



Network Design Technologies, Inc.

1000 N, West Street, Wilmington 19801

www.networkdesogntechologies.com

MUTUAL CONFIDENTIAL NON-DISCLOSURE AGREEMENT

This Confidential Non-Disclosure Agreement (the “Agreement”) is entered into as of 11/15/2019, by and between _____, a _____ corporation, on behalf of itself and its affiliates (**XXXXX**), and NDT, Inc., a Delaware corporation.

1. **Background.** NDT and the **XXXXX INC** intend to engage in discussions or negotiations concerning the possible establishment of a business relationship or transaction (the “Possible Transaction”) between them. In the course of such discussions and negotiations, it is anticipated that each party may disclose or deliver to the other party certain trade secrets or confidential or proprietary information for the purpose of enabling the parties hereto to evaluate the feasibility of the Possible Transaction. The parties have entered into this Agreement in order to assure the confidentiality of such trade secrets and confidential or proprietary information in accordance with the terms of this Agreement.

2. **Proprietary Information.** As used in this Agreement, the term “Proprietary Information” shall mean, subject to Section 4 below, all information disclosed, whether or not designated, marked or stamped as confidential, by each party to the other party, orally or in writing, about the disclosing party’s business, business plans, investments, equity ownership, customers, strategies, trade secrets, operations, records, financial information, assets, technology, data and information that reveals the processes, methodologies, technology or know how by which each party’s existing or future products, services, applications and methods of operation are developed, conducted or operated.

Proprietary Information shall also include, subject to Section 4 below, any other confidential or proprietary information designated as such in writing by the disclosing party, whether by letter or by the use of an appropriate proprietary stamp or legend, prior to or at the time any such trade secret or confidential or proprietary information is disclosed by the disclosing party to the other party or is orally or visually disclosed by each party to the other party. Information which is orally or visually disclosed by the disclosing party to the other party, or is disclosed in writing without an appropriate letter, proprietary stamp or legend, shall nevertheless constitute Proprietary Information if (i) it would be apparent to a reasonable person, familiar with the disclosing party’s business and the industry in which it operates, that such information is of a confidential or proprietary nature the maintenance of which is important to the disclosing party or if (ii) the disclosing party, within thirty (30) days after such disclosure, delivers to the receiving party a written document or documents describing such information and referencing the place and date of such oral, visual or written disclosure and the names of the employees or officers of the receiving party to whom such disclosure was made.

3. Disclosure of Proprietary Information. Each party shall hold in confidence and shall not disclose (or permit or suffer its personnel to disclose) to any person outside its organization, any Proprietary Information, except to such parties' attorneys, financial advisors and other representatives (each a "Representative") who need to know such information to assist a party in connection with the Possible Transaction; provided that any such Representative is advised of this Agreement and agrees to be bound by the terms and provisions hereof. Each party and its personnel and Representatives, if applicable, shall use such Proprietary Information only for the purpose of evaluating the Possible Transaction and shall not use or exploit such Proprietary Information for its own benefit or the benefit of another without the prior written consent of the disclosing party. Without limiting the foregoing, each party shall not cause or permit reverse engineering of any Proprietary Information or recompilation or disassembly of any software programs, developed documentation which are part of the Proprietary Information received by it under this Agreement and shall disclose Proprietary Information only to persons within its organization who have a need to know such Proprietary Information. For purposes of evaluating or working on the Possible Transaction, each party shall adopt and maintain programs and procedures which are reasonably calculated to protect the confidentiality of the Proprietary Information it receives from the other Party hereto and shall be responsible to the other party for any disclosure or misuse of the Proprietary Information which constitutes a breach of this Agreement. Each party shall be fully responsible for any breach of this Agreement by its Representatives and employees. Each party will promptly report to the other party any actual violation of the terms of this Agreement of which it obtains actual knowledge and will take all reasonable further steps requested by the other party to prevent, control or remedy any such violation.

4. Non Proprietary Information. Notwithstanding the foregoing, Proprietary Information shall not include, to the extent the receiving party can so demonstrate, information that:

- (a) is generally known to the public at the time of disclosure or becomes generally known through no breach of this Agreement on the part of the receiving party;
- (b) is in the receiving party's possession at the time of disclosure otherwise than as a result of the receiving party's breach of any legal obligation;
- (c) becomes known to the receiving party through disclosure by a third party having the legal right to disclose such Proprietary Information;
- (d) is independently developed by the receiving party without reference to or reliance upon the Proprietary Information; or
- (e) is required to be disclosed pursuant to Section 5 hereof.

In the event of a disputed disclosure, the receiving party shall bear the burden of proof of demonstrating that the information falls under one of the above exceptions.

5. Mandated Disclosure. In the event that the disclosure of any Proprietary Information disclosed hereunder is required by governmental or judicial law, regulation or ruling (including pursuant to subpoena or other court or administrative process) each party shall give, to

the extent practicable, prior written notice to the disclosing party of such required disclosure. Each party shall cooperate with the disclosing party, at the sole cost and expense of the disclosing party, in the event that the disclosing party seeks a protective order or other appropriate remedy to prevent such disclosure and, if such a protective order or other remedy cannot be obtained by the disclosing party, the other party shall disclose only that portion of such Proprietary Information that it is advised by its legal counsel required to be disclosed and shall use its reasonable efforts to obtain reliable assurances from the recipient that it will accord confidential treatment to such Proprietary Information.

6. Ownership of Proprietary Information. Each party agrees that the disclosing party is and shall remain the exclusive owner of such party's Proprietary Information and all patent, copyright, trade secret, trademark and other intellectual property rights therein. No license or conveyance of any such rights to each party is granted or implied by the other party under this Agreement.

7. Return of Documents. Each party shall, upon either party's request, (i) return to the other party all Proprietary Information, including without limitation all drawings, developed documentation or other documents and other tangible manifestations of the Proprietary Information received by the other party pursuant to this Agreement, and (ii) destroy all copies of any analyses, compilations, studies or other documents prepared by it or for its internal use which reflect the Proprietary Information, within five (5) business days of such request, any such destruction to be certified by one of its duly authorized officers.

8. Disclosure of Discussions. Each party shall not, and will direct its officers, employees and representatives not to, disclose to any person or entity the fact that discussions or negotiations may take place or are taking place concerning the Possible Transaction between NDT and the **XXXXX INC** or any of the terms, conditions or other facts with respect to the Possible Transaction (including the status thereof), without the prior written consent of the other party, unless otherwise required by applicable law or regulation and then, in compliance with Section 5.

9. Miscellaneous.

(a) Integration and Amendment. This Agreement supersedes all prior and/or contemporaneous understandings and agreements, written or oral, between NDT and the NDT relating to the subject matter of this Agreement, all of which are merged herein. This Agreement may not be modified, amended or discharged, in whole or in part, except by an agreement in writing signed by NDT and the **XXXXX INC**.

(b) Assignment. This Agreement is not assignable by either party without the prior written consent of the other party, and any attempt to assign without such consent shall be a material breach of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns.

(c) Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of New York, other than those which would defer to the substantive laws of another jurisdiction.

(d) Breach; Injunctive Relief. The parties understand and agree that, because of the unique nature of the Proprietary Information, in the event of a breach or threatened breach of this Agreement by either party hereto, remedies at law may be inadequate to protect the other party, the other party would suffer irreparable harm and the actual damages would be impracticable or extremely difficult to determine. Therefore, the parties hereto agree that in the event of a breach or threatened breach of this Agreement by either party hereto, the other party may, without prejudice to any other remedies which it has at law or equity, immediately obtain and enforce injunctive relief prohibiting breach of this Agreement and/or an order compelling specific performance of this Agreement.

(e) No partnership, etc. This Agreement shall not be deemed to create a joint venture or partnership between the parties or any other form of legal association which would impose liability upon one party for the act or failure to act of the other party, or to obligate the parties to enter into a joint venture, partnership or other such legal association. This Agreement shall not be deemed to create an agency relationship between the parties or otherwise to make one party the legal representative of the other party. This Agreement is between two (2) independent contracting parties. Nothing herein shall be a representation or warranty by either party that a Possible Transaction will be consummated, the determination as to such shall be made by the parties in their sole and absolute discretion.

(f) Disclaimer. Each party makes no representation or warranty as to the accuracy, completeness, condition or suitability of the Proprietary Information that it may disclose and each party shall have no liability whatsoever to the other party or any third party resulting from the other party's use of the Proprietary Information.

(g) No Waiver. No failure or delay by the parties in exercising any right, power or privilege hereunder will operate as a waiver thereof. No waiver of any provision of this Agreement shall be deemed a waiver of any other provision, or constitute a continuing waiver.

(h) Severability. The invalidity or enforceability of any particular provision of this Agreement shall not affect the validity or enforceability of the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

(i) Restriction on Export of Proprietary Information. The parties agree that no Proprietary Information disclosed hereunder shall be exported or re-exported, directly or indirectly, to any destination restricted or prohibited by governmental authorities without obtaining authorization from such authorities.

(j) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and which when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, each of the parties hereto have caused this Agreement to be signed by one of its duly authorized officers as of the day and year first set forth above.

XXXXXX

NDT, INC.

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____