

MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (this "Agreement") is made and entered into as of _____, 2010 (the "Effective Date"), by and between _____ ("Participant"), a corporation with its principal place of business at _____, and Binarytree.com, Inc, with its principal place of business at One Gateway Center, 25th Floor, Newark, NJ - 07102 ("Company").

RECITALS

WHEREAS, Company owns and possesses certain valuable proprietary and confidential information relating to the business of designing and developing email and data migration software, web sites, and electronic commerce software and associated documentation and materials (the "Business"); and

WHEREAS, this Agreement is made for the sole purpose of permitting Company and Participant to exchange technical and business information for the purpose of conducting discussions toward possible participation of Participant in the Business as it relates to Company and/or otherwise under terms that will protect the confidential and proprietary nature of each party's information.

NOW THEREFORE, in consideration of the discussions and sharing of information between the parties, and the premises, conditions, covenants and warranties contained herein, Company and Participant agree as follows:

TERMS

1. Definitions:

a) **Confidential Information:** "Confidential Information" shall mean any and all information disclosed by Company or Participant pursuant to this Agreement which is not generally known, which relates to the business of Company or of Participant, or any other third party with which Company or Participant deals, or any material, information or service supplied by, or on behalf of, Company or Participant, and which is (i) marked "confidential," "proprietary" or by any other appropriate legend clearly indicating the proprietary nature of the information at or before the time of disclosure thereof, if disclosed in tangible form, or (ii) if disclosed orally or visually, designated confidential or proprietary in accordance with Section 1(a)(i) above and identified in reasonable detail in a writing delivered to the receiving party within thirty (30) days of the date of such oral or visual disclosure. In addition, and regardless of whether labeled pursuant to Sections 1(a)(ii) or 1(a)(i) above, "Confidential Information" of Company shall include any information concerning the Business, and technology and information belonging to Company, including without limitation any and all products, processes, services, working models, drawings, samples, prototypes, research, development, inventions, marketing and business plans, client lists, system architecture, testing plans and results, software object code and source code, specifications, database schema, documents, or interfaces. "Confidential Information" shall also include the terms and conditions of this Agreement and all communications between Company and Participant related to this Agreement.

"Confidential Information" does not include any information that either party establishes by written documentation or other tangible records: (v) was known prior to such disclosure to the receiving party free of any obligation to keep it confidential; (w) is independently developed by the receiving party without reference to, use of or access to the Confidential Information of the disclosing party; (x) is within the public domain at the time of disclosure or that subsequently enters the public domain; (y) is lawfully received from a third party free to disclose such information to the receiving party; or (z) was released without restriction pursuant to the prior written approval of the party claiming it as Confidential Information hereunder, in each of the foregoing cases through no breach by the receiving party of any duty to the disclosing party and through no violation by the receiving party of any applicable law.

b) **Disclosing Party:** “Disclosing Party” means a party to this Agreement which discloses Confidential Information.

c) **Receiving Party:** “Receiving Party” means a party to this Agreement which is the recipient of Confidential Information.

2. **Ownership of Confidential Information; Confidentiality Obligation:** All Confidential Information disclosed by a party hereunder shall remain the property of such party. Neither party shall, without the prior written consent of the party disclosing the Confidential Information, disclose, nor shall it permit any others to disclose, to any third party, or otherwise use, or permit any others to use, any Confidential Information received hereunder for any purpose other than for the express purpose set forth in this Agreement and according to the terms of this Agreement. The parties agree that any Confidential Information disclosed prior to the Effective Date shall be protected by the terms of this Agreement. The degree of care required of the receiving party regarding the prevention of disclosure of the disclosing party’s Confidential Information shall be at least the degree of care the receiving party uses to protect its own similar confidential information and trade secrets, but in no event shall the receiving party exercise less than reasonable care.

3. **Permitted Recipients:** The receiving party shall limit disclosure of the Confidential Information (a) to its employees who require access to and have a bona fide need for such information to enable the receiving party to carry out the purpose of this Agreement and who have been made aware of and instructed to observe the terms of this Agreement and (b) to its advisors, consultants and representatives who require access to and have a bona fide need for such information to enable the receiving party to carry out the purpose of this Agreement, who have been notified as to the existence of this Agreement and who have agreed in writing to observe the terms of this Agreement.

4. **Protective Orders:** If a receiving party is required by order of any court or other government or regulatory agency to disclose any Confidential Information disclosed to it, such party shall provide the disclosing party with prompt written notice of any such requirement so that the disclosing party may seek an appropriate protective order or waive compliance with the provisions hereof. Upon the request and at the expense of the disclosing party, the receiving party will reasonably cooperate with the disclosing party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

5. **No Licenses Granted / No Obligation:** Nothing in this Agreement shall be construed as (a) conferring an express or implied license or an option of a license to a receiving party, whether under any patent, copyright, trademark, license right or trade secret owned or obtained by the disclosing party, relating to the Business or the Confidential Information, or otherwise, except as specified in this Agreement or (b) obligating a party to enter into any other agreement of any kind with another party.

6. **Rights Upon Breach:** The parties agree that in the event of any breach by a receiving party of any of the covenants set forth in this Agreement, the disclosing party shall have the right to (a) receive compensation for actual damages from the receiving party for any losses incurred by reason of such breach, including all reasonable attorney’s fees and costs of suit; and (b) apply to a court of competent jurisdiction, for the entry of an immediate order to restrain or enjoin the breach of said covenants by the receiving party and otherwise to specifically enforce the provisions of this Agreement.

7. **Governing Law; Severability:** This Agreement shall be construed and the right of the parties shall be determined in accordance with the laws of the State of New York, without reference to that state’s choice of law principles. In the event that any provision of this Agreement is held to be illegal, against public policy or otherwise unenforceable, the validity of the remaining portions or provisions hereof shall not be affected.

8. **Term:** Each Party agrees that for a period of three (3) years following the expiration or the termination by either party of this Agreement or any other business dealings between the parties, it shall

not, directly or indirectly, use or disclose the Confidential Information without the express written consent of the disclosing party.

9. **In Effect of Termination:** Either party may terminate this Agreement upon written notice to the other party. It is contemplated that, upon termination, (a) neither party would make further disclosures of Confidential Information to the other, or (b) a superceding Non-Disclosure Agreement would be executed. Termination shall not affect confidentiality obligations with respect to any Confidential Information which was obtained prior to the effective date of termination.

10. **Obligations Upon Termination:** Upon the written request of a disclosing party, a receiving party shall promptly (but in any event within ten (10) days following any such request) return to the disclosing party any Confidential Information (and all copies thereof made by or for a receiving party) in tangible form in any and all media, whether supplied by the disclosing party, or created by the receiving party), and delete or erase such Confidential Information (and copies) from computer or other electronic archival systems, in the possession, custody or control of the receiving party or any person acquiring such Confidential Information (and copies) through the receiving party. At the request of the disclosing party, the receiving party shall certify to the disclosing party, by an instrument in writing signed by one of the receiving party's officers, that the receiving party has complied with the requirements of this paragraph.

11. **Survival:** Each party's rights and obligations under this Agreement shall survive the termination of this Agreement.


12. **No Oral Modification:** No amendment, modification or waiver of any provisions of this Agreement shall be valid unless in writing and signed by the parties.

13. **Disclaimer:** Company shall have no liability whatsoever for any damages arising out of Participant's use of information disclosed pursuant to this Agreement, and all information disclosed by Company hereunder shall be on an "AS IS" basis and with no warranties of any kind, express or implied.

14. **Entire Agreement:** This Agreement contains the entire understanding between the parties hereto regarding the subject matter hereof and supersedes all prior or contemporaneous communications, agreements or understandings with respect to the subject matter hereof.

15. **Assignment:** No party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other, except that Company may assign its rights and interests hereunder to a successor in interest to all or substantially all of its business.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed by its authorized representative, effective on the date first shown above.

| | |
|---------------|---|
| COMPANY NAME: | BINARYTREE.COM, INC. |
| Signed: | Signed:  |
| Name: | Name: Traci Blowers |
| Title: | Title: Director of Alliances & Business Development |