



## **CONFIDENTIALITY AGREEMENT**

This Confidentiality Agreement (this “Agreement”) is made and entered into as of July 1, 2018 (the “Effective Date”), by and between [REDACTED], having a place of business at [REDACTED] (hereinafter referred to as the “Company”), and **LIVELINE TECHNOLOGIES INC.**, a corporation organized and existing under the laws of the State of Delaware and having a place of business at 40300 Traditions Drive, Northville, MI 48168 (hereinafter referred to as “Liveline”). Company and Liveline may individually be referred to as a “Party” and collectively as the as the “Parties.” Any individual or entity that is not a Party is a “third party”.

### **BACKGROUND:**

A. Liveline is engaged in the development, manufacture and sale of, amongst others, various innovative software and controls solutions with a wide variety of end use product applications in many industries (“Innovation Technology”).

B. Company is engaged, among other things, in [REDACTED] (“Company Technology”).

C. Liveline and Company desire to explore the possibility of entering into a potential business arrangement in connection with Innovation Technology and Company Technology (such exploration, and, if applicable, negotiation of any definitive agreement, collectively, the “Purpose”).

D. The Parties expect to require an exchange of certain information that a Party may deem confidential, and wish to provide for the protection of such information by the Party which receives it (the “Receiving Party”) from the Party which discloses it (the “Disclosing Party”) on the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **AGREEMENT:**

#### **1. Confidential Information.**

(a) “Confidential Information” shall mean and include, regardless of the form or manner of disclosure or thereafter reproduction or storage:

(i) all information, materials and documents concerning Innovation Technology, Company Technology or the Purpose that the Receiving Party or any of its Representatives receives from or is given access to by the Disclosing Party or any of its Representatives (as defined in Section 2(b) below), including without limitation, specifications, data, formulae, compositions, recipes, designs, sketches, photographs, graphs, drawings, software, algorithms, Samples (as defined in Section 2(b) below), inventions, discoveries, ideas, know-how, past, current, and planned research and development, current and planned methods and processes, information regarding performance, and other technical information, client

or customer lists and files, current and anticipated client or customer requirements, sources of supply of raw materials and associated characteristics, market studies, business plans and business opportunities, in each case, that is (A) clearly designated, labeled, or marked as “confidential” (or words with similar meaning) information, materials or documents of the Disclosing Party, if first disclosed to the Receiving Party in any tangible form or (B) is summarized in a writing within twenty (20) days after first disclosure to the Receiving Party indicating the information, materials or documents is deemed the confidential information of the Disclosing Party, if first disclosed to the Receiving Party orally or visually without accompanying tangible media at the time of first disclosure.; and

(ii) all notes, analyses, compilations, studies, summaries, interpretations and other documents, records, or data prepared by the Receiving Party or any of its Representatives (as defined in Section 2(b) below) to the extent they contain any information or documents described in (i) above (collectively, “Notes”).

(b) The term “Confidential Information” shall not include any portion(s) of such information, materials or documents described in Section 2(a) above which:

(i) is already in the public domain as of the Effective Date or which thereafter comes into the public domain through no breach of this Agreement by the Receiving Party or any of its Representatives or any other unlawful or wrongful act taken by the Receiving Party or any of its Representatives;

(ii) the Receiving Party can reasonably demonstrate was already in possession of the Receiving Party or any of its Representatives as of the Effective Date and not subject to any existing confidentiality agreement;

(iii) is or was received from a third party without restriction and without breach of this Agreement; or

(iv) is or was independently developed by the Receiving Party or any of its Representatives who did not receive or have access to any of such information, materials or documents of the Disclosing Party, as evidenced by its contemporaneous written records; provided, however, that these exceptions shall not apply to Confidential Information that is or includes personally identifiable information as defined by applicable privacy law (“Personal Information”) unless the Receiving Party possesses and has the right to disclose any such Personal Information independently of its relationship with Disclosing Party. The fact that any of such exceptions applies to any portion(s) of a combination of any multiple elements of such information, materials or documents does not mean such combination is subject to such exception, unless the combination itself as a whole is subject to the exception. The Receiving Party agrees that it bears the burden of establishing that any exception(s) listed as (i) through (iv) above applies to any such information, materials or documents that the Receiving Party contends does not constitute Confidential Information.

## **2. Use and Protection of Confidential Information.**

(a) The Receiving Party shall not, and shall cause its Representatives not to, use any Confidential Information of the Disclosing Party for any purpose other than for the evaluation and pursuit of the Purpose.

(b) The Receiving Party shall, and shall cause its Representatives to, maintain the confidentiality of and to prevent the unauthorized use, dissemination or publication of Confidential Information of the Disclosing Party by using the same or a greater degree of care as the Receiving Party uses to maintain the confidentiality of its own similar Confidential Information (but in no event not less

than a reasonable degree of care). Without limiting the foregoing, the Receiving Party shall, and shall cause its Representatives to:

(i) not to disclose or provide access to any Confidential Information of the Disclosing Party to any third party except as expressly permitted herein;

(ii) not copy or create derivative works of any of the Confidential Information of the Disclosing Party except to the limited extent strictly necessary in direct support of the Purpose;

(iii) clearly designate, label, or mark any copy or derivative work of any such Confidential Information of the Disclosing Party as constituting or containing Confidential Information of the Disclosing Party; and

(iv) limit the use of and disclosure and access to Confidential Information of the Disclosing Party solely to those employees and financial and technical advisors and lawyers of the Receiving Party and its Affiliates who are required to have Confidential Information in connection with the Purpose, who have a need to know such Confidential Information in connection with their role in the Purpose, and who have been notified of the requirements of Receiving Party under this Agreement, and who, prior to the receipt of Confidential Information, have a binding written (or in the case of lawyers, an ethical obligation) to Receiving Party to maintain the confidentiality of, and not use, such consistent with the obligations of Receiving Party under this Agreement (each such persons to whom such disclosure is permissible, a “Representative”). As used in this Agreement, the term “Affiliate” means any person or entity directly or indirectly controlling, controlled by or under common control with a Party as of the Effective Date or hereafter during the Term of this Agreement (provided that such entity shall be considered an Affiliate only for the time during which such control exists), where (A) “control” means the ownership or control, directly or indirectly, of more than fifty percent (50%) of all the voting power of the shares (or other securities rights) entitled to vote for the election of directors or other governing authority and (B) an “entity” means a corporation, partnership, limited liability company, or other enterprise, association, organization, or legal entity recognized under the laws of any jurisdiction. Any act or omission of this Agreement by any Representative of a Party that would be deemed a breach of this Agreement by the Receiving Party will be deemed a breach by the Receiving Party. In no event shall the Receiving Party: (i) reverse engineer, duplicate, copy or chemically analyze any sample, prototype, component or other product provided by the Disclosing Party in connection with the Purpose that embodies Confidential Information including information such as materials or material processing technologies (“Samples”); (ii) manufacture or produce any product replicating the Samples; or (iii) otherwise assist or solicit any other person to engage in any of the foregoing prohibited activities.

(c) If an unauthorized use or disclosure by the Receiving Party or any of its Representatives or any other person who receives Confidential Information of Disclosing Party from the Receiving Party occurs with respect to the Confidential Information of the Disclosing Party, the Receiving Party shall immediately notify the Disclosing Party and take, at the Receiving Party’s expense, all reasonable steps and measures (including available actions for seizure and injunctive relief) necessary to stop further use or disclosure and recover such Confidential Information and prevent its further unauthorized use or disclosure. Additionally, the Disclosing Party is an intended third party beneficiary of the obligations of its Representatives or any other person who receives Confidential Information of the Disclosing Party from the Receiving Party or any of its Representatives with the right to enforce the obligations of the Receiving Party under this Agreement directly against any such person or entity at the cost and expense of the Receiving Party.

(d) The terms of this Agreement (but not its mere existence) are the Confidential Information of each Party for which each Party is deemed the Disclosing Party subject to the foregoing obligations; provided, however, that either Party may also disclose the terms of this Agreement in connection with a permitted assignment of this Agreement or a potential investment, merger or consolidation of the Disclosing

Party, in each case, under an obligation of confidentiality that prohibits use of such information other than in connection with such transaction.

(e) In the event that the Receiving Party is required to disclose any of the Disclosing Party's Confidential Information or this Agreement pursuant to a valid order of a court or other jurisdictional government body, the Receiving Party shall have the right to disclose such Confidential Information, provided that the Receiving Party has notified the Disclosing Party promptly upon learning of the possibility of any such court order and has given the Disclosing Party a reasonable opportunity to contest or limit the scope of such required disclosure (including application for a protective order).

### **3. No Rights Granted.**

(a) The Disclosing Party shall be under no obligation to supply Confidential Information to the Receiving Party merely because this Agreement exists. Except for the limited right to copy and create derivative works of Confidential Information expressly contemplated by Sections 2(b)(iii) and (iv), nothing in this Agreement shall be deemed to grant any direct or indirect license or interest in or right or title to the Receiving Party under any Confidential Information of the Disclosing Party disclosed pursuant to this Agreement. For the avoidance of doubt, any and all intellectual property or other proprietary rights, including, but not limited to, patent rights, trademarks and other intellectual property or proprietary rights, in and to Confidential Information disclosed by the Disclosing Party to the Receiving Party hereunder shall at all times be and remain the exclusive property of the Disclosing Party.

(b) The furnishing of Confidential Information hereunder shall not obligate either Party to enter into further agreement or negotiation with the other or to refrain from entering into an agreement or negotiation with any other party, nor shall it create a joint venture or partnership between the Parties.

(c) The Receiving Party understands and acknowledges that any and all information contained in Confidential Information is being provided without any representation or warranty, express or implied, as to the accuracy or completeness thereof. EACH PARTY HEREBY DISCLAIMS ALL SUCH WARRANTIES OF ANY KIND WHATSOEVER, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, OR AGAINST INFRINGEMENT.

### **4. Return of Confidential Information.**

At any time upon the request of the Disclosing Party, the Receiving Party shall, within five (5) business days of such notification, either deliver to the Disclosing Party, or delete by destruction or redaction, any Confidential Information of the Disclosing Party in the possession or under the control of the Receiving Party or its Representatives, including all copies that are stored in an electronic or other medium and are retrievable in perceivable form. At the time of its request, the Disclosing Party may specify that the Receiving Party deliver certain of the Disclosing Party's original materials constituting Confidential Information (as described in Section 1(a)(i)), in which case the Receiving Party will do so. If the Disclosing Party does not specify, the Receiving Party shall have the option to either deliver such Confidential Information to the Disclosing Party or to delete it by destruction or redaction. With respect to any Confidential Information that is not an original material of the Disclosing Party (i.e., Notes or any copy or derivative work of the Confidential Information of the Disclosing Party), the Receiving Party shall have the option to either deliver such Confidential Information to the Disclosing Party or to delete it by destruction or redaction. The Receiving Party must certify any such destruction to the Disclosing Party in writing, and a list of the destroyed documents and materials must accompany the certification. Notwithstanding the above, the Receiving Party may maintain a single copy of the Confidential Information in its legal archives for the sole purpose of determining the scope of its rights and obligations incurred under this Agreement.

Further, the provisions of this Section 4 shall not apply to copies of electronically exchanged Confidential Information made as a matter of routine information technology backup and to Confidential Information or copies thereof which must be stored according to provisions of mandatory law or to internal compliance guidelines, *provided* that such Confidential Information or copies thereof shall remain subject to the confidentiality obligations according to the terms and conditions set forth herein until returned and/or destroyed, as the case may be.

**5. Term and Termination; Survival of Obligations.**

The period for disclosures of Confidential Information under this Agreement begins on the Effective Date and ends on the date that is **(3) three years** after the Effective Date or such longer period as may be mutually agreed in writing ("Term"). The obligations of the Parties with respect to Confidential Information disclosed or received under this Agreement shall survive and continue in full force and effect for a period of **ten (10) years** after the end of the Term.

**6. Remedies.**

The Receiving Party acknowledges and understands that: (a) the Disclosing Party may be damaged irreparably if any of the provisions of this Agreement are not performed in accordance with the specific terms; (b) the Disclosing Party may encounter extreme difficulty in attempting to prove the actual amount of damages suffered by it as a result of the Receiving Party's breach; and (c) any breach of this Agreement by the Receiving Party might not be adequately compensated by monetary damages alone. Accordingly, the Receiving Party agrees that, in addition to any other right or remedy to which the Disclosing Party may be entitled at law or in equity, to whatever extent it may be deemed proper by a court of competent jurisdiction, the Disclosing Party may seek to enforce any provision of this Agreement by a decree of specific performance and to seek temporary, preliminary and permanent injunctive relief to prevent any breach or threatened breach of this Agreement, without posting any bond or other security. The rights and remedies of the Parties to this Agreement are cumulative and not alternative.

**7. Other Provisions.**

(a) All notices and other communications under this Agreement shall be in writing and shall be deemed given (i) on the day of service if served personally on the Party to whom notice is given, (ii) on the date of receipt if delivered by telecopy, email, pdf or nationally recognized overnight courier, or (iii) on the third Business Day after deposit in the U.S. mail if mailed to the Party to whom notice is given by registered or certified mail, postage prepaid, return receipt requested and properly addressed as follows:

If to Liveline, to:

**Liveline Technologies Inc.**

40300 Traditions Drive

Northville, MI 48168

Attn:

Email/Fax:

If to Company, to:

Attn:

Email/Fax:

(b) This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof. This Agreement shall supersede, and the terms of this Agreement shall take precedence over any conflicting terms contained in, all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof.

(c) Each Party represents and warrants that the person(s) signing this Agreement below on its behalf has authority to bind such Party to this Agreement, and that this Agreement will legally binding upon such Party, enforceable against it in accordance with its terms. To the extent that the practices, policies, or procedures of a Party, now or in the future, are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

(d) This Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the Parties. Either Party may assign its interest under this Agreement in its entirety in connection with the sale of at least all of the assets of such Party to which this Agreement relates, to its Affiliate, or the merger or consolidation of such Party; provided, such Party shall notify the other Party in writing thereof prior to the assignment. Except as provided in the preceding sentence, neither Party may assign any of its rights or obligations under this Agreement without the express written consent of the other Party, which consent may not be unreasonably withheld or delayed. Any purported assignment in violation of this Agreement shall be null and void.

(e) This Agreement may not be amended, supplemented or otherwise modified except by a written agreement dated subsequent to the date of this Agreement and signed by both Parties.

(f) If any provision of this Agreement is unenforceable or invalid, the Parties intend, desire and request that the Agreement shall be ineffective only to the extent of such provisions and the other provisions of this Agreement shall remain in full force and effect.

(g) None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of the Parties or their Representatives. Neither any failure nor any delay by any party in exercising any right, power, or privilege under this Agreement shall operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power or privilege.

(h) This Agreement shall be governed by and construed under the laws of the state of Michigan without regard to conflicts of law principles. Any action or proceeding arising out of or relating to this Agreement may be brought in the courts of the State of Michigan, and each of the Parties irrevocably submits to the jurisdiction of each such court in any such action or proceeding and waives any objection it may now or hereafter have to venue or convenience of forum.

(i) This Agreement may be executed in one or more counterparts (including by means of scanned or facsimile signature pages), all of which taken together shall constitute one and the same original and binding instrument.

*[Remainder of Page Intentionally Left Blank; Signature Page Follows.]*

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized representative, effective as of the Effective Date.

**LIVELINE TECHNOLOGIES INC.**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[FULL COMPANY NAME]**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_