

**BRN PHOENIX, INC.**  
**MUTUAL NON-DISCLOSURE AGREEMENT**

This Mutual Non-Disclosure Agreement (this "Agreement") is entered into between BRN Phoenix, Inc., a Delaware corporation (the "Company"), and \_\_\_\_\_ (referred to jointly as the "Parties" and each individually as a "Party"), effective as of \_\_\_\_\_, 200\_\_ (the "Effective Date").

Background

The Parties wish to engage in discussions concerning the possibility of entering into a business relationship. In connection with such discussions, it may be necessary for the Parties to disclose to each other certain information which they consider confidential, in order to allow each Party to internally evaluate the other Party's technology, capabilities, and/or requirements (the "Purpose"). As a condition to disclosing such information, the Parties wish to enter into this Agreement to protect such information.

Agreement

Based upon the Background above, and the mutual covenants below, the parties agree as follows:

1. Definition of Confidential Information. As used in this Agreement, the term "Confidential Information" means all information disclosed by one Party to the other Party during the term of this Agreement (i) in written or other tangible form, which is marked or labeled "confidential" or "proprietary," or is otherwise marked in a manner indicating the confidential nature of the information, or (ii) orally, provided the information is identified as confidential at the time of disclosure and is described or summarized in a written document, stating that the information is confidential or proprietary, that is delivered to the other Party within thirty (30) days after such oral disclosure, or (iii) that a reasonable person would consider to be confidential due to the nature of the information. Confidential Information may include matters of a technical nature (such as designs, specifications, data, formulae, computer software and documentation, know-how, secret processes or machines, inventions and research projects) and matters of a business nature (such as information about costs, profits, markets, sales, customers, suppliers, and employees).
2. Exceptions to Confidentiality. Notwithstanding the provisions of Section 1 above, information shall not be deemed "Confidential Information" for purposes of this Agreement if:
  - (a) the information is or becomes publicly known through no wrongful act of the receiving Party;  
or
  - (b) the receiving Party can demonstrate, by written records pre-dating the disclosure by the disclosing Party, that the information was already known to the receiving Party at the time that it was disclosed by the disclosing Party; or
  - (c) the information is subsequently disclosed to the receiving Party by a third party without the breach of any confidentiality obligation and without restriction on further disclosure; or
  - (d) the receiving Party can demonstrate that the information has been independently developed by the receiving Party, without the use of the disclosing Party's Confidential Information, by personnel who had no access or exposure to the disclosing Party's Confidential Information.

3. Non-Disclosure. The receiving Party agrees not to disclose any of the other Party's Confidential Information to any third party without the prior written consent of the disclosing Party. The receiving Party further agrees not to disclose any of the other Party's Confidential Information to any employee of the receiving Party unless such person both (a) needs to know such information in order to further the authorized use of the information, and (b) is bound by a written agreement that obligates such person to observe restrictions on use and disclosure of such Confidential Information at least as protective as the terms of this Agreement. In addition, the receiving Party agrees not to make copies of, or otherwise reproduce any documents or other materials containing the other Party's Confidential Information, except as authorized by the disclosing Party in writing. Notwithstanding the above restrictions on disclosure, the receiving Party may disclose the other Party's Confidential Information to the extent required by order of a court, provided the receiving Party has given the other Party reasonable advance notice of such court order in order to allow the other Party to seek an appropriate protective order.

4. Non-Use. The receiving Party agrees not to use any of the other Party's Confidential Information for any purpose except the specific Purpose described in the Background to this Agreement.

5. Term of Agreement; Duration of Protection. This Agreement shall terminate on the date one (1) year after the Effective Date; provided, however, that (a) this Agreement may be extended by mutual written agreement of the Parties, and (b) either Party may terminate this Agreement at any time, by delivering written notice of termination to the other Party. The restrictions on use and disclosure of Confidential Information in Sections 3 and 4 above shall survive any termination of this Agreement and shall continue for a period of five (5) years from the date the Confidential Information was disclosed to the receiving Party.

6. Return of Confidential Information. Upon termination of this Agreement for any reason, or upon the request of the disclosing Party at any time, the receiving Party agrees to return to the disclosing Party, or destroy (at the option of the disclosing Party), all documents and other materials containing the other Party's Confidential Information, and to certify in writing to the disclosing Party that it has done so.

7. No Licenses. Nothing contained in this Agreement shall be interpreted as granting a license under any patent, trademark, copyright or any other proprietary right to any Confidential Information disclosed pursuant to this Agreement.

8. Remedies. The receiving Party acknowledges that the unauthorized disclosure or use of the other Party's Confidential Information may result in substantial and irreparable harm to the other Party and that monetary damages will be difficult to determine and inadequate to compensate the other Party. Therefore, the receiving Party agrees that, upon any breach of this Agreement by the receiving Party, the disclosing Party shall be permitted to seek and obtain equitable relief such as an injunction or specific performance, in addition to monetary damages and any other remedies available to the disclosing Party at law or in equity.

9. No Further Obligations. The Parties acknowledge and agree that this Agreement is entered into only for the Purpose described above, and that neither Party shall have any obligation to purchase products or services from, or sell products or services to, the other Party, or to enter into any other business relationship with the other Party. The Parties are independent contractors and no agency, partnership, or joint venture shall be deemed to exist by reason of this Agreement.

10. Export Controls. The receiving Party agrees to observe and adhere to the U.S. Export Administration Laws and regulations, and any other laws or regulations in effect from time to time relating to the export or dissemination of any technical data, products, or other information provided by the other Party. The receiving Party shall indemnify the disclosing Party for any costs and expenses (including attorney fees), incurred by the disclosing Party as a result of any breach of the above obligations by the receiving Party.

11. General Provisions. This Agreement may be superseded, modified, or amended only in a writing signed by both Parties. This Agreement shall be binding upon the Parties and their successors and assigns. Neither Party shall be entitled to assign this Agreement without the other Party's prior written consent, except that either Party may assign its rights under this Agreement to any person or entity acquiring all or substantially all of its assets relating to the information disclosed by such Party under this Agreement. This Agreement constitutes the full and complete agreement of the Parties with respect to its subject matter and supersedes any prior agreements relating to that subject, whether oral or written. If any provision of this Agreement is held to be invalid or unenforceable, that provision shall be enforced to the maximum extent permitted by law, and the remaining provisions of this Agreement shall not be affected. This Agreement shall be governed by the internal laws of the State of California. Any suit, proceeding, or controversy arising under or in connection with this Agreement may be brought only in a court located in Santa Clara County, California, and each Party consents and submits to the personal and subject matter jurisdiction and venue of such courts. The prevailing party in any suit or proceeding relating to or arising out of this Agreement shall be awarded costs and reasonable attorney fees.

Signatures

**BRN Phoenix, Inc.**

\_\_\_\_\_  
Name of Other Party

By \_\_\_\_\_  
Signature

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title