\*].
  - 1.9 “MES-Territory” means Japan, Vietnam, Malaysia, the Philippines, Mozambique, South Africa and Namibia.
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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

- 1.10 “N-Model” shall mean the software of the controlling system including algorithm and source code developed by [\*\*\*] and solely owned by MES.
- 1.11 “[\*\*\*] Project” shall mean the joint research concerning the wave energy power generation between [\*\*\*] and MES pursuant to the [\*\*\*] Contract.
- 1.12 “OPT-Territory” means the whole world except for MES-Territory.
- 1.13 [\*\*\*]
- 1.14 “Products” shall mean Combined Utility Solution and APB.
- 1.15 “Project” shall mean joint development and other joint activities conducted between the Parties to cooperate, among others, in relation to the [\*\*\*] Projects as well as to the most suitable and efficient Products.
- 1.16 “Project Commencement Date” means July 1, 2008.
- 1.17 “PTO” shall mean the power take-off system with respect to wave energy, which includes (i) single line diagrams, electricity drawings, mechanical drawings, as well as (ii) the software of the controlling system including algorithm and source code. Just for the sake of precaution, disclosure of (ii) above is not intended, until the Commercial Agreement as mentioned in Article 7 is executed.
- 1.18 “Receiving Party” shall mean the Party which received Confidential Information held by the Disclosing Party from the Disclosing Party.
- 1.19 “Subsidiary” shall mean an entity or partnership of whatever legal form, in which the Party has, directly or indirectly, the simple majority of the voting power.
- 1.20 All references to days in this Agreement shall mean calendar days.
- 1.21 All references to the countries and regions in this Agreement shall mean the marine area within the exclusive economic zone of each of the relevant countries and regions.

## **Article 2**

### **Purpose of this Agreement**

The purpose of this Agreement is to (i) confirm the joint development between the Parties to cooperate with each other and jointly develop and/or market the most suitable and efficient Products, meeting the evaluation criteria of [\*\*\*] with respect to Combined Utility Solution and (ii) introduce proper rules on the protection of Confidential Information that may be disclosed from time to time between the Parties in various Project opportunities.

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

### Article 3 Communication

Each Party will designate one of its employees as the primary individual responsible for facilitating communication between the Parties including the documentation of Confidential Information (each, a “**Project Manager**”). Throughout the Term (as defined in Article 8.1 below), the Project Managers and any additional personnel they select shall regularly confer by conference call or, as mutually agreed, in person. The names and contact addresses of Project Manager of the Parties are as follows:

MES: [\*\*\*]

OPT: [\*\*\*]

### Article 4 Confidentiality

4.1 The Receiving Party shall restrict disclosure of the Confidential Information solely to the Employees, etc. with a need to know for the implementation of the Project and the [\*\*\*] Project, and not disclose such Confidential Information to any other third parties. When MES discloses to [\*\*\*] any Confidential Information of OPT in the [\*\*\*] Project, MES shall affix a “confidential” seal to the Confidential Information, demand [\*\*\*] to treat it as confidential, and further shall demand [\*\*\*] protection of the know-how under Article 31 of the Terms and Conditions of the Joint Research Agreement (“[\*\*\*] **Terms and Conditions**”) provided in Article 5, Paragraph 2 of the [\*\*\*] Contract.

4.2 The Receiving Party shall impose the Employees, etc. who receive the Confidential Information the obligation of confidentiality equivalent to those hereunder and acquire from the Employees, etc. signed letter/*(Japanese for “signed letter”)* in which the Employees, etc. declare to abide by confidentiality obligation.

4.3 The Receiving Party shall use and cause the Employees, etc. to use the same degree of care to protect the Confidential Information as is used with its own proprietary information.

4.4 Notwithstanding anything to the contrary herein, the Receiving Party shall have no obligation to preserve the confidentiality of any Confidential Information which:

- a. Was previously known to the Receiving Party free of any obligation to keep it confidential; or
  - b. Is or becomes publicly available by other than unauthorized disclosure, by the Receiving Party; or
  - c. Is independently developed by the Receiving Party; or
  - d. Is disclosed to third parties by the Disclosing Party without any confidentiality obligation; or
  - e. Is received from a third party whose disclosure thereof does not violate any confidentiality obligations; or
  - f. Is subject to subpoena or court orders.
-

\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

4.5 The Confidential Information disclosed shall at all times, namely throughout the Term of this Agreement and after this Agreement ends for whatever reason, remain the property of the Disclosing Party and the Receiving Party shall return to the Disclosing Party, upon termination of this Agreement (for whatever reason) or written demand by the Disclosing Party, any Confidential Information and all copies thereof, and will return, expunge or destroy any notes, analyses, compilation, studies, reports or other documents containing the Confidential Information, or prepared or generated from the Confidential Information by the Receiving Party. The Receiving Party shall, on written demand from the Disclosing Party, promptly certify to the Disclosing Party in writing that it has complied with the obligations hereunder.

4.6 Nothing contained in this Article shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed.

## Article 5 Intellectual Property Rights

5.1 The Receiving Party shall not use or disclose any of such Confidential Information or any related Intellectual Property Rights except for (i) the implementation of the Project, (ii) otherwise explicitly agreed in this Agreement, or (iii) where there is explicit permission in writing by the Disclosing Party. Just for the sake of precaution, all Intellectual Property Rights related to PTO of PowerBuoy® up to and as of the date hereof is owned by OPT and the trademark of PowerBuoy and katakana thereof (*Japanese katakana for "PowerBuoy"*) is and will be owned by OPT.

5.2 Notwithstanding anything to the contrary contained herein, the Parties mutually confirm that any information which each Party disclosed to the other Party after the Project Commencement Date (including relevant Intellectual Property Rights), as well as those which are listed in Appendix 5.2, are the Confidential Information and the exclusive property of the Disclosing Party.

5.3 Ownership of Improvement: If both Parties or either Party make or makes any improvements or develops any invention (together "**Improvement**") based on or using the Background Information of the other Party, the Party who made the Improvement shall notify such Improvement to the other Party in writing on a timely basis ("**Improvement Notice**"), in any event within thirty (30) days after making of the Improvement. The ownership of any Intellectual Property Rights in connection with the Improvement shall be subject to the following rules:

- (i) All Intellectual Property Rights related to the Background Information are and will be owned by the Party who discloses the same.
  - (ii) Intellectual Property Rights regarding the Improvement shall be co-owned by both Parties, and the ratio of co-ownership of each Party shall be determined upon discussion between the Parties taking into consideration the extent of contribution to Improvement as well as contributions in terms of the Background Information, human resources and financial resources etc. (aa) If no agreement can be reached on the ownership ratio within ninety (90) days after the Improvement Notice is made, the ratio shall be fixed on a [\*\*\*] basis. (bb) If no Improvement Notice is made for whatever reason within thirty (30) days after making of the Improvement, the other Party has the right to declare that the Improvement is owned on a [\*\*\*] basis.
  - (iii) Any Party may not transfer, or create any security interest in, its co-ownership interest in Improvement without explicit written consent by the other Party.
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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

The Parties shall keep the records of the Improvements materially in the form of Appendix 5.3A.

If the Intellectual Property Rights in connection with the Improvement fall under Article 33, Paragraph 1 of the [\*\*\*] Terms and Conditions, and therefore the assignment of such rights requires such procedures as approval of [\*\*\*] as provided in Article 33-3, Paragraph 1 of the [\*\*\*] Terms and Conditions, then MES shall perform such procedures for the co-ownership interest held by OPT as described above.

Just for the sake of precaution, the matters that are mentioned in Appendix 5.3B (wave energy buoys as shown in MES brochure 1211REV0-04-SBC and APBs for the purpose of [\*\*\*], both as disclosed by MES to OPT at MES offices on December 12, 2012) fall under the Improvement and thus co-owned by the Parties. The Parties may, however, consider in the Commercial Agreement the possible special treatment for APBs for the purpose of [\*\*\*].

The [\*\*\*] is the sole property of MES only if (i) it does not use any of OPT's Confidential Information and/or any OPT-MES commonly developed and owned technology, and (ii) it is used [\*\*\*]. If the [\*\*\*] uses any of OPT's Confidential Information and/or any OPT-MES commonly developed and owned technology, MES shall pay a royalty to OPT. In such a case, the license agreement shall be agreed upon separately by the Parties, but outside the framework of this Agreement.

#### 5.4 Use of Improvement

5.4.1 Principles: During the Term (as defined in Article 8.1 below), each Party shall grant to the other Party a right to use the Background Information if and to the extent it is necessary to use Improvement as well as the co-ownership interest in Improvement held by such Party under the following rules, provided that each Party can use the Background Information of the other Party and/or Improvement without following such rules if such Party uses the same solely for the implementation of the Project and the [\*\*\*] Project. After expiration or termination of this Agreement for whatever reason, each Party shall not use the Background Information of the other Party and/or Improvement, unless (i) otherwise agreed expressly in this Agreement, or (ii) there is express written consent of the other Party.

#### 5.4.2 Background Information:

(1) *If OPT is the Receiving Party*

MES grants exclusive license to use the Background Information of MES to OPT if all of the following conditions are met: (i) the territory is OPT-Territory, (ii) if the main purposes of the application is wave energy, and (iii) the Commercial Agreement as mentioned in Article 7 is executed. If the main purpose of the application is non-wave energy, a non-exclusive license to use the Background Information shall be given if and to the extent it is necessary for OPT to exercise its right to use the co-ownership interest in Improvement held by MES as licensed under Article 5.4.3 below. The terms of which shall be agreed upon on a case by case basis.

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

(2) *If MES is the Receiving Party*

OPT grants exclusive license to use the Background Information of OPT to MES if all of the following conditions are met: (i) the territory is MES-Territory, (ii) if the main purpose of the application is wave energy, and (iii) the Commercial Agreement as mentioned in Article 7 is executed. If the main purpose of the application is non-wave energy, a non-exclusive license to use the Background Information shall be given if and to the extent it is necessary for MES to exercise its right to use the co-ownership interest in Improvement held by OPT as licensed under Article 5.4.4 below. The terms of which shall be agreed upon on a case by case basis.

5.4.3 Co-ownership interest in Improvement held by MES: With regard to the co-ownership interest in Improvement held by MES, MES grants to OPT (i) exclusive license in OPT-Territory, for wave energy application, and (ii) non-exclusive license in OPT-Territory, for non-wave energy application.

5.4.4 Co-ownership interest in Improvement held by OPT: With regard to the co-ownership interest in Improvement held by OPT, OPT grants to MES (i) exclusive license in MES-Territory, regardless of whether the main purpose of the application is wave energy or not, and (ii) non-exclusive license for the whole world except for MES-Territory, for non-wave energy application.

5.4.5 Restrictions on License: No Party shall license the co-ownership interest in Improvement held by such Party to any third party except for (i) Subsidiary of the relevant Party, or (ii) where the other Party gives prior written consent which consent shall not be unreasonably withheld.

5.4.6 Restrictions on Sub-license: No Party shall sublicense the licensed rights hereunder regarding the co-ownership interest in Improvement held by the other Party as well as the other Party's Background Information associated therewith, to any third party except for (i) Subsidiary of the relevant Party, or (ii) where the other Party gives prior written consent which consent shall not be unreasonably withheld.

5.4.7 Terms and Conditions: The details of the terms and conditions of licenses of the Background Information and Improvement under Articles 5.4.2, 5.4.3, and 5.4.4 shall be determined in the Commercial Agreement (as defined in Article 7.1 below), including the calculation of Royalty (as defined in Article 7.1 below). Each Party shall not use the Background Information of the other Party and/or Improvement until such details are determined in the Commercial Agreement for any purpose other than those solely for the implementation of the Project and the [\*\*\*] Project.

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## **Article 6 Injunctive Relief**

In the event of a breach of this Agreement, each Party understands and agrees that the other Party may suffer irreparable harm and will therefore be entitled to injunctive relief to enforce this Agreement.

## **Article 7 Commercialization**

7.1 The Parties shall start the negotiation on the commercial terms of their relationship (the "**Commercial Agreement**") which shall address, among other things, the following items: licensing, distribution, territory split, revenue sharing, costs and press releases. The Commercial Agreement shall contain a clause under which MES shall purchase PTO (which may include K- model or AIMS) from OPT if MES deploys the Product in the waters of MES-Territory. The Commercial Agreement shall also contain clauses regarding a case in which one Party (the "**Extraterritorial Party**") finds a customer ("**Territorial Customer**") in the territory of the other Party (the "**Territorial Party**").

- The Party shall pay royalty ("**Royalty**") for a license to be granted by the other Party pursuant to Articles 5.4.2 through 5.4.4.
- The Extraterritorial Party must refer such Territorial Customer to the Territorial Party forthwith, but in any event no later than seven (7) days after initial customer contact. The Territorial Party shall then become the party who will be the direct point of contact with, and the contract partner of, such Territorial Customer, unless Territorial Party decides otherwise at its sole discretion. The Territorial Party shall further have the sole discretion to determine whether or not to pursue the business opportunity with such Territorial Customer. The referral mentioned in the preceding sentence shall be made by (i) notifying the contact details of the person in charge at the Territorial Customer as well as the details of the business opportunity to the Territorial Party in writing, and (ii) notifying the contact details of the Territorial Party to the Territorial Customer in writing.
- If the Territorial Party is OPT, OPT shall grant MES a first refusal right ("**FRR**") to the extent permissible under applicable mandatory law, to manufacture, transport, deploy and maintain the structure (but not the PTO) of the Products. The FRR shall not apply to [\*\*\*]. The details of the FRR shall be agreed upon in the Commercial Agreement. In this case, the Parties shall give due consideration to the purpose of the Agreement.
- In addition to the above, the Territorial Party shall pay a reasonable commission to be agreed in the Commercial Agreement to the Extraterritorial Party if the customer which the Extraterritorial Party referred to the Territorial Party actually purchases the Products from the Territorial Party. The commission shall not be payable, however, if MES is the Extraterritorial Party and the relevant territory is located in the [\*\*\*].

The Parties shall agree on the terms of the Commercial Agreement without delay, but no later than March 31, 2013.

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7.2 Each Party agrees that it will not use and/or will not permit any of its affiliated companies and any third party to use, Confidential Information it has received or may receive from the other Party, or any derivatives based on such Information (excluding technology developed or obtained independently by not using such Information) or any improvements achieved based on such Information, for any purpose other than for the Project and the [\*\*\*] Project, and shall not, among others, use it for any commercial purpose, unless the Commercial Agreement has been executed by OPT and MES.

Any use of Confidential Information of the other Party and Improvement for any purpose other than the Project and the [\*\*\*] Project is strictly subject to the execution of the Commercial Agreement.

## **Article 8 Term and Termination**

8.1 **Term:** The term of this Agreement (“**Term**”) shall end upon elapse of ten (10) years after entering into this Agreement. This Agreement may be renewed upon mutual consultation.

8.2 **Termination:** Either Party may terminate this Agreement: (i) if the other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days’ written notice of such breach; or (ii) in the event that the other Party is adjudicated insolvent, consents or acquiesces to the appointment of a receiver or liquidator, takes any step towards dissolution or liquidation, voluntarily or involuntarily becomes a debtor subject to proceedings under bankruptcy law, company rehabilitation law, civil rehabilitation law or other comparable law, or otherwise ceases to do business in the ordinary course.

## **Article 9 Miscellaneous**

9.1 This Agreement shall inure to the benefit of, and be binding upon each of the Parties hereto and their respective successors or assigns; provided, however, that this Agreement shall not be assignable by one Party without the prior written consent of the other Party.

9.2 The relationship of the Parties established under this Agreement is that of independent contractors. This Agreement shall not be construed to establish a partnership, joint venture, agency, or other similar relationship between the Parties.

9.3 This Agreement constitutes the entire understanding and agreement of the Parties with respect to its subject matter, and supersedes all prior and contemporaneous understandings and agreements including 2009 MoU and 2010 NDA, whether written or oral, with respect to such subject matter. No delay or failure by either Party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof of such Party’s rights thereafter to exercise or enforce each and every right and provision of this Agreement. No single waiver shall constitute a continuing or subsequent waiver. No waiver, modification or amendment of any provision of this Agreement shall be effective unless it is in writing and signed by the Parties.

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

9.4 For the sake of effective implementation of this Agreement, both Parties shall not compete against each other directly or indirectly regarding the development, manufacturing, marketing, selling and maintenance of the Products, by any manner. This limitation also applies to the activities of MES, among others, through [\*\*\*] For example:

- (i) MES shall not seek business opportunities in relation to wave power generation market with OPT's serious competitors without the consent by OPT.
- (ii) OPT shall not seek business opportunities in relation to wave power generation market with MES's serious competitor in [\*\*\*] without the consent by MES.

The details of the rules on the non-compete shall be agreed upon in the Commercial Agreement.

9.5 The provisions contained in Article 4 shall survive ten (10) years after this Agreement ends for whatever reason, and the provisions contained in Articles 5.1, 5.2, 5.3, 6, 7.2 and 9.7 shall survive without time limit after this Agreement ends for whatever reason. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.6 Notwithstanding anything to the contrary herein, this Agreement shall terminate if the Parties determine not to execute the Commercial Agreement and in such a case the provisions contained in Article 4 shall survive ten (10) years after the termination, and the provisions contained in Articles 5.1, 5.2, 5.3, 6, 7.2 and 9.7 shall survive without time limit after the termination.

9.7 This Agreement shall be governed and construed in accordance with the laws of the State of New York. Each Party agrees that any dispute arising out of or in connection with this Agreement, including any question regarding the existence, scope, validity or termination of this Agreement, shall be exclusively resolved by arbitration in San Francisco, California under the Arbitration Rules of the International Chamber of Commerce.

9.8 This Agreement shall be written in English and the English version shall be controlling against any Japanese version.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the date set forth above.

**Ocean Power Technologies, Inc.**

**Mitsui Engineering & Shipbuilding Co., Ltd.**

/s/ Charles F. Dunleavy  
\_\_\_\_\_  
Charles F. Dunleavy  
Chief Executive Officer

/s/ Hirotaka Ohashi  
\_\_\_\_\_  
Hirotaka Ohashi  
Deputy General Manager  
Business Development & Innovation Hq.



\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

Appendix 1.13

EXAMPLES OF [\*\*\*]

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

Appendix 1.13-1

**\*\*\* (Diagram redacted)**

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

Appendix 1.13-2

**\*\*\*] (Diagram redacted)**

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

Appendix 5.2

LIST OF CONFIDENTIAL INFORMATION

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

1. List of OPT

\*\*\*] (List redacted – two pages)

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

2. List of MES

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

Appendix 5.3A

RECORD OF IMPROVEMENTS

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Appendix 5.3B

LIST OF IMPROVEMENTS

\*\*\*

The ratio of co-ownership of the Improvements listed above shall be agreed upon in the Commercial Agreement.

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

Attachment 1

\*\*\*](Diagram redacted)

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

Attachment 2

\*\*\***(Diagram redacted)**

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\*\*\* Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

**Appendix 2**

RECORD OF NEW CONFIDENTIAL INFORMATION

DATE PROVIDED TO OPT/MES	RECIPIENT(S)	SENT BY	SUBJECT OR DESCRIPTION OF GOODS

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

I, Charles F. Dunleavy, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. I am 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. 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/ Charles F. Dunleavy

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Charles F. Dunleavy  
Chief Executive Officer  
Interim Chief Financial Officer

Date: December 13, 2013

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

In connection with the Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc. (the "Company") for the period ended October 31, 2013, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Charles F. Dunleavy, Chief Executive Officer and Interim 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/ Charles F. Dunleavy

Charles F. Dunleavy

*Chief Executive Officer*

*Interim Chief Financial Officer*

Date: December 13, 2013