Risk Factors Comparison 2023-07-28 to 2022-07-13 Form: 10-K

Legend: **New Text** ~~Removed Text~~ Unchanged Text Moved Text Section

~~You should carefully consider~~ **The Company' s operations and performance depend significantly on global and regional economic conditions. Macroeconomic conditions, including inflation, slower growth or recession, changes to fiscal and monetary policy, tighter credit, higher interest rates, high unemployment and currency fluctuations can materially and adversely affect demand for the Company' s products and services. In addition, confidence and spending can be materially adversely affected in response to financial market volatility, negative financial news, declines in income or asset values, energy market dislocations and cost increases, labor and healthcare costs and** ~~the~~ **other economic** ~~following risk~~ factors ~~together with~~ **. An adverse impact on demand for** the **Company' s products, uncertainty about, or a decline in, global or regional economic conditions can have a significant impact on the Company' s suppliers and** other **partners** ~~information contained in this Annual Report, and in prior periodic and current reports~~ . ~~If any~~ **Potential effects include financial instability; inability to obtain credit to finance operations and purchases** of **the Company' s products; and insolvency. We cannot predict the timing or scale of** ~~the~~ **these various macroeconomic conditions** ~~following risks actually occur~~ , **but** they ~~may~~ **could have a** ~~materially~~ -- **material** ~~harm~~ **adverse effect on** our business **, results of operations** and ~~our~~ financial condition ~~and results of operations. In this event, the market price of our common stock could decline, and your investment could be lost. Risks Related to Our Financial Condition We have a history of operating losses and may not achieve or maintain profitability and positive cash flow. We have incurred net losses since we began operations in 1994, including net losses of $ 18. 9 million and $ 14. 8 million in fiscal 2022 and 2021, respectively. As of April 30, 2022, we had an accumulated deficit of $ 253. 8 million. Our losses to date have resulted primarily from costs incurred in our research and development programs and from our selling, general and administrative costs. As we continue to develop our proprietary technologies, we expect to continue to have a net loss and use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services. We do not know whether we will be able to successfully commercialize our products and services or whether we can achieve profitability. There is significant uncertainty about our ability to successfully commercialize our products in our targeted markets. Even if we do achieve commercialization of our products and services and become profitable, we may not be able to achieve or, if achieved, sustain profitability on a quarterly or annual basis. We may not be able to raise sufficient capital to continue to operate our business. Historically, we have funded our business operations through sales of equity securities. While we have raised approximately $ 80. 6 million since April 30, 2020 and believe that this is sufficient to fund our operations for the foreseeable future, we do not know whether we will be able to secure additional funding if needed in the future or, if secured, whether the terms will be favorable to us or our investors. Our ability to obtain additional funding will be subject to several factors, including market conditions, our operating performance, litigation and investor sentiment. These factors may make additional funding unavailable, or the timing, dollar amount, and terms and conditions of additional funding unattractive. If we issue additional securities to raise capital, our existing shareholders could experience dilution or may be subordinated to any rights, preferences or privileges granted to the new security holders. In particular, any new securities issued could have rights senior to those associated with our common stock and could contain covenants that could restrict our operations. Should the financing we require to sustain our working capital needs be unavailable or prohibitively expensive when we require it, our business, operating results, financial condition and prospects could be materially and adversely affected~~ . COVID- 19 has, and could continue to, adversely affect the Company' s business, financial condition **,** and results of operations. The COVID- 19 outbreak ~~has~~ caused significant disruption in the financial markets and supply chains both globally and in the U. S., as well as increased travel restrictions and disruption and shutdown of certain businesses in the U. S. and abroad, including disruptions to our own business. **Future pandemics could cause** ~~We may continue to experience impacts from~~ changes in customer behavior, more employees working from home, and less frequent travel for sales and customer meetings, including dealing with potential regulatory limitations on domestic and international travel. Our business benefits from in- person demonstrations and sales meetings ~~, which have been limited due to COVID- 19~~ . The extent to which **future pandemics** ~~COVID- 19 impacts~~ - **impact** our results will ultimately depend on future developments and will include future actions which may be taken by governments and businesses to attempt to contain ~~COVID~~ **them. Adverse developments affecting the financial services industry, including events or concerns involving liquidity, defaults, or non** - ~~19~~ **performance by financial institutions, could adversely affect our business, financial condition, or results of operations. We currently maintain cash balances in accounts at U. S. financial institutions that we believe are high quality. These accounts are in non- interest- bearing and interest- bearing operating accounts and may, from time to time, exceed the Federal Deposit Insurance Corporation (" FDIC ") insurance limits. If such banking institutions were to fail, we could lose all or a portion of those amounts held more than such insurance limitations. In addition, actual events involving limited liquidity, defaults, non- performance or other adverse developments that affect financial institutions, our third- party vendors and counterparties or other companies in the financial services industry or the financial services industry generally, or concerns or rumors about any events of these kinds or other similar risks, have in the past and may in the future lead to market- wide liquidity problems, which could adversely affect our business, financial condition, results of operations and liquidity. Although we assess our banking relationships as we believe necessary or appropriate, our access to funding sources and other credit arrangements in amounts adequate to finance or capitalize our respective current and projected future business operations could be significantly impaired by factors that affect us, the financial institutions with which we have arrangements directly, or the financial services industry or economy in**

general. These factors could include, among others, events such as liquidity constraints or failures, the ability to perform obligations under various types of financial, credit or liquidity agreements or arrangements, disruptions or instability in the financial services industry or financial markets or concerns or negative expectations about the prospects for companies in the financial services industry. These factors could involve financial institutions or financial services industry companies with which we have financial or business relationships but could also include factors involving financial markets or the financial services industry generally. In addition, investor concerns regarding the U. S. or international financial systems could result in less favorable commercial financing terms, including higher interest rates or costs, and tighter financial and operating covenants, or systemic limitations on access to credit and liquidity sources, thereby making it more difficult for us to acquire future financing or access to capital on acceptable terms or at all. As the ability to access capital has historically been, and is expected to continue to be, one of our primary sources of liquidity, any adverse impacts on our ability to access such credit and liquidity sources as a result of adverse developments affecting the financial services industry could adversely affect our business, financial condition, results of operations . Currency translation and transaction risk may adversely affect our business, financial condition **,** and results of operations. Our reporting currency is the U. S. dollar, ~~and~~ **however** sometimes we incur costs in the local currency of countries in which our customers and suppliers are located. As a result, we are subject to currency translation risk. A percentage of our revenues have historically been generated outside the ~~United States~~ **U. S.** and can be denominated in foreign currencies of our customers. Changes in exchange rates between foreign currencies and the U. S. dollar could affect our revenues and cost of revenues and could result in exchange losses. We cannot accurately predict the impact of future exchange rate fluctuations on ~~our~~ **the** results of **our** operations. Currently, we do not engage in any exchange rate hedging activities and, as a result, any volatility in currency exchange rates may have an immediate adverse effect on our business, financial condition **,** and results of operations. Risks Related ~~To~~ **to** Growth ~~Of~~ **of** Our Business If sufficient demand for our solutions and services or new products does not develop or takes longer to develop than we anticipate, our revenue generation will be limited, and it is unlikely that we will be able to achieve and, if achieved, then sustain profitability. Even if wave energy and maritime domain awareness technology achieve broad commercial acceptance, our products, including our **MDAS offering,** PowerBuoys ® and WAM- V ® autonomous surface vessels may not prove to be commercially viable technologies. We have invested a significant portion of our time and financial resources since our inception in the development of our PowerBuoys ® but have not yet achieved successful large scale or profitable commercialization of our PowerBuoys ®. We have also ~~invested in the acquisition of MAR, and~~ added the WAM- V ® product line, but we have not achieved profitability of this product line. As we seek to manufacture, market, sell and deploy our PowerBuoys ® and WAM- Vs ® in greater quantities, we may encounter unforeseen hurdles that would limit the commercial viability of these products, including unanticipated manufacturing, deployment, operating, maintenance **,** and other costs. **We** ~~Our target customers and we~~ may also encounter technical obstacles to deploying, operating **,** and maintaining PowerBuoys ®, WAM- Vs ®, or other products. If demand for our **solutions and** products fails to develop sufficiently, it is unlikely that we will be able to grow our business or generate sufficient revenues ~~to achieve and then sustain profitability~~ . In addition, if we are not successful in commercializing our new **solutions and** products, or are significantly delayed in doing so, our business, financial condition and results of operations will be adversely affected. If we are unable to attract and retain management and other qualified personnel, we may not be able to achieve our business objectives. Our success depends on the skills, experience and efforts of our management and other key product development, manufacturing, and sales and marketing employees. We cannot be certain that we will be able to attract, retain and motivate such employees. The loss of the services of one or more of these employees could have a material adverse effect on our business. There is a risk that we will not be able to retain or replace these key employees. Implementation of our business plans will be highly dependent upon our ability to hire and retain senior executives as well as talented staff in various fields of expertise. We made several changes to our senior management team in fiscal ~~2022~~ **2023** . Changes in senior management are inherently disruptive, and efforts to implement any new strategic or operating goals may not succeed in the absence of a long- term management team. Changes to strategic or operating goals stemming from the appointment of new executives may themselves prove to be disruptive. Periods of transition in senior management leadership are often difficult as new executives gain detailed knowledge of our operations. Cultural differences may also impact changes in strategy and style. Without consistent and experienced leadership, customers, employees, **suppliers,** creditors, shareholders **,** and others may lose confidence in us. To be successful, we need to **attract and** retain key personnel. Qualified individuals, including engineers, **software developers,** project managers and sales leadership, are in high demand, and we may incur significant costs to attract and retain them. All ~~of~~ our employees are at- will employees, which means they can terminate their employment relationship with us at any time, and their knowledge of our business and industry would be difficult to replace. If we lose ~~the services of~~ key personnel, or do not hire or retain other personnel for key positions, this could have a material adverse effect on our business, financial condition, results of operations or cash flows. If we are unable to effectively manage our growth, this could adversely affect our business and operations. The scope of our operations to date has been limited, and we do not have experience operating on the scale that we believe may be necessary to achieve profitable operations. We added two acquisitions over the last two fiscal years, adding operations in Texas and California to our existing operations in New Jersey, without significantly increasing our support staff. Our current personnel, facilities, systems and internal procedures and controls may not be adequate to support our future growth plans, which we expect to include organic growth as well as additional acquisitions and partnerships. This factor, when combined with the technical complexity of some of our development efforts, may result in our inability to meet certain customer expectations or deadlines and could result in ~~the~~ **an** amendment to, or termination of, customer contracts or relationships. To realize our desired growth, we may need to add sales, marketing **,** and engineering offices in our existing and / or additional locations nationally or internationally, which may result in additional organizational complexity and cost. To manage the expansion of our operations, we may be required to improve our operational and financial systems, procedures **,** and controls, increase our manufacturing capacity and expand, train and manage our employee base, which may need to increase significantly if we are to be able to fulfill our current manufacturing and growth plans. Our management may also be required to maintain and expand our relationships with customers, suppliers and other third parties, as well as attract new customers and suppliers. If we do not meet these challenges, we may be unable to take advantage of market opportunities, execute our business strategies or respond to competitive pressures. If we are unable to successfully negotiate and enter into service contracts with our customers on terms that are acceptable to us, our ability to diversify our revenue stream will be impaired. An important element of our business strategy is to enter into service contracts with our customers under which we would be paid fees for services related to the maintenance and operation of our products purchased from us. In addition, we may offer to lease our products, sell power generated by our products or sell data gathered by sensors on our products. Even if customers purchase or lease our products, they may not enter into service contracts with us. We may not be able to negotiate service or other contracts that provide us with any additional profit opportunities. Even if we successfully negotiate and enter into such service contracts, our customers may terminate them prematurely **,** or they may not be profitable for a variety of reasons, including the presence of unforeseen hurdles or costs. In addition, if we were unable to perform adequately under such service contracts, our efforts to successfully market our products could be impaired. Any one of these outcomes could have an adverse effect on our business, financial condition **,** and results of operations. Failure by third parties to supply or manufacture components of our products or to deploy our systems timely or properly could adversely affect our business, financial condition **,** and results of operations. We have been, and expect to continue to be, highly dependent on third parties to supply or manufacture components for our products. If, for any reason, our third- party manufacturers or vendors are not willing or able to provide us with components or supplies in a timely fashion, or at all, our ability to manufacture and sell many of our products could be impaired. For example, some of our manufacturers have experienced staffing shortages due to COVID- 19 and its variants as well as other factors, and this has delayed delivery times for our products from time to time. Specifically, we have concerns about the delivery of semiconductors and specialty metals, which are necessary to produce our products. Other global supply chain issues have caused our vendors to delay orders, or to request increased pricing that we may not always be able to pass on to our customers. We do not have long- term contracts with our third- party manufacturers or vendors. If we do not develop ongoing relationships with vendors located in different regions, we may not be successful at controlling unit costs as our manufacturing volume increases. Additionally, we may not be able to negotiate new arrangements with these third parties on acceptable terms, or at all. In addition, we rely on third parties, under our oversight, for the deployment and mooring for products. We have utilized several different deployment methods, including towing our products to the deployment location and transporting our products to the deployment location by barge or offshore workboat. If these third parties do not properly deploy our systems, cannot effectively deploy the products on a large, commercial scale, or otherwise do not perform adequately, or if we fail to recruit and retain third parties to deploy our systems in particular geographic areas, our business, financial condition **,** and results of operations could be adversely affected. Our targeted markets are **competitive and** highly ~~competitive~~ **complex** . We compete against incumbent solutions already being utilized by our customers and potential customers. If we are unable to compete effectively, we may be unable to increase our revenues and achieve or maintain profitability. Our principal targeted markets include offshore oil and gas, defense and security, science and research, marine charter, and offshore wind. In our targeted markets, which are highly competitive, we compete against incumbent power and maritime domain awareness solutions already being utilized by our customers and potential customers. If we are unable to demonstrate to our customers and our potential customers that our products and services are competitive and reliable to alternative solutions, or if it takes us longer to do so than we anticipate, we may be unable to expand our business, maintain our competitive position, satisfy our contractual obligations, continue to commercialize our products, or become profitable. In addition, if the cost associated with these development efforts exceeds our projections, our results of operations could be materially and adversely affected. In addition, competition may arise from other companies manufacturing similar products, developing different products that produce energy more efficiently than our products, or developing autonomous ~~vessels~~ **vehicles** that perform better or have other characteristics that customers prefer **,** could make our products less attractive or render them obsolete. If we are not successful in manufacturing systems **and solutions** ~~that generate competitively priced power to the capacity~~ required for the application, we may not be able to respond effectively to competitive pressures from **competing** ~~other renewable energy~~ technologies or improvements to existing technologies. If we are unable to respond effectively to such competitive forces, our business, financial condition **,** and results of operations could be adversely affected. Our targeted markets are subject to their own inherent risks, and if those risks should materialize, then our business, financial condition and results of operations could be adversely affected. We market and plan to market our **services and** products in multiple international regions. If we are unable to manage our international operations effectively, our business, financial condition and results of operations could be adversely affected. We market and plan to market our **services and** products in multiple global regions, including parts of North and South America, Europe, and Asia, and we are therefore subject to risks associated with having international operations. Revenues from customers who are based outside of the U. S. accounted for **88 % of our revenues in fiscal 2023 and** 84 % of our revenues in fiscal 2022 ~~and 86 % of our revenues in fiscal 2021~~ . Risks inherent in international operations include, but are not limited to, the following: ● changes in general economic and political conditions in the countries in which we operate; ● unexpected adverse changes in foreign laws or regulatory requirements, including those with respect to renewable energy, environmental protection, permitting, export duties and quotas; ● trade barriers such as export requirements, tariffs, taxes and other restrictions and expenses, which could increase the prices of our products and make us less competitive in some countries; ● fluctuations in exchange rates **that** may affect demand for our products and may adversely affect our profitability in U. S. dollars to the extent the price of our products and cost of raw materials and labor are denominated in a foreign currency; ● difficulty with staffing and managing widespread operations **, including managing the complexity of international labor laws as we send staff and hire consultants to support our international deployments** ; ● complexity of, and costs relating to compliance with, the different commercial and legal requirements of the overseas markets in which we offer and sell our products; ● inability to obtain, maintain or enforce intellectual property rights; and ● difficulty in enforcing agreements in foreign legal systems. Our business in foreign markets requires us to respond to rapid changes in market conditions in these countries. Our overall success as a global business depends, in part, on our ability to succeed in differing legal, regulatory, economic, social **,** and political conditions. We may not be able to develop and implement policies and strategies that will be effective in each location where we do business, which in turn could adversely affect our business, financial condition **,** and results of operations. The current economic environment, particularly the macroeconomic pressures in certain European countries, may increase these risks. Failure of our information systems or those of third parties or breaches of data security could cause significant harm to our business. Our systems and processes involve the storage and transmission of proprietary information and sensitive or confidential data, including personal information of employees, and possibly customers and others. In addition, we rely on information systems controlled by third parties. Information system failures, network disruptions, and system and data security breaches, manipulation, destruction, ransom, or leakage, whether intentional or accidental, could impair our ability to provide services to our customers or otherwise harm our ability to conduct our business. Any such failures, disruptions or breaches could also impede the development, manufacture or shipment of products, interrupt or delay processing of transactions and reporting financial results, result in theft or misuse of our intellectual property or other assets, or result in the unintentional disclosure of personal, proprietary, sensitive, or confidential information of employees, customers, and others. Our development and use of our MDAS platforms, cloud- based offerings, as well as our evolution toward DaaS **, PaaS** and RaaS models ~~,~~ require us to host increasing amounts of our own ~~and~~ **data as well as** customer data ~~,~~ and increases the risk that our and our customers' data and financial and proprietary information could be more susceptible to such failures and data breaches. In addition, the need for substantial numbers of our employees to work remotely, such as due to the COVID- 19 pandemic, could create additional data security risks. Cyber- security breaches of our systems and information technology could adversely impact our ability to operate or meet contractual obligations. We utilize, develop, install **,** and maintain a number of information technology systems. Various privacy and security laws require us to protect sensitive and confidential information from disclosure. In addition, we are bound by our customers and other contracts, as well as our own business practices, to protect confidential and proprietary information (whether it be ours or a third party' s information entrusted to us) from disclosure. Our computer systems, as well as those of our customers, contractors **,** and other vendors, face the threat of unauthorized access, computer hackers, viruses, malicious code, cyber- attacks, phishing and other security incursions and system disruptions, including attempts to improperly access our confidential and proprietary information, as well as the confidential and proprietary information of our customers and other business partners. Industry- accepted security measures and technology to secure computer systems, and the information stored by cloud vendors on these systems are subject to threats. **For example, as we plan to receive projects from the U. S. Department of Defense (" DoD "), we will have to meet their framework for establishing cyber security standards and best practices, what they call Cybersecurity Maturity Model Certification (" CMMC ") at various levels as we grow our business with DoD.** There can be no assurance that our efforts will prevent these threats **, or that we will be able to secure appropriate certifications in this area** . Further, as these security threats continue to evolve, we may be required to devote additional resources to protect, prevent, detect **,** and respond against such threats. A party who circumvents our security measures, or those of our customers, contractors **,** or other vendors, could misappropriate confidential or proprietary information, improperly manipulate data, or cause damage or interruptions to systems. If we are unable to protect sensitive information, our customers or governmental authorities could question the adequacy of our security processes and procedures and our compliance with applicable laws and regulations, including evolving government cyber security requirements for government contractors. Any of these events could damage our reputation, result in litigation and regulatory fines and penalties, or have a material adverse effect on our business, financial condition, results of operations or cash flows **. Our ability to use net operating loss carryforwards to offset future taxable income for U. S. federal income tax purposes may be limited. We have federal net operating loss (" NOL ") carryforwards that are available to offset future taxable income. We may recognize additional NOLs in the future. Section 382 of the Internal Revenue Code of 1986, as amended (the " Code ") imposes an annual limitation on the amount of taxable income that may be offset by a corporation' s NOLs if the corporation experiences an " ownership change " as defined in Section 382 of the Code. An ownership change occurs when our " five- percent shareholders " (as defined in Section 382 of the Code) collectively increase their ownership in OPT by more than 50 percentage points (by value) over a rolling three- year period. Additionally, various states have similar limitations on the use of state NOLs following an ownership change. If an ownership change occurs, the amount of the taxable income for any post- change year that may be offset by a pre- change loss is subject to an annual limitation that is cumulative to the extent it is not all utilized in a year. This limitation is derived by multiplying the fair market value of our stock as of the ownership change by the applicable federal long- term tax- exempt rate. To the extent that a company has a net unrealized built- in gain at the time of an ownership change, which is realized or deemed recognized during the five- year period following the ownership change, there is an increase in the annual limitation for each of the first five- years that is cumulative to the extent it is not all utilized in a year. If an ownership change should occur in the future, our ability to use the NOL to offset future taxable income will be subject to an annual limitation and will depend on the amount of taxable income generated by us in future periods. There is no assurance that we will be able to fully utilize the NOL and we may be required to record an additional valuation allowance related to the amount of the NOL that may not be realized, which could impact our result of operations. As noted, we believe that these NOL carryforwards are a valuable asset for us. Consequently, we have a Section 382 Tax Benefits Preservation Plan in place, to protect our NOLs during the effective period of the rights plan. Although the Tax Benefits Preservation Plan is intended to reduce the likelihood of an " ownership change " that could adversely affect us, there is no assurance that the restrictions on transferability in the rights plan will prevent all transfers that could result in such an " ownership change ". The Tax Benefits Preservation**

Plan could make it more difficult for a third party to acquire, or could discourage a third party from acquiring, us or a large block of our common stock. A third party that acquires 4. 9 % or more of our common stock could suffer substantial dilution of its ownership interest under the terms of the Tax Benefits Preservation Plan through the issuance of common stock or common stock equivalents to all stockholders other than the acquiring person. The foregoing provisions may adversely affect the marketability of our common stock by discouraging potential investors from acquiring our stock. In addition, these provisions could delay or frustrate the removal of incumbent directors and could make more difficult a merger, tender offer or proxy contest involving us, or impede an attempt to acquire a significant or controlling interest in us, even if such events might be beneficial to us and our stockholders . Risks Related to Product Development and Commercialization We have only manufactured a limited number of PowerBuoys ®, and to date we have not produced these products in any significant quantity for commercial production. These products do not have a sufficient operating history to accurately predict how they will perform over their estimated useful life. To date, we have only manufactured a limited number of PowerBuoys ®. As a result, our products may not have a sufficient operating history to confirm how they will perform over their estimated useful life. Our technology may not yet have demonstrated that our engineering and test results can be duplicated in volume or in commercial production. If our products are ultimately proven ineffective or unfeasible, we may not be able to expand the commercial production of our products or we may become liable to our customers for quantities we are obligated to produce but are unable to produce. If our products perform below expectations, we could lose customers and face substantial repair and replacement expenses which could in turn adversely affect our business, financial condition **,** and results of operations. We face ~~numerous~~ **the possibility of a range of potential** accident and safety risks and hazards, including hazards associated with extreme weather, wind **,** and other environmental conditions, which are inherent in offshore operations. Portions of our operations are subject to hazards and risks inherent in the building, testing, deploying and maintenance of our products **, particularly offshore operations** . These hazards and risks could result in personal injuries or loss of life. The unintentional release of a PowerBuoy ® product from its mooring **, for example,** due to extreme environmental conditions and damage caused by its drifting, and other damages which may include damage to our properties, including our products, and the properties of others, or other consequential damages **. Certain weather events could increase in frequency or severity requiring potential design changes or limiting the windows available for offshore operations** . Our autonomous vessels could cause other types of damage, including collisions with other vessels, property of others, or even swimmers or other persons or property utilizing a body of water where the WAM- V ® is operating. This could also lead to the suspension of certain of our operations, large damage claims, damage to our safety reputation and a loss of business. Some of these risks may be uninsurable **,** and some claims may exceed our insurance coverage. Therefore, the occurrence of a significant accident or other risk event or hazard that is not fully covered by insurance could materially and adversely affect our business and financial results and, even if fully covered by insurance, could materially and adversely affect our business due to the impact on our reputation for safety. Our relationships with our strategic partners may not be successful, and we may not be successful in establishing additional relationships, either of which could adversely affect our ability to commercialize our products and services. We have a number of critical relationships with strategic partners, specifically our software development partners. Generally, these types of relationships obligate a party to provide certain services or perform certain tasks in connection with the relationship with the alliance partner, and we are generally responsible for paying the costs we incur relating to such services or tasks. These relationships generally are not expected to provide us with any revenues or sources of financing. If we are unable to reach agreements with additional suitable alliance partners, we may fail to meet our business objectives for the commercialization of our products. We may face significant competition in seeking appropriate alliance partners. Moreover, these development agreements and strategic alliances are complex to negotiate and time consuming to document. We may not be successful in our efforts to establish additional strategic relationships or other alternative arrangements. The terms of any additional strategic relationships or other arrangements that we establish may not be favorable to us. Furthermore, even if we **can** ~~are able to~~ find, negotiate and enter **into** these relationships, such arrangements may be conditional upon our receipt of additional funding. There can be no assurance that we will receive such additional funding. In addition, strategic relationships may not be successful, and we may be unable to sell and market our products to these companies, their affiliates and customers in the future, or growth opportunities may not materialize. ~~Any of which could adversely affect our business, financial condition and results of operations.~~ We have limited manufacturing ~~and~~ **,** deployment **, and internal software development** experience. If we are unable to increase our **internal software development and** manufacturing capacity in a cost- effective manner, our business ~~will~~ **may** be materially harmed. We manufacture key components of our products, while outsourcing the manufacturing for other components of our products. **We** ~~However, we~~ have only manufactured our products in limited quantities for use in development and testing and have limited commercial manufacturing and deployment experience, and our work with our vendors has not included work on multiple orders on time- critical deadlines. Our future success depends on our ability to significantly increase both our manufacturing capacity and production **and service** throughput in a cost- effective and efficient manner, and to manage multiple vendors with several orders on specific deadlines. In order to meet our growth objectives, we will need to increase our engineering, contract management, and manufacturing staff. There is intense competition for hiring qualified technical and engineering personnel. Therefore, we may not be able to hire a sufficient number of qualified personnel to allow us to meet our growth objectives. We may be unable to develop efficient, low- cost manufacturing capabilities and processes that enable us to meet the quality, price, engineering, design and production standards or production volumes necessary to successfully commercialize our products. If we cannot do so, we may be unable to expand our business, satisfy our contractual obligations or become profitable. Even if we are successful in developing our manufacturing capabilities and processes, we may not be able to do so in time to meet our commercialization schedule or satisfy the requirements of our customers. **In addition, historically we have outsourced the majority of our software development activities. For fiscal 2024 and beyond, our plan is to build out an internal software development team and bring in- house certain core**

aspects of our software solutions. We may be unable to hire appropriate internal resources to enable us to meet the software development needs of our products and solutions. If we cannot do so, we may be unable to expand our business and become profitable or do so in time to meet the needs of our customers. Problems with the quality or performance of our products would adversely affect our business, financial condition **,** and results of operations. Our agreements with customers will generally include guarantees and warranties with respect to the quality and performance of our products. Because of the limited operating history of our products, we have been required to make analytical assumptions regarding the durability, reliability **,** and performance of the systems, and we may not be able to predict whether and to what extent we may be required to perform under the guarantees that we expect to give our customers. Our assumptions could prove to be materially different from the actual performance of our products, causing us to incur substantial expense to repair or replace defective systems in the future. We ~~will~~ **could** bear the risk of claims long after we have sold our products and recognized revenue. Moreover, any widespread product failures could adversely affect our business, financial condition **,** and results of operations. We must continually improve existing **services and** products, design and sell new products, and invest in research and development in order to compete effectively. The markets for our **services and** products are characterized by rapid technological change, evolving industry standards and continuous improvements of products. Due to constant changes in our markets, our future success depends on our ability to develop new technologies, products, processes **,** and product applications. New product development and commercialization efforts, including efforts to enter markets or product categories in which we have limited **,** or no prior experience ~~,~~ have inherent risks. These risks include the costs involved, such as development and commercialization, product development or launch delays, and the failure of new products and line extensions to achieve anticipated levels of market acceptance or growth in sales or operating income. We also face the risk that our competitors will introduce innovative new products that compete with our products. If new product development and commercialization efforts are not successful, our financial results could be adversely affected. Product and technological developments are accomplished primarily through internally funded R & D projects. Because it is not generally possible to predict the amount of time required and costs involved in achieving certain R & D objectives, actual development costs may exceed anticipated amounts and estimated product development schedules may be extended. Our financial condition and results of operations may be materially and adversely affected if: ● Product improvements are not completed on a timely basis; ● New products are not introduced on a timely basis or do not achieve sufficient market penetration; ● There are cost overruns or delays in R & D efforts; or ● New products experience reliability or quality problems, or otherwise do not meet customer preferences or requirements. Risks Related to Intellectual Property If we are unable to obtain or maintain intellectual property rights relating to our technology and products, the commercial value of our technology and products may be adversely affected, which could in turn adversely affect our business, financial condition **,** and results of operations. Our success and ability to compete depends in part upon our ability to obtain protection in the U. S. and other countries for our products by establishing and maintaining intellectual property rights relating to or incorporated into our technology and products. We own a variety of patents and patent applications in the U. S. and corresponding patents and patent applications in several foreign jurisdictions. However, we have not obtained patent protection in each market in which we plan to compete. In addition, we do not know how successful we would be should we choose to assert our patents against suspected infringement, and we do not know what the cost to do so would be. Our pending and future patent applications may not **be** ~~issue~~ **issued** as patents or, if issued, may not be issued in a form that will be advantageous to us. Even if issued, patents may be challenged, narrowed, invalidated **,** or circumvented, which could limit our ability to stop competitors from marketing similar products or limit the length of term of patent protection we may have for our products. Changes in either patent laws or in interpretations of patent laws in the U. S. and other countries may diminish the value of our intellectual property or narrow the scope of our patent protection, which could in turn adversely affect our business, financial condition **,** and results of operations. If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected, which could in turn adversely affect our business, financial condition **,** and results of operations. In addition to patented technology, we rely upon unpatented proprietary technology, processes **,** and know- how, particularly with respect to our PowerBuoy ® control and electricity generating systems and our WAM- V ® systems. We generally seek to protect this information in part by confidentiality agreements with our employees, consultants and third parties. These agreements may be breached, and we may not have adequate remedies for any such breach. In addition, our trade secrets may otherwise become known or be independently developed by competitors. Foreign laws may not afford us sufficient protections for our intellectual property, and we may not be able to obtain patent protection outside of the United States. Intellectual property rights protection continues to present significant challenges to U. S. companies operating around the world. The body of law is often relatively undeveloped compared to the commercial law in the U. S. and only limited protection of intellectual property may be available in those jurisdictions. Although we have taken precautions to protect our intellectual property, any local design or manufacture of products that we undertake in a foreign jurisdiction could subject us to an increased risk that unauthorized parties will be able to copy or otherwise obtain or use our intellectual property, which could harm our business. We may also have limited legal recourse in the event we encounter patent or trademark infringement. If we are unable to manage our intellectual property rights, our business and operating results may be seriously harmed. If we infringe or are alleged to have infringed upon intellectual property rights of third parties, our business, financial condition **,** and results of operations could be adversely affected. Our products or use of our trademarks may infringe, or be claimed to infringe, upon patents, patent applications or trademarks under which we do not hold licenses or other rights. Third parties may own or control these patents, patent applications or trademarks in the U. S. and abroad. Third parties could bring claims against us that would cause us to incur substantial expenses and, if successfully asserted against us, could cause us to pay substantial damages. Further, if a patent or trademark infringement suit were brought against us, we could be forced to stop or delay manufacturing or sales of the product or component that is the subject of the suit. As a result of patent or trademark infringement claims, or in order to avoid potential claims, we may choose or be required to seek a license from ~~the~~ **a** third party and be required to pay license fees, royalties or both. These licenses may not be available on acceptable terms, or at all. Even if we were able to obtain a license, the rights may be non- exclusive, which could result in our competitors gaining access to the same intellectual property. Ultimately, we could be forced to cease some aspect of our business operations if, as a result of actual or threatened patent or trademark infringement claims, we are unable to enter into licenses on acceptable terms. This could significantly and adversely affect our business, financial condition **,** and results of operations. In addition to infringement claims against us, we may become a party to other types of ~~patent~~ **patents** or trademark litigation and other proceedings, including proceedings declared by the U. S. Patent and Trademark Office and proceedings in the European Patent Office, regarding intellectual property rights with respect to our products and technology. The cost to us of any patent or trademark litigation or other proceeding, even if resolved in our favor, could be substantial. In addition, if we were to license our intellectual property to others, we may be required to indemnify our licensee if the licensed intellectual property is found to be infringing on a third party' s rights. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources. Our contracts with governmental entities could negatively affect our intellectual property rights, and our ability to commercialize our products could be impaired. Our prior agreements with government agencies in large part funded the research and development of our PowerBuoy ®. When new technologies are developed with U. S. government funding, the government obtains certain rights in any resulting patents, technical data **,** and software, generally including, at a minimum, a non- exclusive license authorizing the government to use the invention, technical data or software for non- commercial purposes. These rights may permit the government to disclose our confidential information to third parties and to exercise " march- in " rights. March- in rights refer to the right of the U. S. government to require us to grant a license to the technology to a responsible applicant or, if we refuse, the government may grant the license itself. U. S. government- funded inventions must be reported to the government and U. S. government funding must be disclosed in any resulting patent applications; our rights in such inventions will normally be subject to government license rights, periodic post- contract utilization reporting, foreign manufacturing restrictions and march- in rights. The government can exercise its march- in rights if it determines that action is necessary because we fail to achieve practical application of the technology or because action is necessary to alleviate health or safety needs, to meet requirements of federal regulations or to give preference to U. S. industry. Our government- sponsored research contracts are subject to audit and require that we provide regular written technical updates on a monthly, quarterly **,** or annual basis, and, at the conclusion of the research contract, a final report on the results of our technical research. Because these reports are generally available to the public, third parties may obtain some aspects of our sensitive confidential information. Moreover, if we fail to provide these reports or to provide accurate or complete reports, the government may obtain rights to any intellectual property arising from the related research. Funding from government contracts may also limit when and how we can deploy our technology developed under those contracts. Foreign governments with which we contract to provide funding for our research and development may seek similar rights. Risks Related to Regulatory and Compliance Matters If we are unable to obtain all necessary regulatory permits and approvals, it is possible that we will not be able to implement our planned projects or business plan. Offshore deployment of our products is heavily regulated. Each of our deployments is subject to multiple permitting and approval requirements. We **and our customers** are dependent on state, federal and regional government agencies for such permits and approvals. Due to the unique nature of in- ocean power generation and the associated potential for environmental hazards stemming from deployment of our products, we expect our projects to receive close scrutiny by permitting agencies, approval authorities and the public, which could result in substantial delay in the permitting process. New regulations surrounding the deployment of autonomous vessels could restrict or limit our ability to deploy WAM- Vs ® in certain jurisdictions. Successful challenges by ~~any~~ parties opposed to our deployments could result in increased costs, or in the denial of necessary permits and approvals. If we or our clients are unable to obtain necessary permits and approvals in connection with any or all ~~of~~ our projects, those projects would not be implemented, and our business, financial condition and results of operations would be adversely affected. If we violate or fail to comply with these permits and approvals, we could be fined or otherwise sanctioned by regulators. In the event we are unable to satisfy regulatory requirements relating to internal control over financial reporting, or if our internal controls are not effective, our business and financial results may suffer. Effective internal controls are necessary for us to provide reasonable assurance with respect to our financial reports and to effectively prevent fraud. Pursuant to the Sarbanes- Oxley Act of 2002, we are required to furnish a report by management on internal control over financial reporting, including management' s assessment of the effectiveness of such control. Internal control over financial reporting may not prevent or detect misstatements because of its inherent limitations, including the possibility of human error, the circumvention or overriding of controls, or fraud. Therefore, even effective internal controls can provide only reasonable assurance with respect to the preparation and fair presentation of financial statements. In addition, projections of any evaluation of the effectiveness of internal control over financial reporting to future periods are subject to the risk that the control may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. If we fail to maintain the adequacy of our internal controls, including any failure to implement new or improved controls, or if we experience difficulties in their implementation, our business and operating results could be harmed, we could fail to meet our reporting obligations, and there could also be a material adverse effect on our stock price. **Environmental and other regulation of our business, including potential climate change regulation, could adversely impact us by increasing our production cost or restricting our ability to deliver products to our customers. Climate change serves as a risk multiplier increasing both the frequency and severity of natural disasters that may affect our business operations. Moreover, there has been a broad range of proposed and promulgated state, national and international regulation aimed at reducing the effects of climate change. In the U. S., there is a significant possibility that some form of regulation will be enacted at the federal level to address the effects of climate change. Such regulation could take several forms that could result in additional costs in the form of taxes, consultant costs, the restriction of output, investments of capital to maintain compliance with laws and regulations**

or required acquisition or trading of emission allowances. Climate change regulation continues to evolve, and it is not possible to accurately estimate either a timetable for implementation or our future compliance costs relating to implementation. A portion of products we acquire from our suppliers are manufactured in foreign countries, making the price and availability of these products subject to international trade risks and other international conditions. A portion of our parts for our products are sourced from foreign countries, some of which in the future are, or could become subject to trade restrictions, including increased tariffs or quotas, embargoes **,** and customs restrictions, which would increase the cost or could reduce the supply of products available to us, and could have a material adverse effect on our business, financial condition and results of operations. Tariffs on imports from foreign countries, as well as changes in tax and trade policies, such as a border adjustment tax or disallowance of certain tax deductions for imported product, could materially increase our manufacturing costs, the costs of our imported products or our income tax expense, which would have a material adverse effect on our financial condition and results of operations. Tariffs imposed by foreign countries on imports of our products could also adversely affect our international sales. Any increase in manufacturing costs, the cost of our products or limitation on the amount of products we **can** ~~are able to~~ purchase, could have a material adverse effect on our financial condition and results of operations. Our business involves the use of hazardous materials, which require compliance with environmental and occupational safety laws regulating the use of such materials. If we violate these laws, we could be subject to significant fines, liabilities **,** or other adverse consequences. Our manufacturing operations, particularly some of the activities undertaken by our third- party suppliers and manufacturers, involve the controlled use of hazardous materials. These include batteries for the PB3 and WAM- V ®, ~~propane for the hybrid~~ and various lubricants and oils. Accordingly, our third- party contractors and we are subject to foreign, federal, state **,** and local laws governing the protection of the environment and human health and safety, including those relating to the use, handling and disposal of these materials. We cannot ~~completely~~ eliminate the risk of accidental contamination or injury from these hazardous materials. In the event of an accident or failure to comply with environmental or health and safety laws and regulations, we could be held liable for resulting damages, including damages to natural resources, fines **,** and penalties, and any such liability could adversely affect our business, financial condition and results of operations. Environmental laws and regulations are complex, change frequently and have tended to become more stringent over time. While we have planned for future capital and operating expenditures to maintain compliance, we cannot assure you that environmental laws and regulations will not change or become more stringent in the future. Therefore, we cannot assure you that our costs of complying with current and future environmental and health and safety laws, and any liabilities arising from past or future releases of, or exposure to, hazardous substances will not adversely affect our business, financial condition **,** or results of operations. Risks Related to Litigation Litigation is costly and time- consuming to defend, and if decided against us, could require us to pay substantial judgments or settlements. We may be the subject of future securities or other litigation, which could adversely affect our company, our business **,** and our liquidity. Any litigation is costly, and time consuming to defend and may distract our management from the daily operations of our business. We may be the subject of additional future litigation, which could **have** a material adverse effect on our business, financial condition, results of operations or cash flows. Although we maintain insurance coverage, we cannot assure **you** that this insurance coverage will be sufficient to cover the substantial fees of lawyers and other professional advisors relating to these pending lawsuits or any future litigation, our obligations to indemnify our officers and directors who may become parties to such pending and future actions, or the amount of any judgments or settlements that we may be obligated to pay in connection with these lawsuits. In addition, prior judgements and settlements have caused our insurance premiums and retention amounts to increase, and we may be subject to additional increases in the future or be subjected to other changes in our insurance ~~coverages~~ **coverage** . Further, given the volatility of the market price of our common stock, we may be subject to future class action securities and other litigation. Accordingly, we have incurred and may continue to incur substantial legal expenses, judgments and / or settlements relating to pending and future litigation and our management' s time and attention may be diverted from the operation of our business, which could materially and adversely affect the Company. We may become the target of securities litigation, which is costly and time- consuming to defend. In the past, companies that ~~experience~~ **experienced** significant volatility in the market price of their publicly traded securities have become subject to class action securities litigation. Our stock price has been volatile, and class action securities litigation and derivative lawsuits have been filed against us **,** and it is possible that additional lawsuits could be brought against us in the future. The results of complex legal proceedings are difficult to predict. These lawsuits assert types of claims that, if resolved against us, could give rise to substantial damages, and an unfavorable outcome or settlement of these lawsuits, or any future lawsuits, could have a material adverse effect on our business, financial condition, results of operations and / or stock price. Even if any future lawsuits ~~,~~ are not resolved against us, the costs of defending such lawsuits may be material to our business and our operations. Moreover, these lawsuits may divert our management' s attention from the operation of our business. For more information on our legal proceedings, see Item 3 " Legal Proceedings " of this Annual Report and Note ~~17~~ **16** " Commitments and Contingencies- Litigation " in the accompanying consolidated financial statements for the fiscal year ended April 30, ~~2022~~ **2023** . Risks Related to Our Common Stock If we issue additional shares of our equity securities in the future, our shareholders may experience substantial dilution in the value of their investment or their ownership interest. Our certificate of incorporation currently authorizes us to issue up to 100, 000, 000 shares of our common stock and to issue and designate the rights of, without shareholder approval, up to 5, 000, 000 shares of preferred stock. In the future, if we were required to raise additional capital, we may offer additional shares of our common stock or other securities convertible into or exchangeable for our common stock at prices that may not be the same as the price per share paid by other investors, and dilution to our shareholders in the value of their investment and their ownership and voting interest in the Company could result. We may sell shares or other securities in any other offering at a price per share that is less than the price per share paid by existing investors, and investors purchasing shares or other securities in the future could have rights superior to existing shareholders. In addition, we have a significant number of stock options and warrants outstanding. To the extent that outstanding stock options or warrants have been or may be exercised or other shares issued, current shareholders and future investors who have purchased our common stock will experience further dilution. In addition, we may choose to raise additional capital due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent that we issue new securities or raise additional capital through the sale of equity or convertible debt securities, the issuance of these securities could result in further dilution to our shareholders or result in downward pressure on the price of our common stock. Historically, our stock price has been volatile, and this is likely to continue; purchasers of our common stock could incur substantial losses as a result. Historically, the market price of our common stock has fluctuated significantly, and we expect that this will continue. Purchasers of our common stock could incur substantial losses relating to their investment in our stock as a result. For the fiscal year ended April 30, ~~2022~~ **2023**, the 52- week low and high prices for our common stock was $ 0. ~~93~~ **45** and $ ~~3~~ **1** . ~~28~~ **45**, respectively. Also, the stock market in general has recently experienced volatility that has often been unrelated or disproportionate to the operating performance of particular companies. These broad market fluctuations could result in fluctuations in the price of our common stock, which could cause purchasers of our common stock to incur substantial losses. The market price for our common stock may be influenced by many factors, including the items identified within these Risk Factors and the other information included within this annual report. Provisions in our corporate charter documents and under Delaware law may delay or prevent attempts by our shareholders to change our management **or our Board of Directors** and hinder efforts to acquire a controlling interest in us. As a result of our reincorporation in Delaware in April 2007, provisions of our certificate of incorporation and bylaws may discourage, delay **,** or prevent a merger, acquisition or other change in control that shareholders may consider favorable, including transactions in which our shareholders might otherwise receive a premium for their shares. These provisions may also prevent or frustrate attempts by our shareholders to replace or remove our management. These provisions include: ● advance notice requirements for shareholder proposals and nominations; ● the inability of shareholders to act by written consent or to call special meetings; and ● the ability of our Board of Directors to designate the terms of and issue new series of preferred stock without shareholder approval, which could be used to institute a " poison pill " that would work to dilute the stock ownership of a potential hostile acquirer, effectively preventing acquisitions that have not been approved by **our Board of Directors. For example, in June 2023, our Board of Directors adopted a Section 382 Tax Benefits Preservation Plan in an effort to diminish the risk that the Company' s ability to utilize its net operating loss carryovers to reduce potential future federal income tax obligations may become substantially limited. The Section 382 Tax Benefits Preservation Plan is also intended to act as a deterrent to any person or group acquiring beneficial ownership of 4. 99 % or more of the outstanding common stock without the approval of** our Board of Directors. The affirmative vote of the holders of at least 75 % of our shares of capital stock entitled to vote is necessary to amend or repeal the above provisions of our certificate of incorporation. In addition, absent the approval of our Board of Directors, our bylaws may only be amended or repealed by the affirmative vote of the holders of at least 75 % of our shares of capital stock entitled to vote. In addition, Section 203 of the Delaware General Corporation Law prohibits a publicly- held Delaware corporation from engaging in a business combination with an interested shareholder, which is generally a person who together with its affiliates owns or within the last three years has owned 15 % of our voting stock, for a period of three years after the date of the transaction in which the person became an interested shareholder, unless the business combination is approved in a prescribed manner. Accordingly, Section 203 may discourage, delay **,** or prevent a change in control of our company **. Actions of activist shareholders could be disruptive and potentially costly, and the possibility that activist shareholders may seek to effect changes in our strategic direction and, in furtherance thereof, changes in how we are governed, could cause uncertainty about the strategic direction of our business. Activist shareholders may, from time to time, attempt to effect changes in our strategic direction and, in furtherance thereof, may seek changes in how the Company is governed, including changes in the composition of our Board of Directors. While our Board of Directors and management team strive to maintain constructive, ongoing communications with the Company' s shareholders, including activist shareholders, and welcome all views and ideas that have the potential to enhance value for all shareholders, activist campaigns that contest, or conflict with, our strategic direction could have an adverse effect on us because: (i) responding to actions by activist shareholders can disrupt our business, be costly and time- consuming, and divert the attention of our Board and management away from their regular duties and the pursuit of our business strategies, which could adversely affect our results of operations and financial condition; (ii) perceived uncertainties as to our future direction as a result of changes to composition of our Board of Directors may lead to the perception of a change in the direction of the business, instability, or lack of continuity which may be exploited by our competitors, cause concern to our current or potential customers, may result in the loss of potential business opportunities and make it more difficult to attract and retain qualified personnel and business partners, and may affect our relationships with vendors, customers, and other third parties; (iii) actions by activist shareholders could cause significant fluctuations in our stock price based on temporary or speculative market perceptions or other factors that do not necessarily reflect the underlying fundamentals and prospects of our business; and (iv) if individuals are elected to our Board of Directors with a specific agenda, it may adversely affect our ability to effectively implement our business strategy and create additional value for our shareholders** . If securities or industry analysts fail to cover us, or do not publish research or publish unfavorable or inaccurate research about our business, our stock price and trading volume could decline. The trading market for our common stock is influenced by the research and reports that industry or securities analysts may publish about us, our business, or our industry from time to time. If no analyst covers us, or ultimately one or more of these analysts cease coverage or fail to publish reports on the Company regularly, we could lose visibility in the financial markets, which in turn could cause the price or trading volume of our common stock to decline. Moreover, if one or more of the analysts who cover our company downgrade our common stock or release a negative report, or if our operating results do not meet ~~analyst~~ **analysts '** expectations, the price of our common stock could decline. We have never paid cash dividends on our common stock, and we do not anticipate paying any cash dividends in the foreseeable future. We have not paid any cash dividends on our common stock to date. We currently intend to retain our future earnings, if any, to fund the development and growth of our business. In addition, the terms of any future debt agreements may preclude us from paying dividends. As a result, capital appreciation, if any, of our common stock will be the sole source of gain for our shareholders for the foreseeable future. ITEM 1B. UNRESOLVED STAFF COMMENTS