

## MUTUAL NONDISCLOSURE AGREEMENT

THIS MUTUAL NONDISCLOSURE AGREEMENT (the "Agreement") is entered into as of \_\_\_\_\_ (the "Effective Date") between Blue Ocean Gear Inc, a California company with its principal offices at 914 Edgecliff Way, Redwood City, CA, USA 94061, and \_\_\_\_\_.  
(Individual/Company)

IT IS AGREED, in consideration of the covenants contained herein, as follows:

1. Each party (the "Disclosing Party," as applicable) will disclose to the other party (the "Recipient," as applicable) certain of the Disclosing Party's confidential and proprietary information, software, hardware, equipment, or other materials (collectively, "Confidential Information", regardless of whether marked as "Confidential"), which Confidential Information may include, without limitation, marketing plans, research and development memoranda, data, prototypes, designs, software, technical information and other information containing trade secrets and know-how, intellectual property and financial and business information, and which Confidential Information may be disclosed in writing, verbally, electronically, graphically, or by inspection of tangible objects. The Disclosing Party's Confidential Information will also include: (i) any and all information disclosed hereunder that, under the circumstances, a person exercising reasonable business judgment would deem it to be confidential or proprietary and (ii) all discoveries, experimental results, data, reports, papers, notebook entries, and memoranda comprising or incorporating, in whole or in part, its Confidential Information or items derived therefrom or based thereon.

2. Recipient will maintain all Confidential Information disclosed hereunder by the Disclosing Party in confidence and will not use, publish, describe or exploit such Information or disclose such Information to any third party other than those of its employees, contractors, consultants, or advisors with a demonstrable need to know such Information; provided that each such employee must execute or have executed an agreement under which he or she is fully bound by the obligations of Recipient hereunder. For the avoidance of doubt, Recipient will not disclose the Disclosing Party's Confidential Information to its parent, its subsidiaries or any other affiliates.

Recipient will use the same degree of care to protect the Disclosing Party's Confidential Information as Recipient uses to protect its own most highly confidential information. Recipient will be liable and responsible for any breach of this Agreement by any of its employees. Recipient will not use or exploit the Confidential Information except as necessary to explore a potential business relationship with the Disclosing Party or, if entered into by the parties, to engage in that business relationship with the Disclosing Party.

Except as expressly permitted by the Disclosing Party in writing, Recipient will not (i) reverse engineer, disassemble, or decompile any software, equipment, or other tangible or intangible objects that embody or incorporate the Disclosing Party's Confidential Information or (ii) make any copies of the Disclosing Party's Confidential Information. Recipient will not incorporate or otherwise use the Disclosing Party's Confidential Information in connection with any patent application. Recipient will mark any and all approved copies as Confidential Information and retain the Disclosing Party's proprietary notices, and immediately notify the Disclosing Party of any unauthorized use, loss, or disclosure of the Disclosing Party's Confidential Information.

3. This Agreement will not apply to any Confidential Information that (i) is already lawfully in Recipient's possession, (ii) becomes generally available to the public through no fault or breach of Recipient or breach by a third party of any obligation of confidentiality owed to the Disclosing Party, (iii) is disclosed to Recipient by a third party who may transfer or disclose such Information without restriction of any kind, (iv) is required to be disclosed by Recipient as a matter of law or judicial or governmental mandate; provided that

Recipient will use all reasonable efforts to provide the Disclosing Party with an opportunity to appear and object to such disclosure, (v) is disclosed by Recipient with the Disclosing Party's approval or (vi) is independently developed by Recipient without any use of the Disclosing Party's Confidential Information as evidenced by the Recipient's records.

4. The Disclosing Party warrants that it has the right to disclose the Confidential Information to Recipient. The Confidential Information disclosed hereunder remains the property of the Disclosing Party and no license or other rights in or to such Information, expressly including rights or licenses in or to any of the Disclosing Party's trade secrets, copyrights or patents, is granted to Recipient hereby. THE CONFIDENTIAL INFORMATION DISCLOSED HEREUNDER IS PROVIDED "AS IS" AND THE DISCLOSING PARTY MAKES NO REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS THEREOF.

5. Recipient acknowledges that the Disclosing Party will suffer irreparable harm on any unauthorized disclosure of Confidential Information by Recipient. Accordingly, on any breach hereof by Recipient, the Disclosing Party will be entitled to immediately obtain equitable relief, including injunctive relief, in addition to any other remedies it may have by law or in equity.

6. The parties are entering into this Agreement as independent parties and nothing herein will be deemed to create any employer/employee, principal/agent, joint venture or other relationship between the parties hereto.

7. This Agreement is effective as of the Effective Date and will continue until the earlier of: (i) such time as all Confidential Information disclosed under this agreement becomes publicly known and is made generally available through no action or inaction of the Receiving Party or (ii) the first anniversary of the disclosure. On termination or on the Disclosing Party's request at any time, Recipient will promptly return to the Disclosing Party and/or, at the Disclosing Party's option, destroy notes, memoranda, programs, software, computer memory media, data, equipment and all other materials containing the Disclosing Party's Confidential Information and will not retain any copies or extracts thereof (and, if applicable, will certify such destruction). Recipient will hold the Disclosing Party's Confidential Information in confidence during and after the term of this Agreement in perpetuity.

8. This Agreement constitutes the entire agreement governing confidentiality between Disclosing Party and Recipient and supersedes all prior agreements and negotiations, whether oral or written. Recipient may only export Confidential Information provided hereunder in strict accordance with this Agreement and in full compliance with applicable law. This Agreement may only be amended in a writing signed by both parties and will be binding upon each party's successors and assigns; provided that neither party may assign this Agreement or its rights or obligations hereunder without the other party's prior written consent. This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law rules. In the event of any litigation or arbitration arising under or related to this Agreement, the losing party will reimburse the prevailing party for its reasonable attorneys' fees and costs of suit, all of which will be included as a part of the order, judgment or award rendered in such proceeding.

IN WITNESS WHEREOF, each party has executed this Mutual Nondisclosure Agreement, effective as of the Effective Date.

BLUE OCEAN GEAR, INC

\_\_\_\_\_  
(Individual/Company)

By: \_\_\_\_\_

By: \_\_\_\_\_