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 July 31, 2024

Or

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

For the Transition Period From ______to______

Commission file number: 001-33417

OCEAN POWER TECHNOLOGIES, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware	**22-2535818**
(State or Other Jurisdiction of Incorporation or Organization)	*(I.R.S. Employer Identification No.)*

28 ENGELHARD DRIVE, SUITE B, MONROE TOWNSHIP, NJ 08831
(Address of Principal Executive Offices, Including Zip Code)

(609) 730-0400
(Registrant's Telephone Number, Including Area Code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock $0.001 par value	OPTT	NYSE American
Series A Preferred Stock Purchase Rights	N/A	NYSE American

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

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

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

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒ Smaller reporting company ☒

Emerging growth company ☐

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

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

As of September 13, 2024, the number of outstanding shares of common stock of the registrant was 97,935,748.

OCEAN POWER TECHNOLOGIES, INC.

INDEX TO FORM 10-Q

Special Note Regarding Forward-Looking Statements

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

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

- Our ability to improve, market and commercialize our products, and achieve and sustain profitability;
- our continued improvement of our proprietary technologies, and expected continued use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services;
- our ability to obtain additional funding, as and if needed, which will be subject to several factors, including market conditions, and our operating performance;
- the substantial doubt about our ability to continue as a going concern;
- our history of operating losses, which we expect to continue for at least the short term and possibly longer;
- our ability to manage challenges and expenses associated with communications and disputes with activist shareholders, including litigation;
- our ability to manage and mitigate risks associated with our internal cyber security protocols and protection of the data we collect and distribute;
- our ability to protect our intellectual property portfolio;
- the impact of inflation related to the U.S. dollar on our business, operations, customers, suppliers, manufacturers, and personnel;
- our ability to meet product enhancement, manufacturing and customer delivery deadlines and the potential impact due to disruptions to our supply chain or our ability to identify vendors that can assist with the prefabrication elements of our products, as a result of, among other things, staff shortages, order delays, and increased pricing from vendors and manufacturers;
- our estimates regarding future expenses, revenue, and capital requirements;
- our ability to identify and penetrate markets for our products, services, and solutions;
- our ability to effectively respond to competition in our targeted markets;
- our ability to establish relationships with our existing and future strategic partners which may not be successful;
- our ability to maintain the listing of our common stock on the NYSE American;
- the reliability of our technology, products and solutions;
- our ability to increase or more efficiently utilize the synergies available from our product lines:
- changes in current legislation, regulations and economic conditions that affect the demand for, or restrict the use of our products;
- our ability to expand markets across geographic boundaries;
- our ability to be successful with Federal government work which is complex due to various statutes and regulations applicable to doing business with the Federal government;
- our ability to be successful doing business internationally which requires strict compliance with applicable import, export, ITAR, anti-bribery and related statutes and regulations;
- the current geopolitical world uncertainty, including Russia's invasion of Ukraine, the Israel/Palestine conflict and recent attacks on merchant ships in the Red Sea;
- our ability to hire and retain key personnel, including senior management, to achieve our business objectives; and
- our ability to establish and maintain commercial profit margin

Any or all of our forward-looking statements in this report may turn out to be inaccurate. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. They may be affected by inaccurate assumptions we might make or unknown risks and uncertainties, including the risks, uncertainties and assumptions described in Item 1A "Risk Factors" of our Annual Report on Form 10-K for the year ended April 30, 2024, and in our subsequent reports under the Exchange Act. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this report may not occur as contemplated and actual results could differ materially from those anticipated or implied by the forward-looking statements.

Many of these factors are beyond our ability to control or predict. These factors are not intended to represent a complete list of the general or specific factors that may affect us. You should not unduly rely on these forward-looking statements, which speak only as of the date of this filing. Unless required by law, we undertake no obligation to publicly update or revise any forward-looking statements to reflect new information or future events or otherwise.

Table of Contents

PART I — FINANCIAL INFORMATION

Item 1. Financial Statements

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Balance Sheets
(in $000's, except share data)

	July 31, 2024 (Unaudited)	April 30, 2024
ASSETS		
Current assets:		
Cash and cash equivalents	$ 3,182	$ 3,151
Accounts receivable	963	796
Contract assets	477	18
Inventory	5,681	4,831
Other current assets	785	1,747
Total current assets	11,088	10,543
Property and equipment, net	3,613	3,443
Intangibles, net	3,589	3,622
Right-of-use assets, net	2,198	2,405
Restricted cash, long-term	154	154
Goodwill	8,537	8,537
Total assets	$ 29,179	$ 28,704
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 1,741	$ 3,366
Earnout payable	450	1,130
Accrued expenses	1,579	1,787
Right-of-use liabilities, current portion	926	774
Contract liabilities	445	302
Total current liabilities	5,141	7,359
Deferred tax liability	203	203
Right-of-use liabilities, less current portion	1,525	1,798
Total liabilities	6,869	9,360
Commitments and contingencies (Note 14)		
Shareholders' Equity:		
Preferred stock, $0.001 par value; authorized 5,000,000 shares, none issued or outstanding; 100,000 designated as Series A	—	—
Common stock, $0.001 par value; authorized 100,000,000 shares, issued 95,661,806 shares and 61,352,731 shares, respectively; outstanding 95,573,789 shares and 61,264,714 shares, respectively	96	61
Treasury stock, at cost; 88,017 and 88,017 shares, respectively	(369)	(369)
Additional paid-in capital	334,659	327,276
Accumulated deficit	(312,031)	(307,579)
Accumulated other comprehensive loss	(45)	(45)
Total shareholders' equity	22,310	19,344
Total liabilities and shareholders' equity	$ 29,179	$ 28,704

See accompanying notes to unaudited consolidated financial statements.

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

	Three months ended July 31,	
	2024	**2023**
Revenues	$ 1,301	$ 1,272
Cost of revenues	854	609
Gross margin	447	663
Operating expenses	4,920	8,103
Gain from change in fair value of consideration	—	(62)
Operating loss	(4,473)	(7,378)
Interest income, net	3	339
Other income	17	—
Loss before income taxes	(4,453)	(7,039)
Income tax benefit	—	—
Net loss	(4,453)	(7,039)
Basic and diluted net loss per share	$ (0.05)	$ (0.12)
Weighted average shares used to compute basic and diluted net loss per common share	81,951,002	58,723,076

See accompanying notes to unaudited consolidated financial statements.

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

	Three months ended July 31,	
	2024	**2023**
Net loss	$ (4,453)	$ (7,039)
Foreign currency translation adjustment	—	—
Total comprehensive loss	$ (4,453)	$ (7,039)

See accompanying notes to unaudited consolidated financial statements.

Ocean Power Technologies, Inc. and Subsidiaries
Consolidated Statements of Shareholders' Equity
(in $000's, except share data)
Unaudited

Three Months Ended July 31, 2024

	Common Shares		Treasury Shares		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance at May 1, 2024	61,352,731	$ 61	(88,017)	$ (369)	$ 327,276	$ (307,579)	$ (45)	19,344
Net loss	—	—	—	—	—	(4,453)	—	(4,453)
Share-based compensation	—	—	—	—	259	—	—	259
Common stock issued related to bonus and earnout payments	2,864,808	3	—	—	627	—	—	630
Issuance of common stock – AGP At The Market Offering, net of issuance costs	31,444,267	32	—	—	6,497	—	—	6,529
Balances at July 31, 2024	95,661,806	$ 96	(88,017)	$ (369)	$ 334,659	$ (312,031)	$ (45)	$ 22,310

Three Months Ended July 31, 2023

	Common Shares		Treasury Shares		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance at May 1, 2023	56,304,642	$ 56	(40,914)	$ (355)	$ 324,393	$ (280,096)	$ (45)	43,953
Net loss	—	—	—	—	—	(7,039)	—	(7,039)
Share-based compensation	—	—	—	—	401	—	—	401
Common stock issued related to bonus and earn out payments	2,403,846	3	—	—	1,247	—	—	1,250
Common stock issued upon vesting of restricted stock	68,166	—	—	—	—	—	—	—
Shares withheld for tax withholdings	—	—	(3,766)	(2)	—	—	—	(2)
Balances at Balance, July 31, 2023	58,776,654	$ 59	(44,680)	$ (357)	$ 326,041	$ (287,135)	$ (45)	$ 38,563

See accompanying notes to unaudited consolidated financial statements.

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

	Three months ended July 31, 2024	Three months ended July 31, 2023
Cash flows from operating activities:		
Net loss	$ (4,453)	$ (7,039)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation of fixed assets	204	71
Amortization of intangible assets	33	40
Amortization of right of use assets	207	135
(Accretion of discount)/amortization of premium on investments	—	(106)
Change in contingent consideration liability	—	(62)
Stock based compensation	259	401
Changes in operating assets and liabilities:		
Accounts receivable	(167)	15
Contract assets	(459)	(141)
Inventory	(850)	(686)
Other assets	962	375
Accounts payable	(1,625)	345
Earnout payable	(50)	(500)
Accrued expenses	(208)	(540)
Right-of-use liabilities	(121)	(127)
Contract liabilities	144	(171)
Net cash used in operating activities	$ (6,124)	$ (7,990)
Cash flows from investing activities:		
Redemptions of short-term investments	—	11,718
Purchases of short-term investments	—	(6,612)
Purchases of property and equipment	(374)	(133)
Net cash (used in)/provided by investing activities	$ (374)	$ 4,973
Cash flows from financing activities:		
Cash paid for tax withholding related to shares withheld	—	(2)
Proceeds from issuance of common stock - At The Market offering, net of issuance costs	$ 6,529	$ —
Net cash provided by/(used in) financing activities	$ 6,529	$ (2)
Net increase/(decrease) in cash, cash equivalents and restricted cash	$ 31	$ (3,019)
Cash, cash equivalents and restricted cash, beginning of period	$ 3,305	$ 7,103
Cash, cash equivalents and restricted cash, end of period	$ 3,336	$ 4,084
Supplemental disclosure of noncash investing and financing activities:		
Common stock issued related to bonus and earnout payments	$ 630	$ 1,250

See accompanying notes to unaudited consolidated financial statements.

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

(1) Background, Basis of Presentation and Liquidity

(a) Background

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

(b) Basis of Presentation

The accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and for interim financial information in accordance with the Securities and Exchange Commission ("SEC"), instructions to Form 10-Q and Article 8 of Regulation S-X. Accordingly, they do not include all the information and footnotes required by GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. The interim operating results are not necessarily indicative of the results for a full year or for any other interim period. Further information on potential factors that could affect the Company's financial results can be found in the Company's Annual Report on Form 10-K for the year ended April 30, 2024, as filed with the SEC and elsewhere in subsequent Exchange Act filings, including this Form 10-Q. Certain amounts have been reclassified to conform to current period presentation. This reclassification had no impact on the previously reported net loss or comprehensive loss.

(c) Going Concern Uncertainty

For the three months ended July 31, 2024, the Company incurred net losses of approximately $4.5 million, and used cash in operations of approximately $6.1 million. Cash used in operations includes cash payments of the Marine Advanced Robotics Inc. (CA), referred to herein as MAR, earnout payable of $50,000 and payment of the fiscal 2024 bonus for all employees. In addition, the Company has continued to make investments to build inventory, support order backlog and 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 could cause actual results to vary materially from expectations include, but are not limited to, performance of its products, its ability to market and commercialize its products and new products that it may develop, access to capital, technology development, scalability of technology and production, ability to attract and retain key personnel, concentration of customers and suppliers, pending or threatened litigation, and deployment risks and integration of acquisitions.

For the three months ended July 31, 2024 and through the date of filing of this Form 10-Q, management has obtained additional capital financing. Refer to Note 17 for further details on capital raises. Management believes the Company's current cash, cash equivalents, and restricted cash balances at July 31, 2024 of $3.3 million may not be sufficient to fund its planned expenditures through September 2025.

These conditions raise substantial doubt about the Company's ability to continue as a going concern. The ability to continue as a going concern is dependent upon the Company's operations in the future and/or obtaining the necessary financing to meet its obligations and repay its liabilities arising from normal business operations when they become due. The accompanying consolidated financial statements have been prepared on a basis which assumes the Company is a going concern and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from any uncertainty related to the Company's ability to continue as a going concern. Such adjustments could be material.

(2) Summary of Significant Accounting Policies

(a) Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries, Marine Advanced Robotics Inc. (CA), referred to herein as MAR, 3dent Technologies LLC (3Dent), Oregon Wave Energy Partners I LLC (DE), ReedSport OPT WavePark, LLC (OR) and Ocean Power Technologies Ltd. in the United Kingdom. ReedSport OPT WavePark, LLC (OR) and Oregon Wave Energy Partners I, LLC (DE) were dissolved during the first quarter of fiscal 2024. 3dent was sold in November 2023 and the consolidated financial statements include 3dent's results of operations for the applicable periods through the date of sale. All significant intercompany balances and transactions have been eliminated in consolidation.

(b) Use of Estimates

The preparation of the consolidated financial statements requires management of the Company to make several estimates and assumptions relating to the reported amounts of assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the period. Significant items subject to such estimates and assumptions include, among other items, stock-based compensation based on actual and projected revenues, over time revenue recognition, valuation consideration related to business combinations, including contingent consideration based on actual and projected revenues, including discount rates and present values, and other assumptions and estimates used to evaluate the recoverability of long-lived assets, goodwill and other intangible assets. Actual results could differ from those estimates.

(c) Cash, Cash Equivalents, Restricted Cash and Security Agreements and Short Term Investments

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less when purchased, to be cash equivalents. The Company invests excess cash in a money market account or in short term investments that are held-to-maturity. The Company had cash, cash equivalents and restricted cash of approximately $3.3 million as of both July 31, 2024 and April 30, 2024.

Restricted Cash and Security Agreements

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

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

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

	July 31, 2024	April 30, 2024
	(in thousands)	
Cash and cash equivalents	$ 3,182	$ 3,151
Restricted cash- long term	154	154
	$ 3,336	$ 3,305

(d) Inventory

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

(e) Accounts Receivable

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

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

(f) Property and Equipment, net

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

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

(g) Foreign Exchange Gains and Losses

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

(h) Concentration of Credit Risk

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

For the three months ended July 31, 2024 and 2023, the Company had two and four customers, respectively, whose revenues accounted for at least 10% of the Company's consolidated revenues. These revenues accounted for approximately 84% and 73% of the Company's total revenues for the respective periods.

(i) Share-Based Compensation

Costs resulting from all share-based payment transactions are recognized in the consolidated financial statements at their fair values. The aggregate share-based compensation expense recorded in the Consolidated Statements of Operations for the three months ended July 31, 2024 and 2023 was approximately $0.3 million and $0.4 million, respectively. The Company's policy is to account for forfeitures of share-based compensation as they occur.

Additionally, upon vesting of Restricted Stock Units ("RSU") that were granted to an employee, the employee is given the option to either pay the taxes themselves, or have enough shares of their RSU award withheld by the Company to cover the taxes incurred by the employee. In the event the employee elects to surrenders shares to cover the tax implication, the Company maintains those shares in the Company's treasury stock account. Shares held in the Company's Treasury stock account are not available for future RSU grants.

(j) Revenue Recognition

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

The nature of the Company's contracts may give rise to several types of variable consideration, including unpriced change orders, liquidated damages and penalties. Variable considerations can also arise from modifications to the scope of services. Variable consideration is included in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur once the uncertainty associated with the variable consideration is resolved. Estimates of variable consideration and determination of whether to include such amounts in the transaction price are based largely on the assessment of legal enforceability, performance, and any other information (historical, current, and forecasted) that is reasonably available to us. There was no variable consideration as of July 31, 2024 or 2023. The Company presents shipping and handling costs, that occur after control of the promised goods or services transfer to the customer, as fulfillment costs in costs of goods sold and regular shipping and handling activities charged to operating expenses.

The Company recognizes revenue when or as it satisfies a performance obligation by transferring a good or service to a customer, either (1) at a point in time or (2) over time. A good or service is transferred when or as the customer obtains control. The evaluation of whether control of each performance obligation is transferred at a point in time or over time is made at contract inception. Input measures such as costs incurred are utilized to assess progress against specific contractual performance obligations for the Company's services. The selection of the method to measure progress towards completion requires judgment and is based on the nature of the services to be provided. For the Company, the input method using costs or labor hours incurred best represents the measure of progress against the performance obligations incorporated within the contractual agreements. If estimated total costs on any contract project a loss, the Company charges the entire estimated loss to operations in the period the loss becomes known. The cumulative effect of revisions to revenue, estimated costs to complete contracts, including penalties, change orders, claims, anticipated losses, and others are recorded in the accounting period in which the events indicating a loss are known and the loss can be reasonably estimated. These loss projections are re-assessed for each subsequent reporting period until the project is complete. Such revisions could occur at any time and the effects may be material. During the three-month period ended July 31, 2024, the Company recognized approximately $1.2 million in revenue related to performance obligations satisfied at a point in time and approximately $0.1 million in revenue related to performance obligations satisfied over time. During the three-month period ended July 31, 2023, the Company recognized approximately $0.5 million in revenue related to performance obligations satisfied at a point in time and approximately $0.8 million in revenue related to performance obligations satisfied over-time.

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

The Company has two types of fixed-price contracts, firm fixed-price and cost-sharing. Under firm fixed-price contracts, the Company receives an agreed-upon amount for providing products and services specified in the contract, and a profit or loss is recognized depending on whether actual costs are more or less than the agreed-upon amount. Under cost-sharing contracts, the fixed amount agreed upon with the customer is only intended to fund a portion of the costs on a specific project. Under cost-sharing contracts, an amount corresponding to the revenue is recorded in cost of revenue, resulting in gross profit on these contracts of zero. The Company reports its disaggregation of revenue by contract type since this method best represents the Company's business. For the three-month periods ended July 31, 2024 and 2023, the majority of the Company's contracts were classified as firm fixed-price and the remainder were cost-sharing.

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

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

As of July 31, 2024, the Company's total remaining performance obligations, also referred to as backlog, totaled $5.3 million. The Company expects to recognize approximately 65%, or $3.4 million, of the remaining performance obligations as revenue over the next twelve months.

Existing customers are subject to ongoing credit evaluations based on payment history and other factors. If it is determined that collectability of any portion of the contract value is not probable, an analysis of variable consideration will be performed using either the most likely amount or expected value method to determine the amount of revenue that must be constrained until the scenario causing the variability has been resolved.

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

The below table represents the total revenue recognized under ASC 606 and ASC 842 for the three months ended July 31, 2024 and 2023.

	Three months ended July 31, 2024			Three months ended July 31, 2023		
	ASC 606	ASC 842	Total	ASC 606	ASC 842	Total
		(in thousands)			(in thousands)	
Product Line:						
WAM-V	$ 1,234	$ 67	$ 1,301	$ 460	$ 243	$ 703
Buoy	—	—	—	250	—	250
Services	—	—	—	319	—	319
Total	$ 1,234	$ 67	$ 1,301	$ 1,029	$ 243	$ 1,272
Region:						
North and South America	$ 1,230	$ —	$ 1,230	$ 1,029	$ 225	$ 1,254
Europe	4	67	71	—	18	18
Total	$ 1,234	$ 67	$ 1,301	$ 1,029	$ 243	$ 1,272

(k) Net Loss per Common Share

Basic and diluted net loss per share for all periods presented is computed by dividing net loss by the weighted average number of shares of common stock and common stock equivalents outstanding during the period. Due to the Company's net losses, potentially dilutive securities, consisting of options to purchase shares of common stock, warrants on common stock and unvested RSU issued to employees and non-employee directors, were excluded from the diluted loss per share calculation due to their anti-dilutive effect.

In computing diluted net loss per share on the Consolidated Statements of Operations, warrants on common stock, options to purchase shares of common stock and unvested RSUs issued to employees and non-employee directors, totaling 6,259,956 and 7,614,992 as of July 31, 2024 and 2023, respectively, were excluded from each of the computations as the effect would have been anti-dilutive due to the net loss for the periods. Share purchase rights, which include a contingency, are not included in the calculation until the contingency is resolved.

(l) Intangibles, net

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

Intangible assets are reviewed for impairment if indicators of potential impairment exist. There were no indications of potential impairment of intangible assets for either the three months ended July 31, 2024 or 2023.

(m) Goodwill

Goodwill is assessed for impairment using a qualitative or quantitative approach. The Company performs an annual impairment test of goodwill and further periodic tests to the extent indicators of impairment develop between annual impairment tests. There were no indications of potential impairment of goodwill identified for the three months ended July 31, 2024 and 2023. Where the Company uses a qualitative analysis, it considers factors that include historical financial performance, macroeconomic and industry conditions, and the legal and regulatory environment. If the qualitative assessment indicates that it is more likely than not that an impairment exists, then a quantitative assessment is also performed. The quantitative assessment requires an analysis of several estimates including future cash flows or income consistent with management's strategic business plans, annual sales growth rates and the selection of assumptions underlying a discount rate (weighted average cost of capital) based on market data available at the time to determine the fair value of the Company. If the fair value is less than the carrying amounts, an impairment charge for the difference is recorded. The Company acquired goodwill as part of its purchase of MAR. Management performed its annual qualitative assessment in fiscal year 2024 and determined that it is more likely than not that no goodwill impairment existed as of April 30, 2024.

(n) Income Taxes

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

The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained upon examination. Recognized income tax positions are measured at the largest amount that is greater than 50% likely of being realized. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. The Company records interest related to unrecognized tax benefits in interest expense and penalties in selling, general, and administrative expenses, to the extent incurred. Refer to Note 15 for additional disclosure.

(o) Accumulated Other Comprehensive Loss

The functional currency for the Company's foreign operations is the applicable local currency. The translation from the applicable foreign currencies to U.S. dollars is performed for balance sheet accounts using the exchange rates in effect at the balance sheet date and for revenue and expense accounts using an average exchange rate during the period. The unrealized gains or losses resulting from such translation are included in Accumulated Other Comprehensive Loss within Shareholders' Equity. For the three months ended July 31, 2024 and 2023, there were no amounts recorded to other comprehensive loss due to limited foreign operations.

(p) Warranty

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

(q) Product Development

Costs related to product development activities by the Company are expensed as incurred. During fiscal year 2024 the Company substantially completed its product development activities and is now primarily focused on commercial activities. The Company had approximately $0.5 million and $1.9 million in product development expense for the three months ended July 31, 2024 and 2023, respectively.

(r) Recently Issued Accounting Standards

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

In November 2023, the FASB issued ASU No. 2023-07, "Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures." This ASU improves financial reporting by requiring disclosure of incremental segment information. The new guidance is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. The guidance was effective for the Company on May 1, 2024. The Company expects to provide incremental qualitative segment-related disclosures beginning with the Company's Annual Report on Form 10-K for the fiscal year ended April 30, 2025.

(3) Accounts Receivable, Contract Assets and Contract Liabilities

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

	July 31, 2024	April 30, 2024	April 30, 2023
		(in thousands)	
Accounts receivable	$ 963	$ 796	$ 745
Contract assets	$ 477	$ 18	$ 152
Contract liabilities	$ 445	$ 302	$ 1,378

Contract Assets

Contract assets include unbilled amounts typically resulting from arrangements whereby the right to payment is conditional on completing additional tasks or services for a performance obligation. The increase in contract assets from year end is primarily a result of consulting services projects for which revenue was recognized in the current period but has not yet been billed. No impairments to contract assets were incurred during the three months ended July 31, 2024 and 2023.

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

	Three months ended July 31, 2024	Three months ended July 31, 2023
	(in thousands)	
Transferred to receivables from contract assets recognized	$ (104)	$ (377)
Revenue recognized and not billed	563	518
Net change in contract assets	$ 459	$ 141

Contract Liabilities

Contract liabilities consist of amounts invoiced to customers in excess of revenue recognized. The increase in contract liabilities from year end is primarily due to payments collected for which we have not yet recognized revenue.

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

	Three months ended July 31, 2024	Three months ended July 31, 2023
	(in thousands)	
Revenue recognized	$ (545)	$ (321)
Payments collected for which revenue has not been recognized	689	150
Net change in contract liabilities	$ 144	$ (171)

(4) Inventory

The Company holds inventory related to the production of its WAM-V® and PowerBuoy® products.

	July 31, 2024	April 30, 2024
	(in thousands)	
Raw Materials	$ 4,877	$ 4,298
Work in Process	804	397
Finished Products	$ —	$ 136
	$ 5,681	$ 4,831

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

Table of Contents

(5) Other Current Assets

Other current assets consisted of the following at July 31, 2024 and April 30, 2024:

	July 31, 2024	April 30, 2024
	(in thousands)	
Prepaid insurance	$ 178	$ 202
Prepaid software & licenses	182	224
Prepaid sales & marketing	67	124
Prepaid project costs	19	578
Prepaid inventory materials	80	414
Prepaid expenses- other	259	205
	$ 785	$ 1,747

(6) Property and Equipment, net

The components of property and equipment, net as of July 31, 2024 and April 30, 2024 consisted of the following:

	July 31, 2024	April 30, 2024
	(in thousands)	
Equipment	$ 1,567	$ 1,530
Computer equipment & software	790	790
Office furniture & equipment	422	422
Leasehold improvements	683	683
Leased WAM-V's	1,864	1,547
Leased Buoys	464	444
	5,790	5,416
Less: accumulated depreciation	(2,177)	(1,973)
	$ 3,613	$ 3,443

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

Depreciation expense was approximately $204,000 and $71,000 for the three-month periods ended July 31, 2024 and 2023, respectively.

(7) Intangible Assets

The components of intangible assets, net as of July 31, 2024 and April 30, 2024 consisted of the following:

	July 31, 2024	April 30, 2024
	(in thousands)	
Patents	$ 2,729	$ 2,729
Trademarks	2,769	2,769
	5,498	5,498
Accumulated amortization	(1,909)	(1,876)
	$ 3,589	$ 3,622

Amortization expense was approximately $33,000 and $40,000 for the three-month periods ended July 31, 2024 and 2023, respectively.

(8) Goodwill

Goodwill in the amount of $8.5 million was recognized in November 2021 related to the acquisition of MAR. There have been no additions to, or any impairment of, goodwill during the three-month periods ended July 31, 2024 and 2023.

(9) Leases

Lessor Information

As of July 31, 2024 and April 30, 2024, the Company had three WAM-V's leased to customers which have been classified as operating leases per accounting guidance contained within ASC Topic 842, "Leases", respectively. The remaining term on these operating leases is less than 2 years.

Lessee Information

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

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

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

Variable lease expenses, if any, are recorded as incurred. The operating lease cash flow payments for the three months ended July 31, 2024 and 2023 were $269,000 and $177,000, respectively.

The components of lease expense which are included in our operating expenses in the Consolidated Statement of Operations for the three months ended July 31, 2024 and 2023 were as follows:

	Three months ended July 31,	
	2024	**2023**
	(in thousands)	
Operating lease cost	$ 261	$ 157
Short-term lease cost	8	20
Total lease cost	$ 269	$ 177

Information related to the Company's right-of use assets and lease liabilities as of July 31, 2024 was as follows:

	July 31, 2024
	(in thousands)
Operating lease:	
Operating right-of-use assets, net	$ 2,198
Right-of-use liabilities- current	$ 926
Right-of-use liabilities- long term	1,525
Total lease liabilities	$ 2,451
Weighted average remaining lease term- operating leases	2.72 years
Weighted average discount rate- operating leases	8.4%

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

	July 31, 2024
	(in thousands)
Remainder of fiscal year 2025	$ 788
2026	1,847
2027	329
2028	333
2029	28
thereafter	—
Total future minimum lease payments	$ 3,325
Less imputed interest	(874)
Total	$ 2,451

(10) Accrued Expenses

Accrued expenses consisted of the following at July 31, 2024 and April 30, 2024:

	July 31, 2024	April 30, 2024
	(in thousands)	
Project costs	$ 29	$ —
Employee incentive payments	1,231	1,271
Accrued salary and benefits	80	369
Professional fees	44	—
Other	195	147
	$ 1,579	$ 1,787

(11) Warrants

Equity Classified Warrants

The underwritten public offering from April 2019 included the issuance of common stock warrants to purchase up to 4,927,680 shares of common stock that have an exercise price of $3.85 per share and expire five years from the issuance date. As of July 31, 2024, common warrants to purchase 732,500 shares of the common stock had been exercised. The remaining warrants expired prior to April 30, 2024.

(12) Share-Based Compensation

In 2015, upon approval by the Company's shareholders, the Company's 2015 Omnibus Incentive Plan (the "2015 Plan") became effective. A total of 1,332,036 shares were authorized for issuance under the 2015 Omnibus Incentive Plan, including shares available for awards under the 2006 Stock Incentive Plan remaining at the time that plan terminated, or that were subject to awards under the 2006 Stock Incentive Plan that thereafter terminated by reason of expiration, forfeiture, cancellation or otherwise. If any award under the 2006 Stock Incentive Plan or 2015 Plan expires, is cancelled, terminates unexercised or is forfeited, those shares become again available for grant under the 2015 Plan. The 2015 Plan will terminate ten years after its effective date, in October 2025, but is subject to earlier termination as provided in the 2015 Plan. At subsequent shareholder meetings, including most recently in February 2024, the shareholders approved an aggregate increase to the 2015 Plan of 2,900,000 shares resulting in total shares authorized for issuance of 7,282,036 as of July 31, 2024.

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

Stock Options

The Company estimates the fair value of each stock option award granted with service-based vesting requirements, using the Black-Scholes option pricing model, assuming no dividends, and using weighted average valuation assumptions. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant commensurate with the expected life of the award. The expected life (estimated period of time outstanding) of the stock options granted was estimated using the "simplified" method as permitted by the SEC's Staff Accounting Bulletin No. 110, *Share-Based Payment.* Expected volatility is based on the Company's historical volatility over the expected life of the stock option granted. The Company did not grant any stock options during the three months ended July 31, 2024 and 2023, respectively.

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

	Shares Underlying Options		Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (In Years)
Outstanding as of April 30, 2024	734,543	$	2.12	7.6
Granted	—	$	—	
Exercised	—	$	—	
Cancelled/forfeited	(70,269)	$	0.89	
Outstanding as of July 31, 2024	664,274	$	2.25	7.3
Exercisable as of July 31, 2024	454,056	$	2.88	6.8

As of July 31, 2024, the total intrinsic value of outstanding and exercisable options was approximately zero. As of July 31, 2024, approximately 210,000 options were unvested, which had an intrinsic value of zero and a weighted average remaining contractual term of 8.2 years. There was approximately $19,000 and $79,000 of total recognized compensation cost related to stock options during each of the three months ended July 31, 2024 and 2023, respectively. As of July 31, 2024, there was approximately $99,000 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 1.2 years.

Performance Stock Units

As of July 31, 2024, there were no performance stock units outstanding. As of April 30, 2023 there were 66,667 units outstanding which were all canceled during the quarter ended July 31, 2023. There was approximately zero and $43,000 of total recognized compensation cost related to performance stock units during the three months ended July 31, 2024 and 2023, respectively.

Restricted Stock Units

Compensation expense for RSUs is generally recorded based on the market value on the date of grant and recognized ratably over the associated service and performance period. During the three months ended July 31, 2024 and 2023, the Company granted zero and 52,500 shares, respectively, that were subject to both service-based and market-based vesting requirements.

A summary of unvested RSU's under the Stock Incentive Plans is as follows:

	Number of Shares	Weighted Average Price per Share
Unvested at April 30, 2024	5,124,529	$ 0.38
Granted/Adjusted	693,038	$ 0.09
Vested and issued	—	$
Cancelled/forfeited	(572,584)	$ 0.30
Unvested at July 31, 2024	5,244,983	$ 0.35

There was approximately $240,000 and $280,000 of total recognized compensation cost related to RSUs for the three months ended July 31, 2024 and 2023, respectively. As of July 31, 2024, there was approximately $959,000 of unrecognized compensation cost remaining related to unvested RSUs. This cost is expected to be recognized over a weighted-average period of 1.3 years.

(13) Fair Value Measurements

ASC Topic 820, "*Fair Value Measurements"* states that fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Assets and liabilities that are measured at fair value are reported using a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy maximizes the use of observable input and minimizes the use of unobservable inputs. The following is a description of the three hierarchy levels.

Level 1 Unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Level 2 Inputs other than quoted prices in active markets that are observable for the asset or liability, either directly or indirectly.

Level 3 Inputs that are unobservable for the asset or liability.

Disclosure of Fair Values

The Company's financial instruments that are not re-measured at fair value include cash, cash equivalents, restricted cash, accounts receivable, other assets, contract assets and liabilities, deposits, accounts payable, and accrued expenses. The carrying value is equal to their fair value due to the short-term nature of these accounts.

In July 2024, the Company paid $50,000 in cash and issued 2,864,808 in shares worth $0.5 million to partially satisfy the final earnout period related to our acquisition of MAR in November 2021.

Transfers into or out of any hierarchy level are recognized at the end of the reporting period in which the transfers occurred. There were no transfers between any hierarchy levels during either of the three months ended July 31, 2024 and 2023, respectively.

(14) Commitments and Contingencies

Spain Income Tax Audit

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

Litigation with Paragon Technologies, Inc.

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

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

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

(Del. Code §225 Complaint) On April 11, 2024, Paragon filed an action in the Delaware Court of Chancery against the Company, and the members of its Board of Directors, challenging the results of the 2023 Annual Meeting (concluded on February 28, 2024), alleging that a quorum was not present for the meeting. On May 7, 2024, the Company filed its answer, including that the Final Report of the Inspector of Election (which Paragon selected) confirmed that a quorum was present. On June 20, 2024, Paragon filed a Motion to Dismiss the case "without prejudice." On June 28, 2024, the Company responded to Paragon's Motion to Dismiss, claiming that the case should be dismissed: (a) "with prejudice"; or (b) "without prejudice," but in such event Paragon should reimburse OPT's fees and costs for defending the case. On July 15, 2024, Paragon filed a reply to the Company's June 28, 2024 response, claiming that its §225 Complaint had merit and should be dismissed without prejudice. The Company is awaiting the Delaware Court of Chancery's decision in this matter.

General Legal Matters

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

(15) Income Taxes

Uncertain Tax Positions

The Company accounts for income taxes in accordance with ASC 740. The guidance requires the Company to recognize in its consolidated financial statements the impact of a tax position if that position is more likely than not to be sustained upon examination, based on the technical merits of the position. The Company has no current or deferred tax due to current and projected losses for the year. The Company has appealed the results of the income tax audit in Spain for the period from 2011 to 2014, when the Company's Spanish branch was closed (see Note 14). At July 31, 2024, the Company had no uncertain tax positions. The Company does not expect any material increase or decrease in its income tax expense or benefit in the next twelve months, related to examinations or uncertain tax positions. Net operating loss and credit carry forwards since inception remain open to examination by taxing authorities and will continue to remain open for a period of time after utilization.

Tax Preservation Plan

In June 2023, in order to protect the Company's valuable tax assets related to its net operating losses from being limited or lost under Section 382 of the Internal Revenue Code, the Company adopted a Tax Benefits Preservation Plan (the "Plan"). Pursuant to the Plan, the Board declared a dividend of one preferred share purchase right (each, a "Right") for each outstanding share of common stock of the Company. The dividend was distributed to stockholders of record as of the close of business on July 11, 2023. The Plan substantially diminishes the risk that the Company's ability to utilize its net operating loss carryovers to reduce potential future federal income tax obligations may become substantially limited. The Plan is intended to act as a deterrent to any person or group acquiring beneficial ownership of 4.99% or more of the outstanding common stock without approval by potentially subjecting any such person or group to significant dilution. The Plan was approved by shareholders by a non-binding advisory vote at the Company's Annual Meeting held on February 28, 2024.

The Company determined the grant date fair value of the Rights using an option-pricing model. The amount was immaterial to the consolidated financial statements and deemed to be de minimis, and accordingly was not recorded to the financial statements.

(16) Operating Segments and Geographic Information

The Company's business consists of one reportable segment as the revenues associated with its different business lines are not material enough to justify segment reporting or to make it meaningful to investors, and the Company's chief operating decision maker does not view the Company's operations on a segment basis. The Company operates worldwide, with its U.S. operations in New Jersey and California and one operating subsidiary in the UK. Revenues and expenses are generally attributed to the operating unit that bills the customers. During each of the three months ended July 31, 2024 and 2023, the Company's primary business operations were in North America and the Middle East.

(17) Subsequent Events

On August 30, 2024, the Company held a Special Meeting of Stockholders to vote on a proposal to approve an amendment to our Certificate of Incorporation to increase the number of authorized shares of common stock, par value $.001 per share, from 100,000,000 to 200,000,000. Quorum was achieved for the meeting and the amendment was approved by our stockholders.

On September 13, 2024, the Company entered into a common stock purchase agreement (the "First RDO Purchase Agreement") with an institutional accredited investor for the sale (the "First Offering") by the Company of shares (the "First RDO Shares") of the Company's common stock, par value $0.001 per share (the "Common Stock"), for aggregate gross proceeds of $1,500,000, before deducting offering expenses payable by the Company. The First RDO Shares will be issued upon issuance of a funding notice by the Company to the investor. The First RDO Shares will be issued at a price per share of 80% of the lowest traded price of the Common Stock ten days prior to the closing date for the purchase of the shares. In addition, the Company has the right, but not the obligation, to sell to this investor up to an additional $3,500,000 of shares of Common Stock on the same pricing terms.

On September 13, 2024, the Company also entered into a common stock purchase agreement (the "Second RDO Purchase Agreement") with a separate institutional accredited investor for the sale (the "Second Offering") by the Company of shares (the "Second RDO Shares") of the Common Stock, for aggregate gross proceeds of $1,500,000, before deducting offering expenses payable by the Company. The Second RDO Shares will be issued upon issuance of a funding notice by the Company to the investor. The Second RDO Shares will be issued at a price per share of 80% of the lowest traded price of the Common Stock five days prior to the closing date for the purchase of the shares. In addition, the Company has the right, but not the obligation, to sell to this investor up to an additional $2,500,000 of shares of Common Stock on the same pricing terms.

On September 13, 2024 the Company granted an exemption from the 382 Plan (see Note 15) to the investors in the First Offering and the Second Offering noted above up to the amount of shares equal to $1.5 million divided by the offering price in each offering and shall be exempted from being an Acquiring Person, as defined in the 382 Plan.

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

The following discussion and analysis should be read in conjunction with the accompanying unaudited consolidated financial statements and related notes included in this Quarterly Report on Form 10-Q. Some of the information contained in this management's discussion and analysis is set forth elsewhere in this Form 10-Q, including information with respect to our plans and strategy for our business, pending and threatened litigation and our liquidity, includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" section of our Annual Report on Form 10-K for the year ended April 30, 2024 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 2024 refers to the year ended April 30, 2024).

Overview

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

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

In November 2023 we announced that we have substantially completed our research and development phase and are primarily focused on commercial activities. We have built a suite of products (more fully described below) that we believe will be the basis for our current and future commercial success resulting in meaningful progress in orders, pipeline, and backlog.

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

Our Solutions

Data as a Service

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

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

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

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

Maritime Domain Awareness Solution ("MDAS")

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

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

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

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

Autonomous Vehicles ("WAM-V®")

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

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

Recent Technological Advancements

In September 2024, we announced that we completed more than four months of offshore testing of our Next Generation PowerBuoy® ("PB") in the Atlantic Ocean off New Jersey. The solar and wind power equipped Next Generation PB was equipped with OPT's proprietary Artificial Intelligence capable Merrows™ suite of solutions. The system maintained 100% data uptime and the state of charge of the batteries remained over 90% throughout the deployment. During the deployment, several Intelligence, Surveillance, and Reconnaissance demonstrations for potential customers were completed.

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

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

<u>Robotics as a Service ("RaaS")</u>

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

<u>Power as a Service ("PaaS")</u>

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

Next Generation PowerBuoy® ("NextGen PB")

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

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

Legacy PB3 PowerBuoy®

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

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

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

Strategic Consulting Services

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

Strategy and Marketing

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

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

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

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

Commercial Activities

As noted above, we are now primarily focused on commercial activities. We have built a suite of products that we believe will be the basis for our current and future commercial success resulting in meaningful progress in orders, pipeline, and backlog. We continue to seek new strategic relationships and further develop our existing partnerships. We collaborate with companies that have developed or are developing in-ocean applications requiring a persistent source of power that is also capable of real time data collection, processing and communication, to address potential customer needs. For the three month periods ended July 31, 2024 and 2023, the Company had two and four customers, respectively, whose revenue accounted for at least 10% of the Company's consolidated revenue, respectively. These revenues accounted for approximately 84% and 73% of the Company's total revenue for the respective periods.

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

Recent Contracts and Commercial Activity

The following commercially notable activities occurred during the first and second quarter of fiscal 2025:

- In September 2024 we announced that we have received a further contract by the Naval Postgraduate School (NPS) in Monterey, California. This contract, which supports revenue generation in the near-term, adds to the deployment of OPT's PowerBuoy® as part of an ongoing initiative to enhance maritime domain awareness and connectivity in Monterey Bay and demonstrate the use of PowerBuoys® for multi-domain drone and communication integration. Building on the success of the previously announced NPS contract, which included installing AT&T 5G technology on a PowerBuoy®, this new order focuses on integrating advanced subsea sensors into a PowerBuoy® equipped with OPT's latest Merrows™ suite for AI capable seamless integration of Maritime Domain Awareness (MDA) across platforms and utilizing communication technologies from AT&T for NPS. The PowerBuoy® will provide carbon free, renewable energy for continuous, autonomous monitoring and data collection in one of the world's most strategically significant maritime environments
- In August 2024 we announced the signing of the latest of four new reseller agreements targeted at supporting global critical services. These agreements include opportunities for partnering with allied nations in areas like the South China Sea, previously announced efforts in Latin America and the Middle East and serving global commercial markets. These partnerships provide leverage to proactively serve the demand for our autonomous maritime technologies in geographies remote from OPT. We believe these partnerships will further accelerate our growth and drive new revenue streams.
- In August 2024 we announced a patent pending for our docking and recharging buoy technology, specifically designed for the WAM-V. This advanced system has already been successfully demonstrated, showcasing its potential to revolutionize the operational efficiency and endurance of autonomous surface vessels. This development aligns with our broader strategy to enhance the functionality and versatility of our Merrows Platform, bringing artificial intelligence capable solutions to the ocean, thereby expanding our market reach and supporting a greater range of customer needs
- In July 2024 we announced the signing of a reseller agreement with Geos Telecom, a prominent provider of maritime communication and navigation solutions in Costa Rica. This partnership marks a significant expansion of our presence in the Latin American market. We believe this agreement not only enhances our footprint in Latin America but also enables us to deliver advanced USV capabilities to a new customer base.
- In July we announced we havehad been awarded a contract for immediate delivery of a PowerBuoy equipped with Merrows in the Midde East. We had previously announced our selection as a preferred supplier for our Merrows equipped buoys in the region. We believe this order for a solar and wind powered system highlights our ability to provide carbon free, renewable Merrows platforms in most all marine environments across the globe. Offering field tested technology solutions as complementary building blocks makes it possible for our customers to integrate WAM-Vs and PowerBuoys into their operations and to put configurable ocean intelligence into their hands.

- In July 2024 we announced the signing of a reseller agreement with Survey Equipment Services, Inc. (“SES”), a specialist in the supply of Marine Survey and Navigation equipment. The agreement focuses on the provision of our WAM-Vs in the USA. This agreement allows us to leverage SES’s offering of survey and navigation equipment and deploy WAM-V’s to SES’s customer base. This partnership serves to further accelerates our growth and enables additional revenue streams.
- In July 2024 we announced a partnership with Unique Group (“Unique”), a UAE headquartered global innovator in subsea technologies and engineering, offering multiple products and services to customers in a range of industry sectors. Unique has more than 600 employees and 20 operational bases around the world. Unique Group will collaborate to deploy our WAM-V in the UAE and other countries in the Gulf Collaboration Council (“GCC”) region. Integrating our commercially available vehicles with Unique’s leading position in the offshore energy industry in the UAE will accelerate the adoption of USVs in the region. Working with Unique Group will further facilitate our efforts to deploy USVs globally.
- In June 2024 we announced the signing of an OEM agreement with Teledyne Marine, a division of Teledyne Technologies Inc. (NYSE: TDY) (“Teledyne”), a key supplier in the maritime technology inclusive of connectors, instruments, and vehicles. This strategic partnership aims to enhance our product offerings and drive innovation within the industry providing customers with a turnkey system. This agreement allows us to leverage Teledyne’s best-in-class offerings to deliver superior sensor and ocean technology products to our customers. We believe this partnership with accelerate our growth and enables additional revenue streams.
- In June 2024 we announced we launched our Global 24/7 Service Support (“Services”). We were already servicing its Artificial Intelligence Capable Maritime Domain Awareness Solution, Merrows, in regions such as Latin America and Sub-Saharan Africa. The new Services offering gives customers the opportunity for 24/7 support with tiered options to maintain operations around the globe. This new Services offering enables our customers to choose from a menu of options and determine the most cost-effective way to operate our PowerBuoys and USVs. It also positions us to add additional recurring revenues to our ongoing growth.

Business Relationships

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

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

Business Strategy

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

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

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

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

- Provide integrated turn-key solutions, purchases or leases. We believe our DaaS, RaaS and PaaS solutions, together with our platforms, are well suited to enable unmanned, autonomous (non-grid connected) offshore applications, such as intelligence, surveillance, and reconnaissance (ISR), mine counter measure operations, topside and subsea surveillance and communications, surveying, subsea equipment monitoring, early warning systems platform, subsea power and buffering, and weather and climate data collection. We have investigated and realized market demand for some of these solutions, and we intend to sell and/or lease our products to these markets as part of these broader integrated solutions. Additionally, we intend to provide services associated with our solution offerings such as paid engineering studies, value-added engineering, maintenance, remote monitoring and diagnostics, application engineering, planning, training, project management, and marine and logistics support required for our solution life cycle. As our MDAS development continues, we expect that this will also include data and cloud services, as well as Counter Unmanned Underwater Vehicle ("CUUV") WAM-V ® capability. CUUV represents emerging technologies designed to detect, track, and neutralize unmanned underwater vehicles and is an important area of growth in ensuring maritime security. Recent demonstrations successfully showcased the ability to detect multiple underwater threats, including singular and swarming micro–AUV .

- Expand customer system solution offerings through new complementary products that enable more cost-efficient deployments that make shorter missions more feasible. We are continuously innovating new solutions to deliver enhanced value to our customers, such as enhancing our MDAS and improving our deployment platforms solutions, such as our PowerBuoys® and WAM-Vs®. We have substantially completed development of our next generation PowerBuoy® that incorporates wave, wind, and solar power generation capabilities in a robust yet cost effective system that supports shorter term missions as well as the ability to operate in near shore and low wave environments. This effort was partially funded by the DOE SBIR Phase II award. In addition, we have integrated PowerBuoy® and WAM-V® capabilities, including WAM-V® recharging from a PowerBuoy®, with future plans to integrate MDAS capabilities into our WAM-Vs®, thus extending our reach and providing both fixed and mobile MDAS offerings to our customers.

- Focus WAM-Vs® on the defense and security, hydrographic survey, and surveillance industries. We are well positioned to capitalize on the growing demand for unmanned surface vehicles to provide maritime safety, security, and awareness of what is happening in the maritime domain, including surveillance, detection, classification, and identification. The ability of our WAM-Vs® to handle various payloads allows us to target navigation surveys, marine infrastructure surveys, berth clearance surveys, dredging surveys, and mining pit surveys. Near-term future markets for our WAM-Vs® include the use of WAM-Vs® for the launch of aerial drones and underwater survey equipment. WAM-Vs® are easily and economically shipped via land, air, or sea, and their modular design enables us to quickly reduce their size for storage or shipment. The ability to disassemble a WAM-V® reduces the footprint by as much as 75%, and as a result, a 20-foot container can hold four 16-foot WAM-Vs®. In addition, our 8-foot WAM-V® can be checked as baggage on a standard commercial flight. To integrate our solutions and add roaming as an option or enhancement to our MDAS, we are advancing developments to further integrate MDAS into the WAM-V® platform and develop additional autonomy capabilities.

- Focus sales efforts on key global markets in the U.S., Middle East, Latin America, and Sub-Saharan Africa. While we are marketing our products and services globally, we have focused on several key markets and applications, including U.S. and foreign defense and security applications with our MDAS offering; and the hydrographic survey market with regard to our WAM-Vs®. We believe that each of these areas has demand for our solutions, sizable end market opportunities, and high levels of industrialization and economic development. Our headquarters in Monroe Township, New Jersey and our office in Richmond, California enable us to support the geographic diversity of our customers and strengthen our dialogue with our solution partners located on both the east and west coasts of the U.S.

- Expand our relationships in key market areas through strategic partnerships and collaborations. We believe that strategic partners are an important part of expanding visibility to our products. Partnerships and collaborations can be used to improve the development of overall integrated solutions, create new market channels, expand commercial know-how and geographic footprint, and bolster our product delivery capabilities. We have formed such a relationship with several well-known groups, and we continue to seek other opportunities to collaborate with application experts from within our selected markets. These partnerships have helped us source services, such as installation expertise, and products, such as MDA enabling equipment, to meet our development and customer obligations. We have been actively pursuing additional opportunities to bring in-house skills, capabilities, and solutions that are complementary to our strategy and enable us to scale more quickly.

- Partner with fabrication, deployment and service contractors. In order to minimize our capital requirements as we scale our business, we intend to optimize and utilize state of the art fabrication, anchoring, mooring, cabling supply, and in some cases, deployment of our products and solutions. We believe this domestically distributed manufacturing and assembly approach enables us to focus on our core competencies and ensure a cost-effective product by leveraging a larger more established supply base. We continue to seek strategic partnerships regarding servicing of our products and solutions.

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

Liquidity

During the three months ended July 31, 2024, the Company incurred a net loss of approximately $4.5 million and used cash in operations of approximately $6.1 million. In addition, the Company has continued to make investments to build inventory, support order backlog and 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 could cause actual results to vary materially from expectations include, but are not limited to, performance of its products, its ability to market and commercialize its products and new products that it may develop, access to capital, technology development, scalability of technology and production, ability to attract and retain key personnel, concentration of customers and suppliers, pending or threatened litigation (including recent litigation noted above), and deployment risks and integration of acquisitions.

On March 21, 2024, the Company entered into an At-the-Market Offering Agreement with AGP with an aggregate offering price of up to $7,000,000 (the “2023 ATM Facility”). On August 30, 2024 the aggregate offering price under the 2023 ATM Facility was increased to approximately $16 million. As of July 31, 2024, the Company had received proceeds of approximately $7 million under this facility and an additional $0.7 million between July 31, 2024 and September 13, 2024. The Company’s ability to raise capital under its shelf offering is limited by the provisions of Rule 415 of the Securities Act of 1933 (Baby Shelf). This limit is currently approximately $16 million.

The Company’s current cash balance may not be sufficient to fund its planned expenditures through September 2025. These conditions raise substantial doubt about the Company’s ability to continue as a going concern. The ability to continue as a going concern is dependent upon the Company’s operations in the future and/or obtaining the necessary financing to meet its obligations and repay its liabilities arising from normal business operations when they become due. The accompanying consolidated financial statements have been prepared on a basis which assumes the Company is a going concern and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classifications of liabilities that may result from any uncertainty related to the Company’s ability to continue as a going concern. Such adjustments could be material.

Backlog

As of July 31, 2024, the Company's backlog was $5.3 million. Our backlog includes unfilled firm orders for our products and services from commercial or governmental customers. If any of our contracts were to be terminated, our backlog would be reduced by the expected value of the remaining terms of such contract.

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

Critical Accounting Policies and Estimates

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

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

For a discussion of our critical accounting estimates, see the section entitled Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the year ended April 30, 2024. There were no material changes to our critical accounting estimates or accounting policies during the three months ended July 31, 2024.

Revenue recognition

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

The nature of the Company's contracts may give rise to several types of variable consideration, including unpriced change orders, liquidated damages and penalties. Variable consideration can also arise from modifications to the scope of services. Variable consideration is included in the transaction price to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur once the uncertainty associated with the variable consideration is resolved. Our estimates of variable consideration and determination of whether to include such amounts in the transaction price are based largely on our assessment of legal enforceability, performance, and any other information (historical, current, and forecasted) that is reasonably available to us. There was no variable consideration as of July 31, 2024 or 2023. The Company presents shipping and handling costs, that occur after control of the promised goods or services transfer to the customer, as fulfillment costs in costs of goods sold and regular shipping and handling activities charged to operating expenses.

The Company recognizes revenue when or as it satisfies a performance obligation by transferring a good or service to a customer, either (1) at a point in time or (2) over time. A good or service is transferred when or as the customer obtains control. The evaluation of whether control of each performance obligation is transferred at a point in time or over time is made at contract inception. Input measures such as costs incurred are utilized to assess progress against specific contractual performance obligations for the Company's services. The selection of the method to measure progress towards completion requires judgment and is based on the nature of the services to be provided. For the Company, the input method using costs or labor hours incurred best represents the measure of progress against the performance obligations incorporated within the contractual agreements. If estimated total costs on any contract project a loss, the Company charges the entire estimated loss to operations in the period the loss becomes known. The cumulative effect of revisions to revenue, estimated costs to complete contracts, including penalties, change orders, claims, anticipated losses, and others are recorded in the accounting period in which the events indicating a loss are known and the loss can be reasonably estimated. These loss projections are re-assessed for each subsequent reporting period until the project is complete. Such revisions could occur at any time and the effects may be material. During the three month period ended July 31, 2024, the Company recognized approximately $1.2 million in revenue related to performance obligations satisfied at a point in time and approximately $0.1 million in revenue related to performance obligations satisfied over time.

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

The Company has two types of fixed-price contracts, firm fixed-price and cost-sharing. Under firm fixed-price contracts, the Company receives an agreed-upon amount for providing products and services specified in the contract, and a profit or loss is recognized depending on whether actual costs are more or less than the agreed-upon amount. Under cost-sharing contracts, the fixed amount agreed upon with the customer is only intended to fund a portion of the costs on a specific project. Under cost sharing contracts, an amount corresponding to the revenue is recorded in cost of revenue, resulting in gross profit on these contracts of zero. The Company's share of the costs is recorded as product development expense. The Company reports its disaggregation of revenue by contract type since this method best represents the Company's business. For the three month period ended July 31, 2024 and 2023, the majority of the Company's contracts were classified as firm fixed-price and the balance were cost-sharing.

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

Recently Issued Accounting Standards

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

In November 2023, the FASB issued ASU No. 2023-07, “Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures.” This ASU improves financial reporting by requiring disclosure of incremental segment information. The new guidance is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. The guidance was effective for the Company on May 1, 2024. The Company expects to provide incremental qualitative segment-related disclosures beginning with the Company’s Annual Report on Form 10-K for the fiscal year ended April 30, 2025.

Financial Operations Overview

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

We currently focus our sales efforts in key global markets in North America, South America, Europe and Asia. The following table shows the percentage of our revenues by geographical location of our customers for the three months ended July 31, 2024 and 2023.

	Three months ended July 31,	
Customer Location*	**2024**	**2023**
North America & South America	95%	99%
Europe	5%	1%
Asia & Australia	—%	—%
	100%	100%

* For U.S. Government contracts, the revenue is classified as North American however, location of operations may differ.

Cost of revenue

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

Operating Expenses

Engineering and product development costs

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

Selling, general and administrative costs

Our selling, general and administrative costs consist primarily of professional fees, salaries, stock based compensation and other personnel-related costs for employees and consultants engaged in sales and marketing of our products, and costs for executive, accounting and administrative personnel, professional fees and other general corporate expenses.

Interest income, net

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

Foreign exchange gain (loss)

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

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

We currently do not hedge our exchange rate exposure. However, we assess the anticipated foreign currency working capital requirements and capital asset acquisitions of our foreign operations and assess the need and cost to utilize financial instruments to hedge currency exposures on an ongoing basis and may hedge against exchange rate exposure in the future.

Results of Operations

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

Three months ended July 31, 2024 compared to the three months ended July 31, 2023

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 July 31, 2024 and 2023.

	Three months ended July 31,	
	2024	2023
Revenues	$ 1,301	$ 1,272
Cost of revenues	854	609
Gross margin	447	663
Operating expenses	4,920	8,103
Gain from change in fair value of consideration	—	(62)
Operating loss	(4,473)	(7,378)
Interest income, net	3	339
Other income	17	—
Loss before income taxes	(4,453)	(7,039)
Income tax benefit	—	—
Net loss	$ (4,453)	$ (7,039)

Revenues

Revenues for the three months ended July 31, 2024 and 2023 were approximately $1.3 million and $1.3 million, respectively. The slight year-over-year increase primarily reflects higher levels of revenue stemming from the sales and leases of WAM-Vs.

Cost of revenues

Cost of revenues for the three months ended July 31, 2024 and 2023 increased slightly to $0.9 million from $0.6 million, respectively. The year-over-year increase is related to a change in product mix, with current year quarterly revenue containing a larger amount of third-party equipment, and associated lower margins.

Gain from change in fair value of contingent consideration

The change in fair value of contingent consideration for the three months ended July 31, 2024 and 2023 was zero and a $0.1 million decrease in the liabilities value, respectively. The prior year adjustment was due to changes in actual and forecasted bookings relating to the MAR acquisition.

Operating expenses

Operating expenses for the three months ended July 31, 2024 and 2023 were $4.9 million and $8.1 million, respectively. The decrease of approximately $3.2 million was primarily the result of the initial benefits of the significant cost reduction activities we implemented at the end of fiscal 2024 including headcount optimization, material reductions in third party spend, and efforts to tightly control and contain costs.

Interest income

Interest income for the three months ended July 31, 2024 and 2023 was $0.0 million and $0.3 million, respectively, with the decrease primarily related to lower investment balances in the current year.

Other income

Other income for the three months ended July 31, 2024 and 2023 was $17 thousand and zero, respectively. The 2024 balance is related to proceeds received from the sale of fixed assets.

Liquidity and Capital Resources

Our cash requirements relate primarily to working capital needed to operate and grow our business including funding operating expenses. We have experienced and continue to experience negative cash flows from operations and net losses. The Company incurred net losses of $4.5 million and $7.0 million for the three months ended July 31, 2024 and 2023, respectively. Refer to “Liquidity Outlook” below for additional information.

Net cash used in operating activities

During the three months ended July 31, 2024, net cash flows used in operating activities was $6.1 million, a decrease of $1.9 million compared to net cash used in operating activities during the three months ended July 31, 2023 of $8.0 million. This primarily reflects a decrease in the net loss, of $2.5 million, partially offset by increases in inventory and timing of payments of trade payables.

In November 2023 we announced that we have substantially completed our research and development phase and are primarily focused on commercial activities. This pivot to commercial activities has enabled reallocation of headcount going forward, resulting in approximately $4.5 million in annual run rate savings, and a material reduction in third-party expenditures.

Net cash (used in)/provided by investing activities

Net cash used in investing activities during the three months ended July 31, 2024 was ($374,000), compared to $5.0 million cash provided by investing activities during the three months ended July 31, 2023. The net cash of ($374,000) million used in investing activities during the three months ended July 31, 2024 was due to the purchase of property, plan and equipment.

Net cash provided by/(used in) financing activities

Net cash provided by/(used in) financing activities during the three months ended July 31, 2024 and July 31, 2023 was $6.5 million and ($2,000), respectively. The current quarter activity was driven by the issuance of common stock under the Company’s At the Market Facility.

Effect of exchange rates on cash and cash equivalents

There was no material effect of exchange rates on cash and cash equivalents during the three months ended July 31, 2024 and July 31, 2023.

Liquidity Outlook

Since our inception, the cash flows from customer revenues have not been sufficient to fund our operations and provide the capital resources for our business. As of July 31, 2024, our year-to-date revenues were $1.3 million, our year-to-date net losses were $4.5 million, and our year-to-date net cash used in operating activities was $6.1 million.

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

- Our ability to improve, market and commercialize our products, and achieve and sustain profitability;
- our continued improvement of our proprietary technologies, and expected continued use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services;
- our ability to obtain additional funding, as and if needed, which will be subject to several factors, including market conditions, and our operating performance;
- the substantial doubt about our ability to continue as a going concern;
- our history of operating losses, which we expect to continue for at least the short term and possibly longer;
- our ability to manage challenges and expenses associated with communications and disputes with activist shareholders, including litigation;
- our ability to manage and mitigate risks associated with our internal cyber security protocols and protection of the data we collect and distribute;
- our ability to protect our intellectual property portfolio;
- the impact of inflation related to the U.S. dollar on our business, operations, customers, suppliers, manufacturers, and personnel;
- our ability to meet product enhancement, manufacturing and customer delivery deadlines and the potential impact due to disruptions to our supply chain or our ability to identify vendors that can assist with the prefabrication elements of our products, as a result of, among other things, staff shortages, order delays, and increased pricing from vendors and manufacturers;
- our estimates regarding future expenses, revenue, and capital requirements;
- our ability to identify and penetrate markets for our products, services, and solutions;
- our ability to effectively respond to competition in our targeted markets;
- our ability to establish relationships with our existing and future strategic partners which may not be successful;
- our ability to maintain the listing of our common stock on the NYSE American;
- the reliability of our technology, products and solutions;
- our ability to increase or more efficiently utilize the synergies available from our product lines:
- changes in current legislation, regulations and economic conditions that affect the demand for, or restrict the use of our products;
- our ability to expand markets across geographic boundaries;
- our ability to be successful with Federal government work which is complex due to various statutes and regulations applicable to doing business with the Federal government;
- our ability to be successful doing business internationally which requires strict compliance with applicable import, export, ITAR, anti-bribery and related statutes and regulations;
- the current geopolitical world uncertainty, including Russia's invasion of Ukraine, the Israel/Palestine conflict and recent attacks on merchant ships in the Red Sea;
- our ability to hire and retain key personnel, including senior management, to achieve our business objectives; and
- our ability to establish and maintain commercial profit margins.

Our business is capital intensive, and through July 31, 2024, we have been funding our business principally through sales of our securities. As of July 31, 2024, our cash and cash equivalents and long-term restricted cash balance was $3.3 million and we expect to fund our business with this amount and, to a lesser extent, with our cash flow generated from operations. Management believes the Company's current cash and cash equivalents, and long-term restricted cash, may not be sufficient to fund its planned expenditures through September 2025.

These conditions and events raise substantial doubt about the Company's ability to continue as a going concern for at least a period of one year from the issuance of these consolidated financial statements. The ability to continue as a going concern is dependent upon the Company's operations in the future and/or obtaining the necessary financing to meet its obligations and repay its liabilities arising from normal business operations when they become due.

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

We maintain disclosure controls and procedures that are designed to provide reasonable assurance that material information required to be disclosed in our reports that we file or submit under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required financial disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that a control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within a company have been detected.

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 CEO and CFO, of the effectiveness of the design and operation of our disclosure controls and procedures pursuant to Rule 13a-15 of the Exchange Act. Based upon that evaluation, our CEO and CFO concluded that our disclosure controls and procedures were not effective, due to the material weaknesses in internal control over financial reporting that are described in our Annual Report on form 10-K for the year ended April 30, 2024 (the "2023 10-K").

Notwithstanding such material weaknesses in internal control over financial reporting, our management, including our CEO and CFO, has concluded that our consolidated financial statements present fairly, in all material respects, our financial position, results of our operations and our cash flows for the periods presented in this Quarterly Report, in conformity with U.S. generally accepted accounting principles.

Remediation Plans

As previously described in *Part II – Item 9A – Controls and Procedures* of the 202410-K, we continue to implement a remediation plan to address the material weaknesses mentioned above. The weaknesses will not be considered remediated until the applicable controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively. Please see below for the remediation actions taken by management.

We trained our employees to reinforce the importance of a strong control environment and communicated expectations to emphasize responsibilities and the technical requirements for controls, and to set the appropriate expectations on internal controls.

We established a business process control remediation plan, which included frequent communications between our Audit Committee and senior management regarding the progression of remediation of our financial reporting and internal control environment

We are establishing IT General Controls and investing in people and technology to address gaps in IT Systems Security controls. In addition, there is now a formal process for System and Organization Controls ("SOC") Report reviews and templates that are being performed by management.

We engaged third-party consultants to assist with process mapping and internal control design.

Progress has been made against management's plan to remediate these material weaknesses, but for Management to consider a material weakness remediated, the related controls are required to function as anticipated for a minimum period which varies based upon the specified control. As part of its remediation plan, management will put mitigating controls in place to minimize risk associated with any open material weaknesses.

Changes in Internal Control Over Financial Reporting

In response to the material weaknesses described in the 2024 10-K, the Company reviewed the design of its controls and began remediation activities to alleviate the noted control deficiencies. Other than these items, there was no change in the Company's internal control over financial reporting that occurred during the quarter ended July 31, 2024, that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. *LEGAL PROCEEDINGS*

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

For information on matters in dispute, see Note 14 to the Consolidated Financial Statements under Part I, Item 1 of this report.

Item 1A. *RISK FACTORS*

The discussion of our business and operations should be read together with the risk factors contained in Item 1A of our Annual Report on Form 10-K for the year ended April 30, 2024 and set forth below in this Quarterly Report on Form 10-Q. These risk factors describe various risks and uncertainties to which we are or may become subject. These risks and uncertainties have the potential to affect our business, financial condition, results of operations, cash flows, strategies or prospects in a material and adverse manner. Except as noted below, 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 25, 2024.

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

We have incurred net losses since we began operations in 1994, including net losses of $4.5 million during the first three months of fiscal year 2025 and $7.0 million during the same three-month period in fiscal year 2024. As of July 31, 2024, we had an accumulated deficit of $312.0 million.

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

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

None.

Item 3. *DEFAULTS UPON SENIOR SECURITIES*

None.

Item 4. *MINE SAFETY DISCLOSURES*

Not applicable.

Item 5. *OTHER INFORMATION*

First Registered Direct Offering

On September 13, 2024, the Company entered into a common stock purchase agreement (the “First RDO Purchase Agreement”) with an institutional accredited investor for the sale (the “First Offering”) by the Company of shares (the “First RDO Shares”) of the Company’s common stock, par value $0.001 per share (the “Common Stock”), for aggregate gross proceeds of $1,500,000, before deducting offering expenses payable by the Company. The First RDO Shares will be issued upon issuance of a funding notice by the Company to the investor. The First RDO Shares will be issued at a price per share of 80% of the lowest traded price of the Common Stock ten days prior to the closing date for the purchase of the shares. In addition, the Company has the right, but not the obligation, to sell to this investor up to an additional $3,500,000 of shares of Common Stock on the same pricing terms.

The First RDO Purchase Agreement contains customary representations, warranties and agreements by the Company and customary conditions to closing. Pursuant to the First RDO Purchase Agreement, the Company also agreed to indemnify the purchaser against certain liabilities, including liabilities under the Securities Act and liabilities arising from breaches of representations and warranties contained therein. The First RDO Purchase Agreement also includes a covenant on the investor to vote their shares of common stock in favor of all Company director nominees and other proxy proposals, but only for so long as the investor owns more than 5% of the outstanding stock.

The Company currently intends to use the net proceeds from this sale to build additional products and solutions to meet market demand, further advance the development of new products and solutions, engage in corporate development and merger and acquisition activities, for working capital needs, capital expenditures, repayment or refinancing of indebtedness, repurchases and redemptions of securities, and for other general corporate purposes.

The First RDO Shares are being offered and sold pursuant to a prospectus supplement which will be filed in connection with a “takedown” from the Company’s shelf registration statement on Form S-3 (File No. 333-275843) declared effective on December 12, 2023.

Second Registered Direct Offering

On September 13, 2024, the Company also entered into a common stock purchase agreement (the “Second RDO Purchase Agreement”) with a separate institutional accredited investor for the sale (the “Second Offering”) by the Company of shares (the “Second RDO Shares”) of the Common Stock, for aggregate gross proceeds of $1,500,000, before deducting offering expenses payable by the Company. The Second RDO Shares will be issued upon issuance of a funding notice by the Company to the investor. The Second RDO Shares will be issued at a price per share of 80% of the lowest traded price of the Common Stock five days prior to the closing date for the purchase of the shares. In addition, the Company has the right, but not the obligation, to sell to this investor up to an additional $2,500,000 of shares of Common Stock on the same pricing terms.

The Second RDO Purchase Agreement contains customary representations, warranties and agreements by the Company and customary conditions to closing. Pursuant to the Second RDO Purchase Agreement, the Company also agreed to indemnify the purchaser against certain liabilities, including liabilities under the Securities Act and liabilities arising from breaches of representations and warranties contained therein. The Second RDO Purchase Agreement also includes a covenant on the investor to vote their shares of common stock in favor of all Company director nominees and other proxy proposals, but only for so long as the investor owns more than 5% of the outstanding stock.

The Company currently intends to use the net proceeds from this sale to build additional products and solutions to meet market demand, further advance the development of new products and solutions, engage in corporate development and merger and acquisition activities, for working capital needs, capital expenditures, repayment or refinancing of indebtedness, repurchases and redemptions of securities, and for other general corporate purposes.

The Second RDO Shares are being offered and sold pursuant to a prospectus supplement which will be filed in connection with a “takedown” from the Company’s shelf registration statement on Form S-3 (File No. 333-275843) declared effective on December 12, 2023.

Item 6. ***EXHIBIT INDEX***

5.1		Opinion of Porter Hedges LLP relating to September 13, 2024 offerings.
10.1		Form of Common Stock Purchase Agreement, dated as of September 13, 2024.
10.2		Form of Securities Purchase Agreement, dated as of September 13, 2024.
31.1		Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2		Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	*	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	*	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101		The following financial information from Ocean Power Technologies, Inc.'s Quarterly Report on Form 10-Q for the quarter ended July 31, 2024, formatted in eXtensible Business Reporting Language (XBRL): (i) Consolidated Balance Sheets – July 31, 2024 (unaudited) and April 30, 2021, (ii) Consolidated Statements of Operations (unaudited) – three and three months ended July 31, 2024 and 2023, (iii) Consolidated Statements of Comprehensive Loss (unaudited) – three and three months ended July 31, 2024 and 2021, (iv) Consolidated Statement of Shareholders' Equity (unaudited) – three and three months ended July 31, 2024 and 2023 (v) Consolidated Statements of Cash Flows (unaudited) –three months ended July 31, 2024 and 2023, (vi) Notes to Consolidated Financial Statements.**
101.INS		Inline XBRL Instance Document
101.SCH		Inline XBRL Taxonomy Extension Schema Document
101.CAL		Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF		Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB		Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE		Inline XBRL Taxonomy Extension Presentation Linkbase Document
104		Cover Page Interactive Data File (embedded within the Inline XBRL document)

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

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

As permitted by Regulation S-K, Item 601(b)(10)(iv) of the Securities Exchange Act of 1934, as amended, certain confidential portions of this exhibit have been redacted from the publicly filed document. The Company agrees to furnish supplementally an unredacted copy of the exhibit to the Securities and Exchange Commission upon its request.

SIGNATURES

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

	Ocean Power Technologies, Inc.
	(Registrant)
Date: September 16, 2024	*/s/ Philipp Stratmann*
	By: Philipp Stratmann *President and Chief Executive Officer*
Date: September 16, 2024	*/s/ Robert Powers*
	By: Robert Powers *Senior Vice President and Chief Financial Officer*

Exhibit 5.1

PORTER | HEDGES

1000 Main Street, 36th Floor
Houston, Texas 77002
Telephone {713} 226-6000
Telecopier {713} 228-1331
porterhedges.com

Sepetmber 16, 2024

014660/0024

Ocean Power Technologies, Inc.
28 Engelhard Drive, Suite B
Monroe Township, NJ 08831

Ladies and Gentlemen:

We have acted as counsel to Ocean Power Technologies, Inc., a Delaware corporation (the "***Company***"), in connection with the preparation for filing with the Securities and Exchange Commission (the "***Commission***") of a prospectus supplement (the "***Prospectus Supplement***") under the Securities Act of 1933, as amended (the "***Act***"), related to the Company's shelf registration statement on Form S-3 (Registration No. 333-275843) (as amended, the "***Registration Statement***"). The Prospectus Supplement relates to the issuance by the Company of up to $3,000,000 of shares (the "***Shares***") of common stock, par value $0.001 per share, of the Company (the "***Common Stock***"). The Shares are being sold by the Company pursuant to a securities purchase agreement (the "***SPA***") and a common stock purchase agreement (the "***CSPA***") entered into by and between the Company and separate accredited institutional investors.

For purposes of the opinions we express below, we have examined the originals or copies, certified or otherwise identified, of: (i) the Certificate of Incorporation and Bylaws, each as amended to date, of the Company; (ii) the Registration Statement; (iii) the Prospectus Supplement; and (iv) the corporate records of the Company, including minute books of the Company, certificates of public officials and of representatives of the Company, statutes and other instruments and documents as we considered appropriate for purposes of the opinions hereafter expressed. In giving such opinions, we have relied upon certificates of officers of the Company and of public officials with respect to the accuracy of the material factual matters contained in such certificates. In giving the opinions below, we have assumed that the signatures on all documents examined by us are genuine, that all documents submitted to us as originals are accurate and complete, that all documents submitted to us as copies are true and correct copies of the originals thereof and that all information submitted to us was accurate and complete.

In making our examination, we have assumed and have not verified (i) that all signatures on documents examined by us are genuine, (ii) the legal capacity of all natural persons, (iii) the authenticity of all documents submitted to us as originals and (iv) the conformity to the original documents of all documents submitted to us as copies thereof.

Based on the foregoing, and subject to the assumptions, exceptions and qualifications set forth herein, we are of the opinion that, when (i) the Prospectus Supplement has been delivered and filed as required by such laws; (ii) the board of directors of the Company has taken all necessary corporate action to authorize the issuance of the Shares and related matters; (iii) when the Shares have been duly delivered against payment therefor in accordance with the SPA and the CSPA, then the Shares will be validly issued, fully paid and nonassessable.

The opinions set forth above are limited in all respects to matters of the General Corporation Law of the State of Delaware and applicable federal law.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement. We also consent to the references to our Firm under the heading “Legal Matters” in the prospectus included in the Registration Statement. In giving this consent, we do not hereby admit we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Porter Hedges LLP

PORTER HEDGES LLP

Exhibit 10.1

COMMON STOCK PURCHASE AGREEMENT

The COMMON STOCK PURCHASE AGREEMENT (the "Agreement"), dated as of September 13, 2024, by and between Ocean Power Technologies, Inc., a Delaware corporation (the "Company"), and TRITON FUNDS LP, a Delaware limited partnership (the "Investor").

RECITALS

WHEREAS, subject to the terms and conditions set forth in this Agreement, the Company wishes to sell to the Investor, and the Investor wishes to buy from the Company, up to $5,000,000 of the Company's registered Common Stock, $0.001 par value per share (the "Common Stock"). The shares of Common Stock to be acquired hereunder are referred to herein as the "Securities."

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Investor hereby agree as follows:

ARTICLE I
CERTAIN DEFINITIONS

Section 1.1 DEFINED TERMS. As used in this Agreement, the following terms shall have the following meanings specified or indicated (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Administrative Fee" shall mean a $20,000 payment from Company to Investor upon execution of this Agreement.

"Affiliate" shall mean, with respect to a Party, any individual, a corporation or any other legal entity, directly or indirectly, controlling, controlled by or under common control with such Party. For purpose of this definition, the term "*control*," as used with respect to any corporation or other entity, means (a) direct or indirect ownership of fifty percent (50%) or more of the securities or other ownership interests representing the equity voting stock or general partnership or membership interest of such corporation or other entity or (b) the power to direct or cause the direction of the management or policies of such corporation or other entity, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" shall have the meaning specified in the preamble hereof.

"Bankruptcy Law" means Title 11, U.S. Code, or any similar federal or state law for the relief of debtors.

"Beneficial Ownership Limitation" shall have the meaning specified in Section 7.2(g).

"Business Day" shall mean a day on which the Principal Market shall be open for business.

"Clearing Costs" shall mean all the Transfer Agent costs with respect to the deposit of the Purchase Notice Shares.

"Closing" shall mean any one of the closings of a purchase and sale of shares of Common Stock pursuant to Section 2.2.

"Closing Date" shall mean the date a Closing occurs.

"Commitment Period" shall mean the period commencing on the date hereof and ending on the earlier of (i) October 30, 2024, or (ii) the date on which the Investor shall have purchased Purchase Notice Shares pursuant to this Agreement for an aggregate purchase price of the Investment Amount.

"Common Stock" shall mean the Company's common stock, $0.001 par value per share.

"Common Stock Equivalents" means any securities of the Company entitling the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Company" shall have the meaning specified in the preamble to this Agreement.

"Custodian" means any receiver, trustee, assignee, liquidator, or similar official under any Bankruptcy Law.

"Current Report" has the meaning set forth in Section 6.2.

"Damages" shall mean any loss, claim, damage, liability, cost and expense (including, without limitation, reasonable attorneys' fees and disbursements and costs and expenses of expert witnesses and investigation).

"DTC" shall mean The Depository Trust Company, or any successor performing substantially the same function for the Company.

"DTC/FAST Program" shall mean the DTC's Fast Automated Securities Transfer Program.

"DWAC" shall mean Deposit Withdrawal at Custodian as defined by the DTC.

"DWAC Eligible" shall mean that (a) the Common Stock is eligible at DTC for full services pursuant to DTC's operational arrangements, including, without limitation, transfer through DTC's DWAC system, (b) the Company has been approved (without revocation) by the DTC's underwriting department, (c) the Transfer Agent is approved as an agent in the DTC/FAST Program, (d) the Securities are otherwise eligible for delivery via DWAC, and (e) the Transfer Agent does not have a policy prohibiting or limiting delivery of the Securities, as applicable, via DWAC.

"DWAC Shares" means shares of Common Stock that are (i) issued in electronic form, (ii) freely tradable and transferable and without restriction on resale and (iii) timely credited by the Company to the Investor's or its designee's specified DWAC account with DTC under the DTC/FAST Program, or any similar program hereafter adopted by DTC performing substantially the same function.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Execution Date" shall mean the date of the last signature of this Agreement.

"Investment Amount" shall mean $5,000,000.

"Investor" shall have the meaning specified in the preamble to this Agreement.

"Lien" means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right, or other restriction.

"Material Adverse Effect" shall mean any effect on the business, operations, properties, or financial condition of the Company that is material and adverse to the Company and/or any condition, circumstance, or situation that would prohibit or otherwise materially interfere with the ability of the Company to enter into and perform its obligations under any Transaction Document.

"Party" shall mean a party to this Agreement.

"Person" shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Principal Market" shall mean any of the national exchanges (i.e., NYSE, AMEX, Nasdaq), or principal quotation systems (i.e., OTCQX, OTCQB, OTC Pink, the OTC Bulletin Board), or other principal exchange or recognized quotation system which is at the time the principal trading platform or market for the Common Stock.

"Purchase Notice Amount" shall mean the Purchase Notice Shares referenced in the Purchase Notice multiplied by the Purchase Price in accordance with Section 2.1.

"Purchase Notice" shall mean a written notice from Company, substantially in the form of Exhibit A hereto, to the Investor setting forth the Purchase Notice Shares which the Company requires the Investor to purchase pursuant to the terms of this Agreement.

"Purchase Notice Date" shall have the meaning specified in Section 2.2(a).

"Purchase Notice Shares" shall mean all shares of Common Stock that the Company shall be entitled to issue as set forth in all Purchase Notices in accordance with the terms and conditions of this Agreement.

"Purchase Price" shall mean the 80% of the lowest traded price of the Common Stock ten (10) days prior to the Closing Date.

"Registration Statement" shall have the meaning specified in Section 6.3.

"Regulation D" shall mean Regulation D promulgated under the Securities Act.

"Rule 144" shall mean Rule 144 under the Securities Act or any similar provision then in force under the Securities Act.

"SEC" shall mean the United States Securities and Exchange Commission.

"SEC Documents" shall have the meaning specified in Section 4.5.

"Securities" mean the Purchase Notice Shares to be issued to the Investor pursuant to the terms of this Agreement.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Subsidiary" means any Person the Company wholly-owns or controls, or in which the Company, directly or indirectly, owns a majority of the voting stock or similar voting interest, in each case that would be disclosable pursuant to Item 601(b)(21) of Regulation S-K promulgated under the Securities Act.

"Transaction Documents" shall mean this Agreement and all exhibits hereto and thereto.

"Transfer Agent" shall mean the current transfer agent of the Company, and any successor transfer agent of the Company.

All such determinations shall be appropriately adjusted for any share dividend, share split, share combination, recapitalization, or other similar transaction during such period.

ARTICLE II
PURCHASE AND SALE OF COMMON STOCK

Section 2.1 PURCHASE NOTICES.

(a) PURCHASE NOTICES. Subject to the conditions set forth herein, at any time during the Commitment Period, the Company shall have the right, but not the obligation, to direct the Investor, by its delivery to the Investor of a Purchase Notice from time to time, to purchase, and the Investor shall have the obligation to purchase from the Company, the number of Purchase Notice Shares set forth on the Purchase Notice at the Purchase Price, provided that the amount of Purchase Notice Shares shall not exceed the Beneficial Ownership Limitation set forth in Section 7.2(g). The Company may not deliver a subsequent Purchase Notice until the Closing of an active Purchase Notice, except if waived by the Investor in writing.

Section 2.2 MECHANICS.

(a) PURCHASE NOTICE. In accordance with Section 2.1 and 2.2(b) below, and subject to the satisfaction of the conditions set forth in Section 7.2, the Company shall deliver the Purchase Notice Shares, as DWAC Shares to the Investor, alongside the delivery of each Purchase Notice by email. A Purchase Notice shall be deemed delivered on (i) the Business Day that the Purchase Notice has been received by email by the Investor if both conditions are met on or prior to 8:00 a.m. New York time or (ii) the next Business Day if the conditions are met after 8:00 a.m. New York time on a Business Day or at any time on a day which is not a Business Day (the "Purchase Notice Date").

(b) DELIVERY OF PURCHASE NOTICE SHARES. No later than 8:00 a.m. New York time on the Business Day of the Purchase Notice Date, the Company shall deliver the Purchase Notice Shares as DWAC Shares to the Investor.

(c) CLOSING. The Closing of a Purchase Notice shall occur no later than five (5) Business Days after a Purchase Notice Date. For each Purchase Notice, upon the terms and subject to the conditions set forth herein, the Investor will pay the Purchase Notice Amount via wire transfer of immediately available funds on the Closing Date. All payments made under this Agreement shall be made in lawful money of the United States of America or wire transfer of immediately available funds to such account as the Company may from time to time designate by written notice in accordance with the provisions of this Agreement. Whenever any amount expressed to be due by the terms of this Agreement is due on any day that is not a Business Day, the same shall instead be due on the next succeeding day that is a Business Day.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF INVESTOR

The Investor represents and warrants the following to the Company:

Section 3.1 INTENT. The Investor is entering into this Agreement for its own account and the Investor has no present arrangement (whether or not legally binding) at any time to sell the Securities to or through any Person in violation of the Securities Act or any applicable state securities laws; provided, however, that the Investor reserves the right to dispose of the Securities at any time in accordance with federal and state securities laws applicable to such disposition.

Section 3.2 NO LEGAL ADVICE FROM THE COMPANY. The Investor acknowledges that it has had the opportunity to review this Agreement and the transactions contemplated by this Agreement with its own legal counsel and investment and tax advisors. The Investor is relying solely on such counsel and advisors and not on any statements or representations of the Company or any of its representatives or agents for legal, tax or investment advice with respect to this investment, the transactions contemplated by this Agreement or the securities laws of any jurisdiction.

Section 3.3 ACCREDITED INVESTOR. The Investor is an accredited investor as defined in Rule 501(a)(3) of Regulation D, and the Investor has such experience in business and financial matters that it is capable of evaluating the merits and risks of an investment in Securities. The Investor acknowledges that an investment in the Securities is speculative and involves a high degree of risk.

Section 3.4 AUTHORITY. The Investor has the requisite power and authority to enter into and perform its obligations under the Transaction Documents and to consummate the transactions contemplated hereby and thereby. The execution and delivery of the Transaction Documents and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action and no further consent or authorization of the Investor is required. The Transaction Documents to which it is a party has been duly executed by the Investor, and when delivered by the Investor in accordance with the terms hereof, will constitute the valid and binding obligation of the Investor enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

Section 3.5 NOT AN AFFILIATE. The Investor is not an officer, director or "affiliate" (as that term is defined in Rule 405 of the Securities Act) of the Company.

Section 3.6 ORGANIZATION AND STANDING. The Investor is an entity duly formed, validly existing, and in good standing under the laws of the State of Delaware with full right and limited partnership or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents.

Section 3.7 ABSENCE OF CONFLICTS. The execution and delivery of the Transaction Documents and the consummation of the transactions contemplated hereby and thereby and compliance with the requirements hereof and thereof, will not (a) violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Investor, (b) violate any provision of any indenture, instrument or agreement to which the Investor is a party or is subject, or by which the Investor or any of its assets is bound, or conflict with or constitute a material default thereunder, (c) result in the creation or imposition of any lien pursuant to the terms of any such indenture, instrument or agreement, or constitute a breach of any fiduciary duty owed by the Investor to any third party, or (d) require the approval of any third-party (that has not been obtained) pursuant to any material contract, instrument, agreement, relationship or legal obligation to which the Investor is subject or to which any of its assets, operations or management may be subject.

Section 3.8 DISCLOSURE; ACCESS TO INFORMATION. The Investor had an opportunity to review copies of the SEC Documents filed on behalf of the Company and has had access to all publicly available information with respect to the Company.

Section 3.9 MANNER OF SALE. At no time was the Investor presented with or solicited by or through any leaflet, public promotional meeting, television advertisement or any other form of general solicitation or advertising.

Section 3.10 NO DISQUALIFICATION EVENTS. None of the Investor, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Investor participating in the offering contemplated hereby, any beneficial owner of 20% or more of the Investor's outstanding voting equity securities, calculated on the basis of voting power (each, an "Investor Covered Person") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3) under the Securities Act. The Investor has exercised reasonable care to determine whether any Investor Covered Person is subject to a Disqualification Event.

Section 3.11 RELIANCE ON EXEMPTIONS. The Investor understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of U.S. federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Investor's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Investor set forth herein in order to determine the availability of such exemptions and the eligibility of the Investor to acquire the Securities. The Investor understands that (i) the Securities may not be offered for sale, sold, assigned or transferred unless (A) registered pursuant to the Securities Act or (B) an exemption exists permitting such Securities to be sold, assigned or transferred without such registration; and (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the SEC thereunder.

Section 3.12 STATUTORY UNDERWRITER STATUS. The Investor acknowledges that it will be disclosed as an "underwriter" in each Registration Statement and in any Prospectus contained therein to the extent required by applicable law and to the extent the Prospectus is related to the resale of the Securities.

Section 3.13 RESALES OF SECURITIES. The Investor represents, warrants and covenants that it will resell such Securities only (i) pursuant to the Registration Statement and the Prospectus in which the resale of such Securities is registered under the Securities Act, in a manner described under the caption "Plan of Distribution" in such Registration Statement and the Prospectus in substantially the form annexed hereto, and in a manner in compliance with all applicable U.S. federal and state securities laws, rules and regulations, including, without limitation, any applicable prospectus delivery requirements of the Securities Act, or (ii) in compliance with some other exemption under the Securities Act.

Section 3.14 EFFECTIVE REGISTRATION STATEMENT. The Investor is solely relying on the Registration Statement, the Prospectus, and the SEC Documents, in determining whether to acquire the Purchase Notice Shares.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the SEC Documents, the Company represents and warrants the following to the Investor, as of the Execution Date:

Section 4.1 ORGANIZATION OF THE COMPANY. The Company is an entity duly incorporated or otherwise organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. The Company is not in violation or default of any of the provisions of its certificate of incorporation, bylaws or other organizational or charter documents. The Company is duly qualified to conduct business and is in good standing as a foreign corporation in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in a Material Adverse Effect and no proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification. Other than as listed on Exhibit 21.1 of the Company's most recent annual report on Form 10-K, the Company has no Subsidiaries.

Section 4.2 AUTHORITY. The Company has the requisite corporate power and authority to enter into and perform its obligations under the Transaction Documents. The execution and delivery of the Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action and no further consent or authorization of the Company or its Board of Directors or shareholders is required. The Transaction Documents have been duly executed and delivered by the Company and constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

Section 4.3 CAPITALIZATION. As of the date hereof, the authorized capital stock of the Company consists of 200,000,000 shares of Common Stock, of which 98,023,765 shares are issued and outstanding, and 5,000,000 shares of preferred stock, par value of $0.001 per share, of which zero shares are issued and outstanding. Except as set forth in the SEC Documents, the Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options or the vesting of RSUs under the Company's equity incentive plans, the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plans, pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act and shares of Common Stock issued as part of the earnout on a Company acquisition as contemplated by the Registration Statement on Form S-3 (File No. 333-281283) which was declared effective by order of the SEC on September 11, 2024. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as set forth in the SEC Documents and this Agreement, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. Except as set forth in the SEC Documents, the issuance and sale of the Securities will not obligate the Company to issue shares of Common Stock or other securities to any Person (other than the Investor) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. Except as set forth in the SEC Documents, there are no shareholder agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's shareholders.

Section 4.4 LISTING AND MAINTENANCE REQUIREMENTS. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the SEC is contemplating terminating such registration. Other than as disclosed in the SEC Documents (as defined below), the Company has not, in the twelve (12) months preceding the date hereof, received notice from the Principal Market on which the Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Principal Market.

Section 4.5 SEC DOCUMENTS; DISCLOSURE. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) thereof, for the one (1) year preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, including without limitation all registration statements under the Securities Act, whether required to be filed or otherwise), being collectively referred to herein as the "SEC Documents") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Documents prior to the expiration of any such extension. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and other federal laws, rules and regulations applicable to such SEC Documents, and none of the SEC Documents when filed contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Documents comply as to form and substance in all material respects with applicable accounting requirements and the published rules and regulations of the SEC or other applicable rules and regulations with respect thereto. Such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis during the periods involved (except (a) as may be otherwise indicated in such financial statements or the notes thereto or (b) in the case of unaudited interim statements, to the extent they may not include footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments). Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided the Investor or its agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Investor will rely on the foregoing representation in effecting transactions in securities of the Company.

Section 4.6 VALID ISSUANCES. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid, and non-assessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents.

Section 4.7 NO CONFLICTS. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Securities, do not and will not: (a) result in a violation of the Company's certificate or articles of incorporation, by-laws or other organizational or charter documents, (b) conflict with, or constitute a material default (or an event that with notice or lapse of time or both would become a material default) under, result in the creation of any Lien upon any of the properties or assets of the Company, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture, instrument or any "lock-up" or similar provision of any underwriting or similar agreement to which the Company is a party, or (c) result in a violation of any federal, state or local law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations) applicable to the Company or by which any property or asset of the Company is bound or affected (except for such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate, have a Material Adverse Effect) nor is the Company otherwise in violation of, conflict with or in default under any of the foregoing. The business of the Company is not being conducted in violation of any law, ordinance or regulation of any governmental entity, except for possible violations that either singly or in the aggregate do not and will not have a Material Adverse Effect. The Company is not required under federal, state or local law, rule or regulation to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency in order for it to execute, deliver or perform any of its obligations under the Transaction Documents (other than any SEC, FINRA, NYSE, or state securities filings that may be required to be made by the Company in connection with any Closing or any registration statement that may be filed pursuant hereto); provided that, for purposes of the representation made in this sentence, the Company is assuming and relying upon the accuracy of the relevant representations and agreements of Investor herein.

Section 4.8 NO MATERIAL ADVERSE EFFECT. No event has occurred that would have a Material Adverse Effect on the Company that has not been disclosed in subsequent SEC Documents.

Section 4.9 LITIGATION AND OTHER PROCEEDINGS. Except as disclosed in the SEC Documents, there are no material actions, suits, investigations, SEC inquiries, FINRA inquiries, NYSE inquiries, or similar proceedings (however any governmental agency may name them) pending or, to the actual knowledge of the Company, threatened against or affecting the Company or its properties, nor has the Company received any written or oral notice of any such action, suit, proceeding, SEC inquiry, FINRA inquiry, Nasdaq inquiry or investigation, which would have a Material Adverse Effect. No judgment, order, writ, injunction or decree or award against the Company has been issued by or, to the actual knowledge of the Company, requested of any court, arbitrator or governmental agency which would have a Material Adverse Effect. There has not been, and to the actual knowledge of the Company, there is no pending investigation by the SEC involving the Company or any current officer or director of the Company.

Section 4.10 ACKNOWLEDGMENT REGARDING INVESTOR'S PURCHASE OF SECURITIES. Based solely on the Investor's representation and warranties, the Company acknowledges and agrees that the Investor is acting solely in the capacity of an arm's length purchaser with respect to this Agreement and the transactions contemplated hereby and thereby and that the Investor is not (i) an officer or director of the Company, or (ii) an "affiliate" (as defined in Rule 144) of the Company. The Company further acknowledges that the Investor is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereby and thereby, and any advice given by the Investor or any of its representatives or agents in connection with the Agreement and the transactions contemplated hereby and thereby is merely incidental to the Investor's purchase of the Purchase Notice Shares. The Company further represents to the Investor that the Company's decision to enter into this Agreement has been based solely on the independent evaluation by the Company and its representatives.

Section 4.11 NO GENERAL SOLICITATION. Neither the Company, nor any Person acting on its behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities act) in connection with the offer or sale of the Securities.

Section 4.13 PLACEMENT AGENT; OTHER COVERED PERSONS. The Company has not engaged any Person to act as a placement agent, underwriter, broker, dealer, or finder in connection with the sale of the Securities hereunder. The Company is not aware of any Person that has been or will be paid (directly or indirectly) remuneration for solicitation of the Investor in connection with the sale of any Securities.

ARTICLE V
COVENANTS OF INVESTOR

Section 5.1 SHORT SALES AND CONFIDENTIALITY. Neither the Investor, nor any Affiliate of the Investor acting on its behalf or pursuant to any understanding with it, will execute any short sales during the period from the Execution Date to the end of the Commitment Period. For the purposes hereof, and in accordance with Regulation SHO, the sale after delivery of the Purchase Notice of such number of shares of Common Stock reasonably expected to be purchased under the Purchase Notice shall not be deemed a short sale. The Investor shall, until such time as the transactions contemplated by the Transaction Documents are publicly disclosed by the Company in accordance with the terms of the Transaction Documents, maintain the confidentiality of the existence and terms of this transaction and the information included in the Transaction Documents.

Section 5.2 COMPLIANCE WITH LAW; TRADING IN SECURITIES. The Investor's trading activities with respect to shares of Common Stock will be in compliance with all applicable state and federal securities laws and regulations and the rules and regulations of the Principal Market.

Section 5.3 VOTING. For so long as the Investor owns or controls at least 5% of the total issued and outstanding shares of Common Stock at any meeting of stockholders of the Company or at any adjournment thereof or in any other circumstances upon which a vote, consent or other approval (including by written consent) is sought, the Investor shall, including by executing a written consent if requested by the Company, vote (or cause to be voted) the Shares in favor of each director nominated by the Board of Directors of the Company and each proposal recommended by the Board. For the avoidance of doubt, this Clause is intended to constitute a voting agreement entered into under Section 218(c) of the Delaware General Corporation Law.

ARTICLE VI
COVENANTS OF THE COMPANY

Section 6.1 LISTING OF COMMON STOCK. The Company shall use its commercially reasonable efforts to continue the listing or quotation and trading of the Common Stock on the Principal Market (including, without limitation, maintaining sufficient net tangible assets, if required) and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Principal Market.

Section 6.2 FILING OF CURRENT REPORT. The Company agrees that it shall file a Current Report on Form 8-K, including the Transaction Documents as exhibits thereto, with the SEC within the time required by the Exchange Act, relating to the execution of the transactions contemplated by, and describing the material terms and conditions of, the Transaction Documents (the "Current Report"). The Company shall use its reasonable best efforts to permit the Investor to review and comment upon the final pre-filing draft version of the Current Report at least two (2) Business Days prior to its filing with the SEC, and the Company shall give reasonable consideration to all such comments. The Investor shall use its reasonable best efforts to comment upon the final pre-filing draft version of the Current Report within one (1) Business Day from the date the Investor receives it from the Company.

Section 6.3 FILING OF REGISTRATION STATEMENT. The Company has prepared and filed a Registration Statement on Form S-3 with the SEC in accordance with the provisions of the Securities Act, which was declared effective by order of the SEC on December 12, 2023 (File No. 333-275843) (the "Base Registration Statement"). The Base Registration Statement is effective under the Securities Act and the Company has not received any written notice that the SEC has issued or intends to issue a stop order or other similar order with respect to the Base Registration Statement or the prospectus contained therein (the "Prospectus"), or that the SEC otherwise has (i) suspended or withdrawn the effectiveness of the Base Registration Statement or (ii) issued any order preventing or suspending the use of the Prospectus or any prospectus supplement thereto, in either case, either temporarily or permanently or intends or has threatened in writing to do so. The "Plan of Distribution" section of the Prospectus permits the issuance of the Securities hereunder. The SEC has not notified the Company of any objection to the use of the form of the Base Registration Statement pursuant to Rule 401(g)(1) of the Securities Act. The Company was at the time of the filing of the Base Registration Statement eligible to use Form S-3. As of the Execution Date, the Company is currently eligible to use the Base Registration Statement. The Companyis subject to the limitations set forth in General Instruction I.B.6 of Form S-3. All corporate action required to be taken for the authorization, issuance, and sale of the Securities has been duly and validly taken. The Securities conform in all material respects to all statements with respect thereto contained in the Base Registration Statement, the Prospectus and the Prospectus Supplement (as defined below).

The Company shall file with the SEC, within five (5) Business Days (i) from the Execution Date, a prospectus supplement covering the offering and sale of the Securities (the "Prospectus Supplement") and (ii) from the Closing Date, a prospectus supplement covering the sale of Common Stock pursuant to each Purchase Notice. The Prospectus Supplement shall relate to the transactions contemplated by, and describing the material terms and conditions of, this Agreement, containing required information previously omitted from the Prospectus at the time of effectiveness of the Base Registration Statement in reliance on Rule 430B under the Securities Act, and disclosing all information relating to the transactions contemplated hereby required to be disclosed in the Base Registration Statement and the Prospectus as of the date of the Prospectus Supplement, including, without limitation, information required to be disclosed in the section captioned "Plan of Distribution" in the Prospectus. The Company shall permit the Investor to review and comment upon the Prospectus Supplement within a reasonable time prior to their filing with the SEC and the Company shall give reasonable consideration to all such comments. The Investor shall furnish to the Company such information regarding itself, the Company's securities beneficially owned by the Investor, and the intended method of distribution thereof, including any arrangement between the Investor and any other person or relating to the sale or distribution of the Company's securities, as shall be reasonably requested by the Company in connection with the preparation and filing of the Current Report and the Prospectus Supplement, and shall otherwise cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of the Current Report and the Prospectus Supplement with the SEC. At the time of the filing of the Prospectus Supplement, the Company shall have no knowledge of any untrue statement (or alleged untrue statement) of a material fact in the Prospectus (as supplemented by the Prospectus Supplement) or omission (or alleged omission) of a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and there shall be no such untrue statement of material fact or omission in any effective registration statement filed or any post-effective amendment or prospectus which is a part of the foregoing. The Company shall promptly give the Investor notice of any event (including the passage of time) which makes the Prospectus not to be in compliance with Section 5(b) or 10 of the Securities Act and shall use its best efforts thereafter to file with the SEC any post-effective amendment to the Base Registration Statement, amended Prospectus or Prospectus Supplement in order to comply with Section 5(b) or 10 of the Securities Act.

ARTICLE VII
CONDITIONS TO DELIVERY OF PURCHASE NOTICE AND CONDITIONS TO CLOSING

Section 7.1 CONDITIONS PRECEDENT TO THE OBLIGATION OF THE COMPANY TO ISSUE AND SELL SECURITIES. The obligation of the Company to issue and sell the Securities to the Investor is subject to the satisfaction of each of the conditions set forth below:

(a) ACCURACY OF INVESTOR'S REPRESENTATIONS AND WARRANTIES. The representations and warranties of the Investor shall be true and correct in all material respects as of the Execution Date and as of the date of each Closing as though made at each such time.

(b) PERFORMANCE BY INVESTOR. Investor shall have performed, satisfied and complied in all respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Investor at or prior to each Closing.

Section 7.2 CONDITIONS PRECEDENT TO THE OBLIGATION OF INVESTOR TO PURCHASE THE PURCHASE NOTICE SHARES. The obligation of the Investor hereunder to purchase the Purchase Notice Shares is subject to the satisfaction of each of the following conditions:

(a) EFFECTIVE REGISTRATION STATEMENT. The Registration Statement, and any amendment or supplement thereto, shall remain effective for the offering and sale of the Purchase Notice Shares and (i) the Company shall not have received notice that the SEC has issued or intends to issue a stop order with respect to such Registration Statement or that the SEC otherwise has suspended or withdrawn the effectiveness of such Registration Statement, either temporarily or permanently, or intends or has threatened to do so and (ii) no other suspension of the use of, or withdrawal of the effectiveness of, such Registration Statement or the Prospectus shall exist. The Investor shall not have received any notice from the Company that the Registration Statement, Prospectus and/or any prospectus supplement or amendment thereto fails to meet the requirements of Section 5(b) or Section 10 of the Securities Act.

(b) ACCURACY OF THE COMPANY'S REPRESENTATIONS AND WARRANTIES. The representations and warranties of the Company shall be true and correct in all material respects as of the date of this Agreement and as of the date of each Closing (except for representations and warranties specifically made as of a particular date).

(c) PERFORMANCE BY THE COMPANY. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company.

(d) NO INJUNCTION. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or adopted by any court or governmental authority of competent jurisdiction that prohibits or directly and materially adversely affects any of the transactions contemplated by the Transaction Documents, and no proceeding shall have been commenced that may have the effect of prohibiting or materially adversely affecting any of the transactions contemplated by the Transaction Documents.

(e) ADVERSE CHANGES. Since the date of filing of the Company's most recent SEC Documents, the Company shall have disclosed any event that had or is reasonably likely to have a Material Adverse Effect.

(f) NO SUSPENSION OF TRADING IN OR DELISTING OF COMMON STOCK. The trading of the Common Stock shall not have been suspended by the SEC or the Principal Market, or otherwise halted for any reason, and the Common Stock shall have been approved for listing or quotation on and shall not have been delisted from or no longer quoted on the Principal Market. In the event of a suspension, delisting, or halting for any reason, of the trading of the Common Stock, as contemplated by this Section 7.2(f), the Investor shall have the right to return to the Company any amount of Purchase Notice Shares associated with such Purchase Notice, and the Investment Amount with respect to such Purchase Notice shall be refunded accordingly.

(g) BENEFICIAL OWNERSHIP LIMITATION. The number of Purchase Notice Shares then to be purchased by the Investor shall not exceed the number of such shares that, when aggregated with all other shares of Common Stock then owned by the Investor beneficially or deemed beneficially owned by the Investor, would result in the Investor owning more than the Beneficial Ownership Limitation (as defined below), as determined in accordance with Section 13 of the Exchange Act. For purposes of this Section 7.2(g), if the amount of Common Stock outstanding is greater or lesser on a Closing Date than on the date upon which the Purchase Notice associated with such Closing Date is given, the amount of Common Stock outstanding on such issuance of a Purchase Notice shall govern for purposes of determining whether the Investor, when aggregating all purchases of Common Stock made pursuant to this Agreement, would own more than the Beneficial Ownership Limitation following a purchase on any such Closing Date. The "Beneficial Ownership Limitation" shall be 19.99% of the number of shares of the Common Stock outstanding immediately prior to the issuance of shares of Common Stock issuable pursuant to a Purchase Notice. To the extent that the Beneficial Ownership Limitation would be exceeded in connection with a Closing, the number of shares of Common Stock issuable to the Investor shall be reduced so it does not exceed the Beneficial Ownership Limitation, unless waived by the Investor.

(h) Blank.

(i) NO KNOWLEDGE. The Company shall have no knowledge of any event more likely than not to have the effect of causing the effectiveness of the Registration Statement to be suspended or the Prospectus or any prospectus supplement thereto failing to meet the requirement of Sections 5(b) or 10 of the Securities Act (which event is more likely than not to occur within the fifteen (15) Business Days following the Business Day on which such Purchase Notice is deemed delivered).

(k) DWAC ELIGIBLE. The Common Stock must be DWAC Eligible and not subject to a "DTC chill".

(l) SEC DOCUMENTS. All reports, schedules, registrations, forms, statements, information and other documents required to have been filed by the Company with the SEC pursuant to the reporting requirements of the Exchange Act shall have been filed with the SEC.

ARTICLE VIII
LEGENDS

Section 8.1 NO RESTRICTIVE STOCK LEGEND. No restrictive stock legend shall be placed on the share certificates representing the Securities.

Section 8.2 INVESTOR'S COMPLIANCE. Nothing in this Article VIII shall affect in any way the Investor's obligations hereunder to comply with all applicable securities laws upon the sale of the Common Stock.

ARTICLE IX
INDEMNIFICATION

Section 9.1 INDEMNIFICATION. Each party (an "Indemnifying Party") agrees to indemnify and hold harmless the other party along with its officers, directors, employees, and authorized agents (an "Indemnified Party") from and against any claim or suit by third parties for Damages resulting from or arising out of (i) any misrepresentation, breach of warranty or nonfulfillment of or failure to perform any covenant or agreement on the part of the Indemnifying Party contained in this Agreement, (ii) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any post-effective amendment thereof or Prospectus, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in the light of the circumstances under which the statements therein were made, not misleading, or (iv) any violation by the Indemnifying Party of the Securities Act, the Exchange Act, any state securities law or any rule or regulation under the Securities Act, the Exchange Act or any state securities law, as such Damages are incurred by the Indemnified Party except to the extent that such Damages result primarily from the Indemnified Party's failure to perform any covenant or agreement contained in this Agreement or the Indemnified Party's negligent, recklessness or willful misconduct; provided, however, that the foregoing indemnity agreement shall not apply to any Damages of the Investor to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made by the Company in reliance upon and in conformity with information furnished to the Company by the Investor for use in the Registration Statement, any post-effective amendment thereof, Prospectus, or any preliminary prospectus or final prospectus (as amended or supplemented).

Section 9.2 PROCEDURES. Promptly after receipt by an Indemnified Party of notice of the commencement of any claim or suit for which indemnification may be available pursuant here to, such Indemnified Party shall, if a claim in respect thereof is to be made against any Indemnifying Party hereunder, deliver to the Indemnifying Party a written notice of the commencement thereof; but the failure to so notify the Indemnifying Party will not relieve it of liability under this Article IX except to the extent the Indemnifying Party is prejudiced by such failure. The Indemnifying Party shall have the right to participate in, and, to the extent the Indemnifying Party so desires to assume control of the defense thereof with counsel mutually reasonably satisfactory to the Indemnified Party; provided, however, that the Indemnified Party shall have the right to retain its own counsel with the actual and reasonable third party fees and expenses of not more than one counsel for the Indemnified Party to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the Indemnifying Party, the representation by such counsel of the Indemnified Party and the Indemnifying Party would be inappropriate due to actual or potential differing interests between the Indemnified Party and any other party represented by such counsel in such proceeding. The Indemnified Party shall cooperate fully with the Indemnifying Party in connection with any negotiation or defense of any such action or claim by the Indemnifying Party and shall furnish to the Indemnifying Party all information reasonably available to Indemnified Party which relates to such action or claim. The Indemnifying Party shall keep the Indemnified Party reasonably apprised as to the status of the defense or any settlement negotiations with respect thereto. No Indemnifying Party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Party of a release from all liability in respect to such claim or litigation. Following indemnification as provided for hereunder, the Indemnifying Party shall be subrogated to all rights of the Indemnified Party with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The indemnification required by this Section 9.2 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received and payment therefor is due.

ARTICLE X
MISCELLANEOUS

Section 10.1 FORCE MAJEURE. NO PARTY shall be liable for any failure to fulfill its obligations hereunder due to causes beyond its reasonable control, including but not limited to acts of God, epidemic or pandemic, natural disaster, labor disturbances, terrorist attack, riots or wars, and any action taken, or restrictions or limitations imposed, by government or public authorities.

Section 10.2 GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California without regard to the principles of conflicts of law.

Section 10.3 ASSIGNMENT. The Transaction Documents shall be binding upon and inure to the benefit of the Company and the Investor and their respective successors. Neither any of the Transaction Documents nor any rights of the Investor or the Company hereunder may be assigned by either Party to any other Person.

Section 10.4 NO THIRD-PARTY BENEFICIARIES. This Agreement is intended for the benefit of the Company and the Investor and their respective successors, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as contemplated by Article XI.

Section 10.5 TERMINATION. The Company may terminate this Agreement at any time by written notice to the Investor. This Agreement shall automatically terminate on the end of the Commitment Period.

Section 10.6 ENTIRE AGREEMENT. The Transaction Documents, together with the exhibits thereto, contain the entire understanding of the Company and the Investor with respect to the matters covered herein and therein and supersede all prior agreements and understandings, oral or written, with respect to such matters.

Section 10.7 FEES AND EXPENSES. Except as expressly set forth in the Transaction Documents or any other writing to the contrary, aside from the Administrative Fee, each Party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such Party incidental to the negotiation, preparation, execution, delivery and performance of the Transaction Documents. The Company shall pay the Clearing Costs associated with each Closing, and any Transfer Agent fees (including any fees required for same-day processing of any instruction letter delivered by the Company), stamp taxes, and other taxes and duties levied on the Company in connection with the delivery of any Securities to the Investor.

Section 10.8 COUNTERPARTS AND EXECUTION. The Transaction Documents may be executed in multiple counterparts, each of which may be executed by less than all of the Parties and shall be deemed to be an original instrument which shall be enforceable against the Parties actually executing such counterparts and all of which together shall constitute one and the same instrument. The Transaction Documents may be delivered to the other Party hereto by email of a copy of the Transaction Documents bearing the signature of the Party so delivering the Transaction Documents. The Parties agree that this Agreement shall be considered signed when the signature of a Party is delivered by PDF, DocuSign or other generally accepted electronic signature. Such PDF, DocuSign, or other generally accepted electronic signature shall be treated in all respects as having the same effect as an original signature. The signatories to this Agreement each represent and warrant that they are duly authorized by the Parties with the power and authority to bind the Parties to the terms and conditions thereof.

Section 10.9 SEVERABILITY. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that such severability shall be ineffective if it materially changes the economic benefit of this Agreement to any Party.

Section 10.10 FURTHER ASSURANCES. Each Party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other Party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

Section 10.11 NOT TO BE CONSTRUED AGAINST DRAFTER. The Parties acknowledge that they have had an adequate opportunity to review each and every provision contained in this Agreement and to submit the same to legal counsel for review and comment. The Parties agree with each and every provision contained in this Agreement and agree that the rule of construction that a contract be construed against the drafter, if any, shall not be applied in the interpretation and construction of this Agreement.

Section 10.12 TITLE AND SUBTITLES. The titles and subtitles used in this Agreement are used for the convenience of reference and are not to be considered in construing or interpreting this Agreement.

Section 10.13 AMENDMENTS; WAIVERS. No provision of this Agreement may be amended other than by a written instrument signed by both Parties hereto and no provision of this Agreement may be waived other than in a written instrument signed by the Party against whom enforcement of such waiver is sought. No failure or delay in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

Section 10.14 PUBLICITY. The Company and the Investor shall consult with each other in issuing any press releases or otherwise making public statements with respect to the transactions contemplated hereby and no Party shall issue any such press release or otherwise make any such public statement, other than as required by law or for legal compliance, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that no prior consent shall be required if such disclosure is required by law, in which such case the disclosing Party shall provide the other Party with prior notice of such public statement. The Investor acknowledges that the Transaction Documents may be deemed to be "material contracts," as that term is defined by Item 601(b)(10) of Regulation S-K, and that the Company may therefore be required to file such documents as exhibits to reports or registration statements filed under the Securities Act or the Exchange Act. The Investor further agrees that the status of such documents and materials as material contracts shall be determined solely by the Company, in consultation with its counsel.

Section 10.15 DISPUTE RESOLUTION.

(a) ARBITRATION. Subject to Section 10.15(a), any dispute, controversy or claim arising out of or relating to this Agreement or any Transaction Document (including whether any such dispute is arbitrable), shall be determined by arbitration administered by the American Arbitration Association ("AAA") pursuant to the AAA Commercial Arbitration Rules in effect at the time of the filing of the relevant arbitration demand. The parties will cooperate with the AAA through its case management staff in choosing a single arbitrator from the AAA's list of neutral arbitrators and in otherwise proceeding with the arbitration. Any award resulting from an arbitration initiated pursuant to this Agreement shall be enforceable in courts of applicable jurisdiction. The Parties consent to the jurisdiction of the Chancery Court of the State of California and the United States District Court for the District of Delaware for all purposes in connection with any such arbitration. The Parties further waive any right to any jury trial in any action, and as to all claims hereunder. Any arbitration pursuant to this section shall be governed by the Federal Arbitration Act. Except as may be required by law, neither a party nor the arbitrator may disclose the content or results of any arbitration proceeding conducted pursuant to this Agreement without the prior written consent of both Parties. Each party will be responsible for 50% of any administrative costs imposed by the AAA and the arbitrator's fees. Each party may choose, at its own expense, to retain a court reporter for the arbitration hearing. If both parties decide to use a court reporter for the arbitration hearing, the parties shall jointly retain a court reporter and split evenly the court reporter's fees. The prevailing party in any arbitration conducted pursuant to this Agreement shall be entitled to recover from the other party its reasonable attorneys' fees and costs.

(b) The Company and the Investor agree that all dispute resolution proceedings in accordance with this Section 10.15 may be conducted in a virtual setting.

Section 10.16 NOTICES. All notices, demands, requests, consents, approvals, and other communications required or permitted hereunder shall be in writing and, unless otherwise specified herein, shall be (a) personally served, (b) delivered by reputable air courier service with charges prepaid for next Business Day delivery, or (c) transmitted by hand delivery, or email as a PDF (with read receipt or a written confirmation of delivery or receipt), addressed as set forth below or to such other address as such Party shall have specified most recently by written notice given in accordance herewith. Any notice or other communication required or permitted to be given hereunder shall be deemed effective upon hand delivery or delivery by email at the address designated below (if delivered on a Business Day during normal business hours where such notice is to be received), or the first Business Day following such delivery (if delivered other than on a Business Day during normal business hours where such notice is to be received).

The addresses for such communications shall be:

If to the Company:

Ocean Power Technologies, Inc.
ATTN: Tracy Pagliara
28 Engelhard Drive, Suite B.
Monroe Township, NJ 08831
Email: tpagliara@oceanpowertech.com

with a copy which shall not constitute notice to:

If to the Investor:
TRITON FUNDS
ATTN: SpecOps
260 Newport Center Drive
Newport Beach, CA 92660
team@tritonfunds.com

with a copy which shall not constitute notice to:

Marc Indeglia
10250 Constellation Boulevard
19th Floor
Los Angeles, CA 90067
mindeglia@glaserweil.com

Either Party hereto may from time to time change its address or email for notices under this clause by giving prior written notice of such changed address to the other party hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the Execution Date.

Ocean Power Technologies, Inc.

By: /s/ Robert Powers
Name: Robert Powers
Title: Chief Financial Officer

TRITON FUNDS LP

By: /s/ Tyler Hoffman
Name: Tyler Hoffman
Title:

EXHIBIT A
FORM OF PURCHASE NOTICE

TO: TRITON FUNDS LP

We refer to the Purchase Agreement, dated as of September 13, 2024 (the "Agreement"), entered into by and between Ocean Power Technologies, Inc., and you. Capitalized terms defined in the Agreement shall, unless otherwise defined herein, have the same meaning when used herein.

We hereby:

1) Give you notice that we require you to purchase __________ Purchase Notice Shares.

3) Certify that, as of the date hereof, the conditions set forth in Section 7 of the Agreement are satisfied.

____

Exhibit 10.2

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "**Agreement**"), dated as of September 13, 2024, by and between **Ocean Power Technologies, Inc.**, a Delaware corporation (the "**Company**"), and **Alumni Capital LP**, a Delaware limited partnership (the "**Investor**").

RECITALS

WHEREAS, subject to the terms and conditions set forth in this Agreement, the Company wishes to sell to the Investor, and the Investor wishes to buy from the Company, up to $4,000,000 of shares (the "**Shares**") of common stock, $0.001 par value per share, of the Company (the "**Common Stock**").

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Investor hereby agree as follows:

ARTICLE I
CERTAIN DEFINITIONS

Section 1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings specified or indicated (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"**Affiliate**" shall mean, with respect to a Party, any individual, a corporation or any other legal entity, directly or indirectly, controlling, controlled by or under common control with such Party. For purpose of this definition, the term "*control*," as used with respect to any corporation or other entity, means (a) direct or indirect ownership of fifty percent (50%) or more of the securities or other ownership interests representing the equity voting stock or general partnership or membership interest of such corporation or other entity or (b) the power to direct or cause the direction of the management or policies of such corporation or other entity, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" shall have the meaning specified in the preamble hereof.

"**Bankruptcy Law**" shall mean Title 11, U.S. Code, or any similar federal or state law for the relief of debtors.

"**Base Registration Statement**" shall have the meaning specified in Section 6.3.

"**Beneficial Ownership Limitation**" shall have the meaning specified in Section 8.2(f).

"**Bloomberg**" shall mean Bloomberg, L.P.

"**Business Day**" shall mean a day on which the Principal Market shall be open for business.

"**Common Stock**" shall have the meaning set forth in the Recitals.

“**Clearing Costs**” shall mean all of the Investor’s broker and Transfer Agent costs with respect to the deposit of the Purchase Notice Securities.

“**Closing**” shall mean any one of the closings of a purchase and sale of Purchase Notice Securities pursuant to Section 2.3(c).

“**Closing Date**” shall mean the date on which a Closing occurs, which shall occur no later than four (4) Business Days after delivery of a Purchase Notice and the corresponding Purchase Notice Securities.

“**Commitment Amount**” shall mean $4,000,000.

“**Commitment Period**” shall mean the period commencing on the Execution Date and ending on the earlier of (i) December 31, 2024, or (ii) the date on which the Investor shall have purchased Securities pursuant to this Agreement for an aggregate purchase price of the Commitment Amount.

“**Company**” shall have the meaning specified in the preamble to this Agreement.

“**Current Report**” has the meaning set forth in Section 6.2.

“**Custodian**” shall mean any receiver, trustee, assignee, liquidator, or similar official under any Bankruptcy Law.

“**Damages**” shall mean any loss, claim, damage, liability, cost, and expense (including, without limitation, reasonable attorneys’ fees and disbursements and costs and expenses of expert witnesses and investigation).

“**Dispute Submission Deadline**” shall have the meaning set forth in Section 10.16(a).

“**DRS**” shall mean the DTC’s Direct Registration System.

“**DRS Eligible**” shall mean that (a) the Shares are eligible at DTC for full services pursuant to DTC’s operational arrangements, including, without limitation, transfer through DTC’s DRS system, (b) the Company has been approved (without revocation) by the DTC’s underwriting department, (c) the Transfer Agent is approved as an agent in the DTC/FAST Program, (d) the Purchase Notice Securities are otherwise eligible for delivery via DRS, and (e) the Transfer Agent does not have a policy prohibiting or limiting delivery of the Purchase Notice Securities, as applicable, via DRS.

“**DRS Shares**” shall mean Shares that are (i) issued in electronic form, (ii) freely tradable and transferable and without restriction on resale, and (iii) timely credited by the Company to the Investor’s or its designee’s specified DRS account with DTC under the DTC/FAST Program, or any similar program hereafter adopted by DTC performing substantially the same function.

“**DTC**” shall mean The Depository Trust Company, or any successor performing substantially the same function for the Company.

“**DTC/FAST Program**” shall mean the DTC’s Fast Automated Securities Transfer Program.

“**DWAC**” shall mean Deposit Withdrawal at Custodian as defined by the DTC.

“**DWAC Eligible**” shall mean that (a) the Shares are eligible at DTC for full services pursuant to DTC’s operational arrangements, including, without limitation, transfer through DTC’s DWAC system, (b) the Company has been approved (without revocation) by the DTC’s underwriting department, (c) the Transfer Agent is approved as an agent in the DTC/FAST Program, (d) the Purchase Notice Securities are otherwise eligible for delivery via DWAC, and (e) the Transfer Agent does not have a policy prohibiting or limiting delivery of the Purchase Notice Securities, as applicable, via DWAC.

“**DWAC Shares**” shall mean Shares that are (i) issued in electronic form, (ii) freely tradable and transferable and without restriction on resale, and (iii) timely credited by the Company to the Investor’s or its designee’s specified DWAC account with DTC under the DTC/FAST Program, or any similar program hereafter adopted by DTC performing substantially the same function.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Exchange Cap**” shall have the meaning set forth in Section 8.2(g).

“**Execution Date**” shall mean the date of the last signature of this Agreement.

“**FINRA**” shall mean the Financial Industry Regulatory Authority, Inc.

“**Future SEC Documents**” shall have the meaning set forth in Section 8.2(k).

“**Indemnified Party**” shall have the meaning set forth in Section 7.4.

“**Indemnifying Party**” shall have the meaning set forth in Section 7.4.

“**Initial Purchase Notice Limitation**” shall mean $1,500,000.

“**Investor**” shall have the meaning specified in the preamble to this Agreement.

“**Lien**” shall mean a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right, or other restriction.

“**Material Adverse Effect**” shall mean any effect on the business, operations, properties, or financial condition of the Company that is material and adverse to the Company and/or any condition, circumstance, or situation that would prohibit or otherwise materially interfere with the ability of the Company to enter into and perform its obligations under any Transaction Document.

“**Party**” shall mean a party to this Agreement.

“**Person**” shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"**Principal Market**" shall mean any of the national securities exchanges (i.e. NYSE, NYSE American, Nasdaq), or principal quotation systems (i.e. OTCQX, OTCQB, OTC Pink), or other principal exchange or recognized quotation system which is at the time the principal trading platform or market for the Common Stock.

"**Prospectus**" shall have the meaning specified in Section 6.3.

"**Prospectus Supplement**" shall have the meaning specified in Section 6.3.

"**Purchase Notice Amount**" shall mean the product of the number of Purchase Notice Securities referenced in the Purchase Notice multiplied by the applicable Purchase Price in accordance with Section 2.1.

"**Purchase Notice**" shall mean a written notice from Company, substantially in the form of Exhibit A hereto, to the Investor setting forth the Purchase Notice Securities which the Company requires the Investor to purchase pursuant to the terms of this Agreement.

"**Purchase Notice Date**" shall have the meaning specified in Section 2.3(a).

"**Purchase Notice Securities**" shall mean all Common Stock that the Company shall be entitled to issue as set forth in all Purchase Notices in accordance with the terms and conditions of this Agreement.

"**Purchase Price**" shall mean the lowest traded price of the Common Stock on the Principal Market for the five (5) Business Days prior to the Closing Date with respect to a Purchase Notice, as reported by Bloomberg, multiplied by eighty percent (80%).

"**Regulation D**" shall mean Regulation D promulgated under the Securities Act.

"**Regular Purchase Notice Limitation"** shall mean $1,000,000.

"**Rule 144**" shall mean Rule 144 under the Securities Act or any similar provision then in force under the Securities Act.

"**Required Dispute Documentation**" shall have the meaning set forth in Section 10.16(a).

"**SEC**" shall mean the United States Securities and Exchange Commission.

"**SEC Documents**" shall have the meaning specified in Section 4.5.

"**Securities**" shall mean the Purchase Notice Securities to be issued to the Investor pursuant to the terms of this Agreement.

"**Securities Act**" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Share Equivalents**" shall mean any securities of the Company entitling the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"**Subsidiary**" shall mean any Person that the Company wholly owns or controls, or in which the Company, directly or indirectly, owns a majority of the voting stock or similar voting interest, in each case that would be disclosable pursuant to Item 601(b)(21) of Regulation S-K promulgated under the Securities Act.

"**Transaction Documents**" shall mean this Agreement and all exhibits hereto.

"**Transfer Agent**" shall mean the current transfer agent of the Company, and any successor transfer agent of the Company.

ARTICLE II
PURCHASE AND SALE OF SECURITIES

Section 2.1 Purchase Notices. Subject to the conditions set forth herein, at any time during the Commitment Period, the Company shall have the right, but not the obligation, to direct the Investor, by its delivery to the Investor of a Purchase Notice from time to time, to purchase, and the Investor shall have the obligation to purchase from the Company, the number of Purchase Notice Securities set forth on the Purchase Notice at the Purchase Price, provided that the amount of Purchase Notice Securities shall not exceed the Initial Purchase Notice Limitation with respect to the first Purchase Notice, the Regular Purchase Notice Limitation with respect to all Purchase Notices after the first Purchase Notice, or the Beneficial Ownership Limitation set forth in Section 8.2(f). The Company may not deliver a subsequent Purchase Notice until the Closing of an active Purchase Notice, except if waived by the Investor in writing.

Section 2.2 Deliveries; Closing.

(a) Purchase Notice Delivery. In accordance with Section 2.1 and subject to the satisfaction of the conditions set forth in Section 8.2, the Company shall deliver the Purchase Notice Securities as DWAC Shares or DRS Shares to the Investor pursuant to Section 2.3(b) alongside the delivery of each Purchase Notice by email at the Investor's email address set forth in Section 10.17 and by overnight courier at the Investor's address set forth in Section 10.17. A Purchase Notice shall be deemed delivered on (i) the Business Day that both the Purchase Notice Securities are received and the Purchase Notice has been received by email by the Investor if both conditions are met on or prior to 8:00 a.m. New York time or (ii) the next Business Day if the conditions are met after 8:00 a.m. New York time on a Business Day or at any time on a day which is not a Business Day (the "**Purchase Notice Date**").

(b) Delivery of Purchase Notice Securities. No later than 8:00 a.m. New York time on the Purchase Notice Date, the Company shall deliver the Purchase Notice Securities as DWAC Shares or DRS Shares to the Investor.

(c) Closing. The Investor shall pay to the Company the Purchase Notice Amount with respect to the applicable Purchase Notice as full payment for such Purchase Notice Securities purchased by the Investor under the applicable Purchase Notice via wire transfer of immediately available funds as set forth below on the Closing Date. The Company shall not issue any fraction of a share of Common Stock pursuant to any Purchase Notice. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up or down to the nearest whole Share. All payments made under this Agreement shall be made in lawful money of the United States of America by wire transfer of immediately available funds to such account as the Company may from time to time designate by written notice in accordance with the provisions of this Agreement. Whenever any amount or issuance of Common Stock expressed to be due by the terms of this Agreement is due on any day that is not a Business Day, the same shall instead be due on the next succeeding day that is a Business Day.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF INVESTOR

The Investor represents and warrants the following to the Company:

Section 3.1 **Intent**. The Investor is entering into this Agreement and purchasing the Securities for its own account, and not as nominee or agent, for investment purposes and not with a view towards, or for a sale in connection with, a "distribution" (as such term is defined in the Securities Act), and the Investor has no present arrangement (whether or not legally binding) at any time to sell the Securities to or through any Person in violation of the Securities Act or any applicable state securities laws; provided, however, that the Investor reserves the right to dispose of the Securities at any time in accordance with federal and state securities laws applicable to such disposition.

Section 3.2 **No Legal Advices From The Company**. The Investor acknowledges that it has had the opportunity to review this Agreement and the transactions contemplated by this Agreement with its own legal counsel and investment and tax advisors. The Investor is relying solely on such counsel and advisors and not on any statements or representations of the Company or any of its representatives or agents for legal, tax, or investment advice with respect to this investment, the transactions contemplated by this Agreement or the securities laws of any jurisdiction.

Section 3.3 **Accredited Investor**. The Investor is an "accredited investor" (as such term is defined in Rule 501(a)(3) of Regulation D), and the Investor has such experience in business and financial matters that it is capable of evaluating the merits and risks of an investment in the Securities. The Investor acknowledges that an investment in the Securities is speculative and involves a high degree of risk.

Section 3.4 **Authority**. The Investor has the requisite power and authority to enter into and perform its obligations under the Transaction Documents and to consummate the transactions contemplated hereby and thereby. The execution and delivery of the Transaction Documents and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action and no further consent or authorization of the Investor is required. The Transaction Documents to which it is a party has been duly executed by the Investor, and when delivered by the Investor in accordance with the terms hereof, will constitute the valid and binding obligation of the Investor enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

Section 3.5 **Not An Affiliate**. The Investor is not an officer, director, or "affiliate" (as that term is defined in Rule 405 of the Securities Act) of the Company.

Section 3.6 **Organization and Standing**. The Investor is an entity duly formed, validly existing, and in good standing under the laws of the State of Delaware with full right and limited partnership or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents.

Section 3.7 **Absence of Conflicts**. The execution and delivery of the Transaction Documents and the consummation of the transactions contemplated hereby and thereby and compliance with the requirements hereof and thereof, will not (a) violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Investor, (b) violate any provision of any indenture, instrument or agreement to which the Investor is a party or is subject, or by which the Investor or any of its assets is bound, or conflict with or constitute a material default thereunder, (c) result in the creation or imposition of any lien pursuant to the terms of any such indenture, instrument or agreement, or constitute a breach of any fiduciary duty owed by the Investor to any third party, or (d) require the approval of any third-party (that has not been obtained) pursuant to any material contract, instrument, agreement, relationship or legal obligation to which the Investor is subject or to which any of its assets, operations or management may be subject.

Section 3.8 **Disclosure; Access to Information**. The Investor has had an opportunity to review copies of the SEC Documents filed on behalf of the Company and has had access to all publicly available information with respect to the Company. The Investor understands that its investment in the Securities involves a high degree of risk. The Investor is able to bear the economic risk of an investment in the Securities including a total loss. The Investor has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities. The Investor understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

Section 3.9 **Manner of Sale**. At no time was the Investor presented with or solicited by or through any leaflet, public promotional meeting, television advertisement or any other form of general solicitation or advertising.

Section 3.10 **No Prior Short Selling**. At no time prior to the date of this Agreement has any of the Investor, its agents, representatives or affiliates engaged in or effected, in any manner whatsoever, directly or indirectly, any (i) "short sale" (as such term is defined in Section 242.200 of Regulation SHO of the Exchange Act) of the Securities or (ii) hedging transaction, which establishes a net short position with respect to the Securities or any other Company's securities.

Section 3.11 **No Disqualification Events**. None of the Investor, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Investor participating in the offering contemplated hereby, any beneficial owner of 20% or more of the Investor's outstanding voting equity securities, calculated on the basis of voting power (each, an "**Investor Covered Person**") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "**Disqualification Event**"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3) under the Securities Act. The Investor has exercised reasonable care to determine whether any Investor Covered Person is subject to a Disqualification Event.

Section 3.12 **Reliance on Exemptions**. The Investor understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of U.S. federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and the Investor's compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Investor set forth herein in order to determine the availability of such exemptions and the eligibility of the Investor to acquire the Securities. The Investor understands that (i) the Securities may not be offered for sale, sold, assigned or transferred unless (A) registered pursuant to the Securities Act or (B) an exemption exists permitting such Securities to be sold, assigned or transferred without such registration; and (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the SEC thereunder.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the SEC Documents, the Company represents and warrants the following to the Investor, as of the Execution Date:

Section 4.1 **Organization of the Company**. The Company is an entity duly organized, validly existing and in good standing under the laws of the State of Delaware, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. The Company is not in violation or default of any of the provisions of its organizational or charter documents. The Company is duly qualified to conduct business and is in good standing as a foreign company in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in a Material Adverse Effect and no proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification. The Company has Subsidiaries as disclosed in the SEC Documents.

Section 4.2 **Authority**. The Company has the requisite corporate power and authority to enter into and perform its obligations under the Transaction Documents. The execution and delivery of the Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action and no further consent or authorization of the Company or its Board of Directors or stockholders is required. The Transaction Documents have been duly executed and delivered by the Company and constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

Section 4.3 **Capitalization**. As of the date hereof, the Company is authorized to issue 200,000,000 shares of Common Stock, of which 98,023,765 shares are issued and outstanding. The Company has not issued any securities since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans, the issuance of securities to employees pursuant to the Company's employee stock purchase plans and pursuant to the conversion and/or exercise of Share Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as set forth in the SEC Documents and this Agreement, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire any securities, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional securities or Share Equivalents. The issuance and sale of the Securities will not obligate the Company to issue other securities to any Person (other than the Investor) and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. There are no stockholders agreements, voting agreements, or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

Section 4.4 **Listing and Maintenance Requirements**. The Shares are registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Shares under the Exchange Act nor has the Company received any notification that the SEC is contemplating terminating such registration. Except as disclosed in the SEC Documents, the Company has not, in the twelve (12) months preceding the date hereof, received notice from the Principal Market on which the Shares are or have been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Principal Market. Except as disclosed in the SEC Documents, the Company is and has no reason to believe that it will not in the foreseeable future continue to be in compliance with all such listing and maintenance requirements.

Section 4.5 **SEC Documents; Disclosure**. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) thereof, for the one (1) year preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "**SEC Documents**") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Documents prior to the expiration of any such extension. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and other federal laws, rules, and regulations applicable to such SEC Documents, and none of the SEC Documents when filed contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Documents comply as to form and substance in all material respects with applicable accounting requirements and the published rules and regulations of the SEC or other applicable rules and regulations with respect thereto. Such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis during the periods involved (except (a) as may be otherwise indicated in such financial statements or the notes thereto or (b) in the case of unaudited interim statements, to the extent they may not include footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments). Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided the Investor or its agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Investor will rely on the foregoing representation in effecting transactions in securities of the Company.

Section 4.6 **Valid Issuances**. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid, and non-assessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. Assuming the accuracy of the representations of the Investor in Article III of this Agreement and subject to the filings described in Section 4.7 of this Agreement, the Securities will be issued in compliance with all applicable federal and state securities laws.

Section 4.7 **No Conflicts**. The execution, delivery, and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Purchase Notice Securities, do not and will not (a) result in a violation of the Company's certificate or articles of incorporation, by-laws or other organizational or charter documents, (b) conflict with, or constitute a material default (or an event that with notice or lapse of time or both would become a material default) under, result in the creation of any Lien upon any of the properties or assets of the Company, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture, instrument or any "lock-up" or similar provision of any underwriting or similar agreement to which the Company is a party, or (c) result in a violation of any federal, state or local law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations) applicable to the Company or by which any property or asset of the Company is bound or affected (except for such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate, have a Material Adverse Effect) nor is the Company otherwise in violation of, conflict with or in default under any of the foregoing. The business of the Company is not being conducted in violation of any law, ordinance or regulation of any governmental entity, except for possible violations that either singly or in the aggregate do not and will not have a Material Adverse Effect. The Company is not required under federal, state or local law, rule or regulation to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency in order for it to execute, deliver or perform any of its obligations under the Transaction Documents (other than (i) any SEC or state securities filings that may be required to be made by the Company in connection with the execution of this Agreement or the issuance of Securities pursuant hereto, or (ii) the filing of a Listing of Additional Shares Notification Form with the Principal Market, which, in each case, have been made or will be made in a timely manner); provided that, for purposes of the representation made in this sentence, the Company is assuming and relying upon the accuracy of the relevant representations and agreements of the Investor herein.

Section 4.8 **No Material Adverse Effect**. No event has occurred that would have a Material Adverse Effect on the Company that has not been disclosed in the SEC Documents.

Section 4.9 **Litigation and Other Proceedings**. Except as disclosed in the SEC Documents, there are no material actions, suits, investigations, SEC inquiries, FINRA inquiries, NASDAQ inquiries, or similar proceedings (however any governmental agency may name them) pending or, to the actual knowledge of the Company, threatened against or affecting the Company or its properties, nor has the Company received any written or oral notice of any such action, suit, proceeding, SEC inquiry, FINRA inquiry, NASDAQ inquiry or investigation, which would have a Material Adverse Effect. No judgment, order, writ, injunction or decree or award against the Company has been issued by or, to the actual knowledge of the Company, requested of any court, arbitrator or governmental agency which would have a Material Adverse Effect. There has not been, and to the actual knowledge of the Company, there is no pending investigation by the SEC involving the Company or any current officer or director of the Company.

Section 4.10 **Acknowledgment Regarding Investor's Purchase of Securities**. Based solely on the Investor's representations and warranties, the Company acknowledges and agrees that the Investor is acting solely in the capacity of an arm's length purchaser with respect to this Agreement and the transactions contemplated hereby and thereby and that the Investor is not (i) an officer or director of the Company, or (ii) an "affiliate" (as defined in Rule 144) of the Company. The Company further acknowledges that the Investor is not acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to this Agreement and the transactions contemplated hereby and thereby, and any advice given by the Investor or any of its representatives or agents in connection with this Agreement and the transactions contemplated hereby and thereby is merely incidental to the Investor's purchase of the Purchase Notice Securities. The Company further represents to the Investor that the Company's decision to enter into this Agreement has been based solely on the independent evaluation by the Company and its representatives.

Section 4.11 **No General Solicitation**. Neither the Company, nor any Person acting on its behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities Act) in connection with the offer or sale of the Securities.

Section 4.12 No Integrated Offering. None of the Company, its Affiliates, and any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings for purposes of any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated, but excluding stockholder consents required to authorize and issue the Securities or waive any anti-dilution provisions in connection therewith.

Section 4.13 Placement Agent; Other Covered Persons. The Company has not engaged any Person to act as a placement agent, underwriter, broker, dealer, or finder in connection with the sale of the Securities hereunder. The Company is not aware of any Person that has been or will be paid (directly or indirectly) remuneration for solicitation of the Investor in connection with the sale of any Securities.

Section 4.14 Registration Statement. At the time of the filing of the Registration Statement, New Registration Statement, or any amendment thereto, the Company shall have no knowledge of any untrue statement (or alleged untrue statement) of a material fact in the Registration Statement or New Registration Statement, as the case may be, or omission (or alleged omission) of a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and there shall be no such untrue statement of material fact or omission in any effective registration statement filed or any post-effective amendment or prospectus which is a part of the foregoing.

ARTICLE V
COVENANTS OF INVESTOR

Section 5.1 Short Sales and Confidentiality. During the period from the Execution Date to the end of the Commitment Period, neither the Investor, nor any Affiliate of the Investor acting on its behalf or pursuant to any understanding with it, shall execute (i) any “short sale” (as such term is defined in Section 242.200 of Regulation SHO of the Exchange Act) of the Securities or (ii) hedging transaction which establishes a net short position with respect to the Securities or any other Company’s securities. For the purposes hereof, and in accordance with Regulation SHO, the sale after delivery of the Purchase Notice of such number of Securities reasonably expected to be purchased under the Purchase Notice shall not be deemed a short sale. The Investor shall, until such time as the transactions contemplated by the Transaction Documents are publicly disclosed by the Company in accordance with the terms of the Transaction Documents, maintain the confidentiality of the existence and terms of this transaction and the information included in the Transaction Documents.

Section 5.2 Compliance with Law; Trading in Securities. The Investor’s trading activities with respect to the Securities shall be in compliance with all applicable state and federal securities laws and regulations and the rules and regulations of the Principal Market.

Section 5.3 **Voting**. For so long as the Investor owns or controls at least 5% of the total issued and outstanding shares of Common Stock at any meeting of stockholders of the Company or at any adjournment thereof or in any other circumstances upon which a vote, consent or other approval (including by written consent) is sought, the Investor shall, including by executing a written consent if requested by the Company, vote (or cause to be voted) the Shares in favor of each director nominated by the Board of Directors of the Company and each proposal recommended by the Board. For the avoidance of doubt, this Clause is intended to constitute a voting agreement entered into under Section 218(c) of the Delaware General Corporation Law..

ARTICLE VI
COVENANTS OF THE COMPANY

Section 6.1 **Listing of Shares**. The Company shall use its commercially reasonable efforts to continue the listing or quotation and trading of the Securities on the Principal Market (including, without limitation, maintaining sufficient net tangible assets, if required) and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Principal Market.

Section 6.2 **Filing of Current Report**. The Company agrees that it shall file a Current Report on Form 8-K, including the Transaction Documents as exhibits thereto, with the SEC within the time required by the Exchange Act, relating to the execution of the transactions contemplated by, and describing the material terms and conditions of, the Transaction Documents (the "**Current Report**"). The Company shall permit the Investor to review and comment upon the final pre-filing draft version of the Current Report at least two (2) Business Days prior to its filing with the SEC, and the Company shall give reasonable consideration to all such comments. The Investor shall use its reasonable best efforts to comment upon the final pre-filing draft version of the Current Report within one (1) Business Day from the date the Investor receives it from the Company.

Section 6.3 **Filing of Prospectus Supplement**. The Company has prepared and filed a Registration Statement on Form S-3 with the SEC in accordance with the provisions of the Securities Act, which was declared effective by order of the SEC on December 12, 2023 (File No. 333-275843) (the "**Base Registration Statement**"). The Base Registration Statement is effective under the Securities Act and the Company has not received any written notice that the SEC has issued or intends to issue a stop order or other similar order with respect to the Base Registration Statement or the prospectus contained therein (the "**Prospectus**"), or that the SEC otherwise has (i) suspended or withdrawn the effectiveness of the Base Registration Statement or (ii) issued any order preventing or suspending the use of the Prospectus or any prospectus supplement thereto, in either case, either temporarily or permanently or intends or has threatened in writing to do so. The "Plan of Distribution" section of the Prospectus permits the issuance of the Securities hereunder. The SEC has not notified the Company of any objection to the use of the form of the Base Registration Statement pursuant to Rule 401(g)(1) of the Securities Act. The Company was at the time of the filing of the Base Registration Statement eligible to use Form S-3. As of the Execution Date, the Company is currently eligible to use the Base Registration Statement. The Company and, until the filing of the Company's next annual report on Form 10-K, is not subject to the limitations set forth in General Instruction I.B.6 of Form S-3. All corporate action required to be taken for the authorization, issuance, and sale of the Securities has been duly and validly taken. The Securities conform in all material respects to all statements with respect thereto contained in the Base Registration Statement, the Prospectus and the Prospectus Supplement (as defined below).

The Company shall file with the SEC, within five (5) Business Days (i) from the Execution Date, a prospectus supplement covering the offering and sale of the Securities (the "**Prospectus Supplement**") and (ii) from the Closing Date, a prospectus supplement covering the sale of Common Stock pursuant to each Purchase Notice. The Prospectus Supplement shall relate to the transactions contemplated by, and describing the material terms and conditions of, this Agreement, containing required information previously omitted from the Prospectus at the time of effectiveness of the Base Registration Statement in reliance on Rule 430B under the Securities Act, and disclosing all information relating to the transactions contemplated hereby required to be disclosed in the Base Registration Statement and the Prospectus as of the date of the Prospectus Supplement, including, without limitation, information required to be disclosed in the section captioned "Plan of Distribution" in the Prospectus. The Company shall permit the Investor to review and comment upon the Prospectus Supplement within a reasonable time prior to their filing with the SEC and the Company shall give reasonable consideration to all such comments. The Investor shall furnish to the Company such information regarding itself, the Company's securities beneficially owned by the Investor, and the intended method of distribution thereof, including any arrangement between the Investor and any other person or relating to the sale or distribution of the Company's securities, as shall be reasonably requested by the Company in connection with the preparation and filing of the Current Report and the Prospectus Supplement, and shall otherwise cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of the Current Report and the Prospectus Supplement with the SEC. At the time of the filing of the Prospectus Supplement, the Company shall have no knowledge of any untrue statement (or alleged untrue statement) of a material fact in the Prospectus (as supplemented by the Prospectus Supplement) or omission (or alleged omission) of a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and there shall be no such untrue statement of material fact or omission in any effective registration statement filed or any post-effective amendment or prospectus which is a part of the foregoing. The Company shall promptly give the Investor notice of any event (including the passage of time) which makes the Prospectus not to be in compliance with Section 5(b) or 10 of the Securities Act and shall use its best efforts thereafter to file with the SEC any post-effective amendment to the Base Registration Statement, amended Prospectus or Prospectus Supplement in order to comply with Section 5(b) or 10 of the Securities Act..

ARTICLE VII
INDEMNIFICATION

Section 7.1 Indemnification. Each party (an "**Indemnifying Party**") agrees to indemnify and hold harmless the other party along with its officers, directors, employees, and authorized agents (an "**Indemnified Party**") from and against any claim or suit by third parties for Damages resulting from or arising out of (i) any misrepresentation, breach of warranty or nonfulfillment of or failure to perform any covenant or agreement on the part of the Indemnifying Party contained in this Agreement, (ii) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any post-effective amendment thereof or Prospectus, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus or contained in the final prospectus (as amended or supplemented, if the Company files any amendment thereof or supplement thereto with the SEC) or the omission or alleged omission to state therein any material fact necessary to make the statements made therein, in the light of the circumstances under which the statements therein were made, not misleading, or (iv) any violation by the Indemnifying Party of the Securities Act, the Exchange Act, any state securities law or any rule or regulation under the Securities Act, the Exchange Act or any state securities law, as such Damages are incurred by the Indemnified Party except to the extent that such Damages result primarily from the Indemnified Party's failure to perform any covenant or agreement contained in this Agreement or the Indemnified Party's negligent, recklessness or willful misconduct; provided, however, that the foregoing indemnity agreement shall not apply to any Damages of the Investor to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made by the Company in reliance upon and in conformity with information furnished to the Company by the Investor for use in the Registration Statement, any post-effective amendment thereof, Prospectus, or any preliminary prospectus or final prospectus (as amended or supplemented).

Section 7.2 **Procedures**. Promptly after receipt by an Indemnified Party of notice of the commencement of any claim or suit for which indemnification may be available pursuant here to, such Indemnified Party shall, if a claim in respect thereof is to be made against any Indemnifying Party hereunder, deliver to the Indemnifying Party a written notice of the commencement thereof; but the failure to so notify the Indemnifying Party will not relieve it of liability under this Article VII except to the extent the Indemnifying Party is prejudiced by such failure. The Indemnifying Party shall have the right to participate in, and, to the extent the Indemnifying Party so desires to assume control of the defense thereof with counsel mutually reasonably satisfactory to the Indemnified Party; provided, however, that the Indemnified Party shall have the right to retain its own counsel with the actual and reasonable third party fees and expenses of not more than one counsel for the Indemnified Party to be paid by the indemnifying party, if, in the reasonable opinion of counsel retained by the Indemnifying Party, the representation by such counsel of the Indemnified Party and the Indemnifying Party would be inappropriate due to actual or potential differing interests between the Indemnified Party and any other party represented by such counsel in such proceeding. The Indemnified Party shall cooperate fully with the Indemnifying Party in connection with any negotiation or defense of any such action or claim by the Indemnifying Party and shall furnish to the Indemnifying Party all information reasonably available to Indemnified Party which relates to such action or claim. The Indemnifying Party shall keep the Indemnified Party reasonably apprised as to the status of the defense or any settlement negotiations with respect thereto. No Indemnifying Party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, consent to entry of any judgment or enter into any settlement or other compromise which does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Party of a release from all liability in respect to such claim or litigation. Following indemnification as provided for hereunder, the Indemnifying Party shall be subrogated to all rights of the Indemnified Party with respect to all third parties, firms or corporations relating to the matter for which indemnification has been made. The indemnification required by this Section 7.2 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received and payment therefor is due.

ARTICLE VIII
CONDITIONS TO DELIVERY OF
PURCHASE NOTICE AND CONDITIONS TO CLOSING

Section 8.1 **Conditions Precedent to the Obligation of the Company to Issue and Sell Purchase Notice Securities**. The obligation of the Company hereunder to issue and sell the Purchase Notice Securities to the Investor is subject to the satisfaction of each of the conditions set forth below:

(a) Accuracy of the Investor's Representations and Warranties. The representations and warranties of the Investor shall be true and correct in all material respects as of the Execution Date and as of the date of each Closing as though made at each such time.

(b) Performance by the Investor. The Investor shall have performed, satisfied, and complied in all respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied, or complied with by the Investor at or prior to each Closing.

(c) Principal Market Regulation. The Company shall have no obligation to issue any Purchase Notice Securities, and the Investor shall have no right to receive any Purchase Notice Securities, if the issuance of such Purchase Notice Securities would exceed the aggregate number of Securities which the Company may issue without breaching the Company's obligations under the rules or regulations of the Principal Market.

Section 8.2 **Conditions Precedent to the Obligation of the Investor to Purchase the Purchase Notice Securities**. The obligation of the Investor hereunder to purchase the Purchase Notice Securities is subject to the satisfaction of each of the following conditions:

(a) Effective Base Registration Statement. The Base Registration Statement, Prospectus, and any amendment or supplement thereto, shall have been declared effective and shall remain effective for the resale of the Registrable Securities at all times until the Closing with respect to the subject Purchase Notice, the Company shall not have received notice that the SEC has issued or intends to issue a stop order with respect to such Registration Statement or that the SEC otherwise has suspended or withdrawn the effectiveness of such Registration Statement, either temporarily or permanently, or intends or has threatened to do so, and no other suspension of the use of, or withdrawal of the effectiveness of, such Registration Statement, the Prospectus, or the Prospectus Supplement shall exist. The Investor shall not have received any notice from the Company that the Prospectus, Prospectus Supplement, and/or any prospectus supplement or amendment thereto fails to meet the requirements of Section 5(b) or Section 10 of the Securities Act.

(b) Accuracy of the Company's Representations and Warranties. The representations and warranties of the Company shall be true and correct in all material respects as of the Execution Date and as of the date of each Closing (except for representations and warranties specifically made as of a particular date).

(c) Performance by the Company. The Company shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed, satisfied, or complied with by the Company at or prior to such Closing.

(d) No Injunction. No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or adopted by any court or governmental authority of competent jurisdiction that prohibits or directly and materially adversely affects any of the transactions contemplated by the Transaction Documents, and no proceeding shall have been commenced that may have the effect of prohibiting or materially adversely affecting any of the transactions contemplated by the Transaction Documents.

(e) No Suspension of Trading in or Delisting of Shares. The trading of the Securities shall not have been suspended by the SEC or the Principal Market, or otherwise halted for any reason, and the Securities shall have been approved for listing or quotation on and shall not have been delisted from or no longer quoted on the Principal Market. In the event of a suspension, delisting, or halting for any reason, of the trading of the Securities, as contemplated by this Section 8.2(e), the Investor shall have the right to return to the Company any amount of Purchase Notice Securities associated with such Purchase Notice, and the Commitment Amount with respect to such Purchase Notice shall be refunded accordingly.

(f) Beneficial Ownership Limitation. The number of Purchase Notice Securities then to be purchased by the Investor shall not exceed the number of such shares that, when aggregated with all other Securities then owned by the Investor beneficially owned (as such term is defined under the Exchange Act) by the Investor, would result in the Investor beneficially owning more than the Beneficial Ownership Limitation (as defined below), as determined in accordance with Section 13 of the Exchange Act. For purposes of this Section 8.2(f), if the amount of Securities outstanding is greater or lesser on a Closing Date than on the date on which the Purchase Notice associated with such Closing Date is given, the amount of Securities outstanding on such date of issuance of a Purchase Notice shall govern for purposes of determining whether the Investor, when aggregating all purchases of Securities made pursuant to this Agreement, would beneficially own more than the Beneficial Ownership Limitation following a purchase on any such Closing Date. If the Investor claims that compliance with a Purchase Notice would result in the Investor owning more than the Beneficial Ownership Limitation, upon request of the Company, the Investor will provide the Company with evidence of the Investor's then existing Securities beneficially owned. The "**Beneficial Ownership Limitation**" shall be 9.99% of the number of Securities outstanding immediately prior to the issuance of Securities issuable pursuant to a Purchase Notice. To the extent that the Beneficial Ownership Limitation would be exceeded in connection with a Closing, the number of Securities issuable to the Investor shall be reduced so it does not exceed the Beneficial Ownership Limitation.

(g) Principal Market Regulation. The Company shall have no right to issue and the Investor shall have no obligation to purchase any Purchase Notice Securities if the issuance of aggregate Purchase Notice Securities would exceed equals 19.99% of the Company's outstanding Common Stock as of the date hereof (the "**Exchange Cap**"), unless and until the Corporation receives the approval of its stockholders as required by the applicable rules and regulations of any Principal Market on which any securities of the Company are listed. The Exchange Cap shall be appropriately adjusted for any stock dividend, stock split, reverse stock split, or similar transaction.

(h) No Knowledge. The Company shall have no knowledge of any event more likely than not to have the effect of causing the effectiveness of the Registration Statement to be suspended or the Prospectus or Prospectus Supplement failing to meet the requirement of Sections 5(b) or 10 of the Securities Act (which event is more likely than not to occur within the fifteen (15) Business Days following the Business Day on which such Purchase Notice is deemed delivered).

(i) No Violation of Stockholder Approval Requirement. The issuance of the Securities shall not violate the stockholder approval requirements of the Principal Market.

(j) DWAC Eligible. The Securities must be DWAC Eligible and not subject to a "DTC chill."

(k) SEC Documents. All reports, schedules, registrations, forms, statements, information and other documents required to have been filed by the Company with the SEC pursuant to the reporting requirements of the Securities Act and the Exchange Act after the Execution Date (the "**Future SEC Documents**") (1) shall have been filed with the SEC within the applicable time periods prescribed for such filings under the Exchange Act, and (2) as of their respective dates, such Future SEC Documents complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and other federal laws, rules and regulations applicable to such Future SEC Documents, and none of such Future SEC Documents contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

ARTICLE IX
LEGENDS

Section 9.1 No Restrictive Legend. No restrictive stock legend shall be placed on the share certificates representing the Purchase Notice Securities.

Section 9.2 Investor's Compliance. Nothing in this Article IX shall affect in any way the Investor's obligations hereunder to comply with all applicable securities laws upon the sale of the Securities.

ARTICLE X
MISCELLANEOUS

Section 10.1 Force Majeure. No Party shall be liable for any failure to fulfill its obligations hereunder due to causes beyond its reasonable control, including but not limited to acts of God, epidemic or pandemic, natural disaster, labor disturbances, terrorist attack, riots, or wars, and any action taken, or restrictions or limitations imposed, by government or public authorities.

Section 10.2 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware without regard to the principles of conflicts of law.

Section 10.3 **Termination**. The Company may terminate this Agreement at any time by written notice to the Investor. This Agreement shall automatically terminate on the end of the Commitment Period.

Section 10.4 **Assignment**. The Transaction Documents shall be binding upon and inure to the benefit of the Company and the Investor and their respective successors. Neither any of the Transaction Documents nor any rights of the Investor or the Company hereunder may be assigned by either Party to any other Person.

Section 10.5 **No Third-Party Beneficiaries**. This Agreement is intended for the benefit of the Company and the Investor and their respective successors, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as contemplated in Section 7.4.

Section 10.6 **Termination**. This Agreement shall automatically terminate on the earlier of (i) the end of the Commitment Period, or (ii) the date that, pursuant to or within the meaning of any Bankruptcy Law, the Company commences a voluntary case or any Person commences a proceeding against the Company, a Custodian is appointed for the Company or for all or substantially all of its property or the Company makes a general assignment for the benefit of its creditors.

Section 10.7 **Entire Agreement**. The Transaction Documents, together with the exhibits thereto, contain the entire understanding of the Company and the Investor with respect to the matters covered herein and therein and supersede all prior agreements and understandings, oral or written, with respect to such matters.

Section 10.8 **Fees and Expenses**. Except as expressly set forth in the Transaction Documents or any other writing to the contrary, each Party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such Party incidental to the negotiation, preparation, execution, delivery and performance of the Transaction Documents. Notwithstanding the foregoing, the Parties agree that the amount of fifteen thousand dollars ($15,000), representing legal fees of the Investor for this Agreement and the transactions related hereto, shall be deducted from the applicable Purchase Price to be paid by the Investor to the Company for the Purchase Notice Securities, pursuant to the first Purchase Notice delivered pursuant to this Agreement.

Section 10.9 **Clearing Costs**. The Company shall pay the Clearing Costs associated with each Closing, and any Transfer Agent fees (including any fees required for same-day processing of any instruction letter delivered by the Company), stamp taxes and other taxes and duties levied on the Company in connection with the delivery of any Securities to the Investor.

Section 10.10 **Counterparts and Execution**. The Transaction Documents may be executed in multiple counterparts, each of which may be executed by less than all of the Parties, all of which together will constitute one instrument, will be deemed to be an original, and will be enforceable against the Parties. The Transaction Documents may be delivered to the other Party hereto by email of a copy of the Transaction Documents bearing the signature of the Party so delivering the Transaction Documents. The Parties agree that this Agreement shall be considered signed when the signature of a Party is delivered by .PDF, DocuSign or other generally accepted electronic signature. Such .PDF, DocuSign, or other generally accepted electronic signature shall be treated in all respects as having the same effect as an original signature. The signatories to this Agreement each represent and warrant that they are duly authorized by the Parties with the power and authority to bind the Parties to the terms and conditions thereof.

Section 10.11 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that such severability shall be ineffective if it materially changes the economic benefit of this Agreement to any Party.

Section 10.12 Further Assurances. Each Party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other Party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

Section 10.13 Agreement Not to be Construed Against Drafter. The Parties acknowledge that they have had an adequate opportunity to review each and every provision contained in this Agreement and to submit the same to legal counsel for review and comment. The Parties agree with each and every provision contained in this Agreement and agree that the rule of construction that a contract be construed against the drafter, if any, shall not be applied in the interpretation and construction of this Agreement.

Section 10.14 Titles and Subtitles. The titles and subtitles used in this Agreement are used for the convenience of reference and are not to be considered in construing or interpreting this Agreement.

Section 10.15 Amendments; Waivers. No provision of this Agreement may be amended other than by a written instrument signed by both Parties hereto and no provision of this Agreement may be waived other than in a written instrument signed by the Party against whom enforcement of such waiver is sought. No failure or delay in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

Section 10.16 Publicity. The Company and the Investor shall consult with each other in issuing any press releases or otherwise making public statements with respect to the transactions contemplated hereby and no Party shall issue any such press release or otherwise make any such public statement, other than as required by law or for legal compliance, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that no prior consent shall be required if such disclosure is required by law, in which case the disclosing Party shall provide the other Party with prior notice of such public statement. The Investor acknowledges that the Transaction Documents may be deemed to be "material contracts," as that term is defined by Item 601(b)(10) of Regulation S-K, and that the Company may therefore be required to file such documents as exhibits to reports or registration statements filed under the Securities Act or the Exchange Act. The Investor further agrees that the status of such documents and materials as material contracts shall be determined solely by the Company, in consultation with its counsel.

Section 10.17 __Notices__. All notices, demands, requests, consents, approvals, and other communications required or permitted hereunder shall be in writing and, unless otherwise specified herein, shall be (a) personally served, (b) delivered by reputable air courier service with charges prepaid for next Business Day delivery, or (c) transmitted by hand delivery, or email as a PDF (with read receipt or a written confirmation of delivery or receipt), addressed as set forth below or to such other address as such Party shall have specified most recently by written notice given in accordance herewith. Any notice or other communication required or permitted to be given hereunder shall be deemed effective upon hand delivery or delivery by email at the address designated below (if delivered on a Business Day during normal business hours where such notice is to be received), or the first Business Day following such delivery (if delivered other than on a Business Day during normal business hours where such notice is to be received).

The addresses for such communications shall be:

If to the Company:

Address: 28 Engelhard Drive, Suite B, Monroe Township, NJ 08831

Telephone: (609) 730-0400
E-mail: tpagliara@oceanpowertech.com

If to the Investor:

Address: 80 S.W. Eighth St., 20th Floor, Miami FL, 33131
Telephone: (917) 793-1173
E-mail: operations@alumnicapital.com

Either Party hereto may from time to time change its address or email for notices under this clause by giving prior written notice of such changed address to the other party hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the Execution Date.

OCEAN POWER TECHNOLOGIES, INC.

By: /s/ Philipp Stratmann
Name: Philipp Stratmann
Title: Chief Executive Officer
Date: September 13, 2024

ALUMNI CAPITAL LP

By: ALUMNI CAPITAL GP LLC

By: /s/ Ashkan Mapar
Name: Ashkan Mapar
Title: Manager
Date: September 13, 2024

EXHIBIT A

FORM OF PURCHASE NOTICE

TO: ALUMNI CAPITAL LP
We refer to the Purchase Agreement (the "**Agreement**"), dated as of September 13, 2024, entered into by and between Ocean Power Technologies, Inc. and you. Capitalized terms defined in the Agreement shall, unless otherwise defined herein, have the same meaning when used herein.

We hereby certify that, as of the date hereof, the conditions set forth in Article VIII of the Agreement are satisfied, and we hereby elect to exercise our right pursuant to the Agreement to require you to purchase ______ Purchase Notice Securities.

The Company acknowledges and agrees that the amount of Purchase Notice Securities shall not exceed the Initial Purchase Notice Limitation or Regular Purchase Notice Limitation applicable to such Purchase Notice or the Beneficial Ownership Limitation.

The Company's wire instructions are as follows:

[*Insert Wire Instructions]*

OCEAN POWER TECHNOLOGIES, INC.

By: ______________________________
Name:
Title: Chief Executive Officer
Date: September [●], 2024

Exhibit 31.1

CERTIFICATION PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT

I, Philipp Stratmann, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or other persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 16, 2024

/s/ Philipp Stratmann
Philipp Stratmann
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION PURSUANT TO SECTION 302 OF SARBANES-OXLEY ACT

I, Robert Powers, certify that:

1 I have reviewed this Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc.;

2 Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3 Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4 The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5 The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or other persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 16, 2024

/s/ Robert Powers
Robert Powers
Senior Vice President and Chief Financial Officer

Exhibit 32.1

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

In connection with the Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc. (the "Company") for the period ended July 31, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Philipp Stratmann III, President and Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: September 16, 2024

/s/ Philipp Stratmann
Philipp Stratmann
President and Chief Executive Officer

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

Exhibit 32.2

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

In connection with the Quarterly Report on Form 10-Q of Ocean Power Technologies, Inc. (the "Company") for the period ended July 31, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Robert Powers, Senior Vice President and Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: September 16, 2024

/s/ Robert Powers
Robert Powers
Senior Vice President and Chief Financial Officer

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