



**XTRACT ONE TECHNOLOGIES INC.**

**MUTUAL NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT**

This Nondisclosure and Confidentiality Agreement (the "**Agreement**") made effective on the Effective Date, by and between Xtract One Technologies Inc. ("**Xtract One**"), with offices at 257 Adelaide Street West, Suite 400, Toronto, ON, M5H 1X9, Canada, and the participant identified below ("**Interested Party**"):

Name of Interested Party	
Address	
Contact Individual	
E-mail	
Telephone No.	
Effective Date	

**NOW THEREFORE, IN CONSIDERATION** of entering into this Agreement, the mutual covenants, terms and conditions, and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

**1. Purpose.** The Parties wish to disclose to each other certain Confidential Information relating to the other's business, including without limitation, information relating to threat detection and counter terrorism solutions in relation to concealed weapons and explosives, using radar, microwaves and other electromagnetic fields and radiation, imaging and other audio-visual technologies, cellular and molecular diagnostic technologies, software and database solutions for the sole purpose of assessing the commercial potential of the Technologies by the Parties for a potential business relationship (the "**Purpose**"), provided that each Recipient maintains the confidentiality of all such information so disclosed at all times or as hereinafter provided by each Discloser.

**2. Confidential Information.** "**Confidential Information**" means all information, including data and compilations of data, whether oral or written, in whatever form or medium, including financial, commercial, scientific or technical information received by a Party or any of its Affiliates (the "**Recipient**") relating to the discloser or any its Affiliates (the "**Discloser**"), including without limitation: (a) technical information, trade secrets, inventions, know-how, research, experimental work and results, methods of operation, computer program source codes and object codes, logic diagrams, programming instructions, data and data definitions, computer program architecture, designs, drawings, engineering, hardware configuration information, ideas, specifications, improvements and techniques; (b) product information, product designs, product plans and specifications; (c) business information regarding the Discloser's customers, vendors and suppliers, business opportunities, ventures, business concepts and strategies, market research; (d) financial information, including costs, sales, income, profits and margins; and/or (e) information that would reasonably be understood, given the nature of the information and the circumstances surrounding its disclosure, to be confidential. "**Affiliate**" means any entity which, directly or indirectly controls, is controlled by, or is under common control with the subject entity. "**Control**" (as used in the preceding sentence) means direct or indirect ownership or control of more than fifty percent (50%) of the voting securities or interests of the subject entity.

**3. Marking.** The Discloser shall identify all Confidential Information to be afforded protection under this Agreement as follows:

- (a) all documents and other tangible materials shall be marked with an appropriate restrictive legend which indicates the proprietary nature of the material;
- (b) all other disclosures, including information that is verbally or visually disclosed by the Discloser, must be reduced to written or other permanent form, and shall be identified and marked with an appropriate restrictive legend as being "Confidential" within ten (10) days after such disclosure;

(c) information stored in electronic form on disk, tape or other storage medium constitutes information in permanent form. Such electronic Confidential Information will be adequately marked if a proprietary legend is displayed in reasonable proximity to the Confidential Information when it runs on a computer system and when the Confidential Information is displayed or printed from its data file.

**4. Exclusion from Confidential Information.** Confidential Information shall not include information that: (a) was in the public domain at the time of disclosure; (b) was known and in the possession of the Recipient at the time of the disclosure as can be established by documentary evidence existing prior to the disclosure; (c) was lawfully disclosed to the Recipient by an unrelated third party without restriction on disclosure; (d) was developed by the Recipient without use of the Confidential Information as can be shown by documentary evidence; or (e) disclosure of information which is made subject to an order by judicial or administrative process requiring the Recipient to disclose any or all of the Confidential Information, without restrictions, provided that the Recipient shall use reasonable efforts in the circumstances to promptly notify the Discloser of such requirement to enable the Discloser to participate and oppose such process before disclosure occurs, or seek a protective order.

**5. Disclosure Obligations.** The Recipient shall: (a) hold the Confidential Information in strict confidence and take reasonable precautions to protect such Confidential Information (such precautions to include, at a minimum, all precautions the Recipient employs with respect to its own confidential information); (b) not copy, divulge, furnish, disclose or make accessible to any person, firm, organization or corporation (other than its employees or contractors who need to know), any aspect or portion of the Confidential Information; (c) not reverse engineer, decompile or disassemble any product (hardware or software) received from

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the Discloser except as authorized; and (d) not use any Confidential Information for its own benefit or for the benefit of any third party, except to evaluate and review such Confidential Information for the Purpose. No other use of the Confidential Information is allowed except with the Discloser's prior written consent. The Recipient may disclose the Confidential Information to the Recipient's Affiliates having a need to know for the Purpose of the Agreement provided that any persons receiving such information are under an obligation to hold such Confidential Information in confidence under limitations as restrictive as those set forth in this Agreement.

**6. Term.** Either Party may terminate this Agreement upon ten (10) days' prior written notice to the other Party, but this Agreement's provisions as to the Confidential Information shall survive termination of this Agreement, however caused. Unless the Parties otherwise agree in writing, the Recipient's obligations in relation to the Discloser's Confidential Information expire five (5) years after the Effective Date.

**7. Return or Destruction of Confidential Information.** Upon: (a) termination of this Agreement and written request by the Discloser; or (b) written request by the Discloser at any time, the Recipient will: (i) cease using the Confidential Information; (ii) return or destroy (if specified in writing by the Discloser) the Confidential Information and all documents or media containing any such Confidential Information and any copies, summaries, or extracts thereof within ten (10) days of the request; and (iii) upon request of the Discloser, an officer or director of the Recipient, will certify in writing that the Recipient has complied with these obligations. The Recipient may retain one (1) copy of the documents containing the Confidential Information as may be reasonably required by any applicable law, regulation or rule, or to evidence compliance with this Agreement.

**8. No Representation or Warranty.** All Confidential Information is provided "AS IS" exclusive of any warranty whether express, implied, statutory or otherwise, including without limitation, warranties of merchantability, noninfringement, fitness for a particular purpose, accuracy or completeness. In no event will the Discloser be liable to the Recipient for any loss, damage or claims arising out of the Recipient's use of the Confidential Information.

**9. Proprietary Rights.** No disclosure or physical transfer of any materials or Confidential Information under this Agreement shall be construed as granting or transferring any right, license, title or interest, either express or implied, under any patent, copyright, trade secret, trademark or other intellectual property rights, by license or otherwise, to any Confidential Information disclosed by the Discloser under this Agreement, or to any invention, patent, copyright, trademark or other intellectual property right that has issued or that may issue based on such Confidential Information, or any right of ownership in such materials or Confidential Information. Except as set forth herein, neither Party shall use any trade name, trademark or service mark of the other Party or any colorable imitation or confusingly similar facsimile thereof, without the other Party's prior express written permission.

**10. No Commitment or Obligation.** Each Party acknowledges and agrees that nothing contained in this

Agreement requires either Party to proceed with any contemplated transaction or agreement in connection with which the Confidential Information is disclosed.

- 11. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada in force therein without regard to its conflict of law rules. The Parties agree that by executing this Agreement they have submitted to the exclusive jurisdiction of a court of competent jurisdiction within British Columbia, Canada. Nothing in this Agreement excludes the Parties from seeking injunctive and equitable relief in any court of competent jurisdiction in any jurisdiction.
- 12. Injunctive Relief.** Each Party, as the Recipient, acknowledges and agrees that due to the unique nature of the Discloser's Confidential Information, there may be no adequate remedy at law for any breach by the Recipient of its obligations hereunder, that any such breach or any unauthorized use or release of the Confidential Information may result in irreparable and continuing harm to the Discloser, and therefore, upon any breach or unauthorized release, or any threat thereof, the Discloser shall be entitled to obtain injunctive relief, or other equitable relief including specific performance, in addition to any remedies at law it may have. All remedies hereunder are cumulative.
- 13. Assignment.** Neither Party may assign nor transfer this Agreement or any rights or obligations hereunder, either in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to any person or entity into which the assigning Party has merged, or to any person or entity which has otherwise succeeded to all or substantially all of the assigning Party's business and assets to which this Agreement pertains, whether such succession results from sale of assets, shares, merger, consolidation, reorganization or otherwise. Any attempted or purported assignment in violation of this section shall be null and void. This Agreement, and each Party's rights and obligations hereunder will bind and inure to the benefit of its respective successors, heirs, executors, administrators, and permitted assigns.
- 14. CASL Consent.** Pursuant to Canada's Anti-Spam Legislation or any applicable legislation relating to the sending and receiving of electronic messages ("CASL"), both Parties consent to receive commercial electronic messages such as emails, for the purposes related to this Agreement from the other Party and their agents and contractors. Any Party may withdraw its consent by written notice to the other Party.
- 15. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and PDF signatures shall have the same effect as original signatures.
- 16. Entire Agreement.** The Agreement contains entire understanding and agreement between the Parties and supersedes any prior understanding and agreements between them respecting the subject matter hereof. There are no representations, agreements, arrangements or understanding, oral or written, between the Parties hereto relating to the subject matter of the Agreement which are not fully expressed herein. None of the terms of this Agreement shall be amended or modified except in writing signed by both of the Parties. This Agreement does not supersede or amend any existing agreement between the Parties for the purchase, lease, license, or use of either Party's products or services.
- 17. Export Restriction.** The Confidential Information provided pursuant to this Agreement may be subject to Canadian and U.S. government laws, regulations, orders, embargos or other restrictions regarding export or re-export of Canadian or U.S. origin technical data or other items, or derivatives of such items. Each Party agrees (a) to comply with all such laws or restrictions and (b) to not export or re-export any such items received pursuant to this Agreement to a destination or end user for which applicable law, including Canadian and U.S. law, requires an export license or other approval without first having obtained such license or approval. Each Party will reasonably cooperate with the other to assure compliance with this section.
- 18. Independent Contractors.** The Parties are independent contractors to one another and are not agents or legal representatives of each other and have no power of attorney to represent, act for, bind or commit each other except as described in this Agreement. Nothing contained in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer employee, or joint venture relationship between the Parties.
- 19. Notices.** Notices pursuant to this Agreement will be sent to the addresses above, or to such other addresses as either Party may provide to the other in writing.
- 20. Publicity.** Neither Party will issue any press release, or otherwise make any public statement, about this Agreement or the Purpose without the prior consent of the other Party, which consent will not be unreasonably withheld.

**21. Valid and Lawful Capacity.** Each Party represents and warrants that: (a) it is a duly incorporated and validly existing corporation under the applicable laws of the jurisdiction of incorporation and is in good standing, and that it has full power and capacity to enter into and carry out the activities contemplated in this Agreement; (b) the execution and delivery of this Agreement and all instruments required pursuant to the Agreement have been duly authorized; and (c) the Agreement constitutes a legal, valid and binding obligation of the Parties enforceable in accordance with its terms.

**22. Voluntary Execution.** The Parties acknowledge that they have carefully read all of the provisions of this Agreement, that they understand them, that they are agreeing to voluntarily accept such provisions, and that they will fully and faithfully comply with such provisions. Each of the Parties to this Agreement expressly acknowledges that it has obtained independent legal advice, or had opportunity to do so, prior to the execution of this Agreement, or has waived such requirement, in either case as evidenced by its signature hereto. This Agreement is the product of negotiation and shall not be construed as having been drafted by either Party.

**IN WITNESS WHEREOF** the Parties have executed this Agreement, through their duly authorized representatives, on the dates set forth below but effective as of the Effective Date.

Execution of Interested Party:	Xtract One Technologies Inc.
Name (print)	Name (print)
Title (print)	Title (print)
Signature (I/We have the authority to bind the corporation)	Signature (I/We have the authority to bind the corporation)
Date	Date