

Mutual Non-Disclosure Agreement

This Mutual Non-Disclosure Agreement (the “Agreement”) is entered into and effective as of the day of _____, 20__ (the “Effective Date”) between **Honeyville, Inc.**, a Utah corporation with offices at 1040 West 600 North, Ogden, UT 84404 and at various other locations, on behalf of itself and its Affiliates (as defined in Section 2) (collectively, “Honeyville”), and _____, a _____ with offices at _____, on behalf of itself and its Affiliates (collectively, “Counterparty”). Honeyville and Counterparty are referred to herein, individually, as a “Party” and collectively as the “Parties”. As this Agreement contemplates the mutual disclosure of Confidential Information (as defined below), each Party in its capacity as the discloser of information to the other Party will be referred to herein as the “disclosing Party” and each Party in its capacity as the recipient of information from the other Party will be referred to herein as the “receiving Party”.

Whereas, both Parties anticipate having discussions regarding a possible business arrangement between them (the “Purpose”); and

Whereas, each Party may wish to disclose certain Confidential Information to the other Party, in accordance with the terms herein;

Now, therefore, in consideration of the disclosure of Confidential Information (as defined herein), both Parties covenant and agree as follows:

1. **Definitions.** As used herein, “Confidential Information” means all non-public or proprietary information disclosed or furnished by the disclosing Party to the receiving Party, or otherwise obtained by the receiving Party from the disclosing Party, other than information as exempted from this Agreement in Section 4 below, including by way of example and not limitation any business, technical (software or otherwise), marketing, sales, financial or other information, whether in electronic, oral, written or other form or medium, including memoranda, summaries, notes, analyses, compilations, code, studies, drawings, or other documents containing or reflecting Confidential Information of the disclosing Party, whether or not marked or identified as “confidential”, “proprietary” or the like.
2. **Confidentiality and Non-Use Obligations.** The receiving Party agrees that, for a period of five (5) years from the date of its receipt of Confidential Information from the disclosing Party, or for such longer period as specified in Section 5 below, (i) it will use the Confidential Information solely in connection with its evaluation of potential agreements, business discussions and actual agreements with the other Party, and the receiving Party’s proper exercise of its rights and obligations under such agreements; and (ii) it will not distribute, disclose or disseminate Confidential Information to anyone except its Affiliates, and to employees, agents, and advisors (collectively, “Representatives”) who need to know such Confidential Information for the Purpose, provided that such parties have been informed of and have agreed to abide by the terms of this Agreement (or in accordance with confidentiality terms at least as restrictive as those contained in this Agreement). The receiving Party will use the same care and discretion to avoid disclosure, publication, or dissemination of the Confidential Information as it uses with its own information of similar

sensitivity that it does not wish to disclose, but in no event less than a reasonable degree of care. The receiving Party shall be liable for any breach of this Agreement by its Representatives.

An “Affiliate” of a Party means an entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Party; and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting stock, ownership interest or securities, by contract or otherwise.

3. No obligation of confidentiality applies to any Confidential Information that the receiving Party can show:
 - (i) is, or becomes, publicly available without breach of this Agreement, but only from the date it becomes so available;
 - (ii) was rightfully in the possession of the receiving Party without obligation of confidentiality prior to receiving it from the disclosing Party;
 - (iii) was rightfully disclosed to the receiving Party by a third party without obligation of confidentiality;
 - (iv) is independently developed by the receiving Party without use of the Confidential Information; or
 - (v) is disclosed by the receiving Party with the disclosing Party’s prior written consent.
4. Notwithstanding the foregoing, the receiving Party may disclose that portion of Confidential Information that is required by law to be disclosed, such as by subpoena, judicial or administrative order, provided that, if legally permissible, the disclosing Party is first given notice of the required disclosure and an adequate opportunity to seek appropriate legal relief to prevent such disclosure or limit use and further disclosure of the Confidential Information. If, in the absence of such legal relief or other remedy, the receiving Party is nonetheless required to disclose any part of the Confidential Information, it may disclose such Confidential Information without liability hereunder, provided that it shall furnish only such portion of the Confidential Information of the disclosing Party that the receiving Party determines in good faith is legally required to be disclosed.
5. This Agreement will commence on the Effective Date and will expire one year from that date, unless the Parties agree in writing to extend such term; provided, however, that either Party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other Party. The non-disclosure and non-use obligations set forth in Section 2 above will survive the expiration or termination of this Agreement. Notwithstanding the five-year non-disclosure period specified in Section 2, the non-disclosure restrictions contained in this Agreement will continue with respect to any Confidential Information that constitutes a “trade secret” under applicable law, for as long as such information remains a trade secret.
6. Neither this Agreement nor the disclosure or receipt of Confidential Information constitutes or implies a commitment by either Party to enter into any business transaction with the other Party. This Agreement does not create any obligation for either Party to disclose any Confidential Information or to accept any Confidential Information from the other Party.
7. Confidential Information ownership shall not change as a result of this Agreement and shall remain the property of the disclosing

Party. Nothing in this Agreement shall be construed as a grant of any license to any patent, copyright, trade secret or other intellectual property of the disclosing Party.

8. The disclosing Party warrants that it has the right to disclose Confidential Information to the receiving Party. All Confidential Information is provided "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. The disclosing Party does not represent or warrant the accuracy or completeness of the Confidential Information, or that any target dates will be met. Either Party may change or cancel its plans at any time. The receiving Party shall not export any Confidential Information of the disclosing Party.
9. This Agreement constitutes the complete and full understanding of the Parties concerning the subject matter hereof. Any amendment to this Agreement must be in a subsequently dated writing specifically referencing this Agreement and signed by an authorized representative of each Party. No failure or delay in exercising any right under this Agreement will operate as a waiver thereof.
10. Promptly following a written request from the disclosing Party, all Confidential Information in the possession of the receiving Party shall at the receiving Party's option either be returned to the disclosing Party or destroyed (as certified in writing by receiving Party); provided, however, that the receiving party may retain Confidential Information on its back-up servers that are not reasonably accessible, in the ordinary course of business, as well as one copy in a secure location for archival purposes, to comply with its record retention policies and applicable legal, regulatory, or professional obligations. Such retained Confidential Information shall remain subject to the terms of this Agreement.
11. Subject to Section 3, neither Party will disclose the subject matter of this Agreement, any terms of this Agreement or the content or substance of any discussions between the Parties concerning this Agreement without the prior written consent of the other Party.
12. Each Party acknowledges and agrees that a breach of this Agreement would cause the disclosing Party to suffer irreparable damage that could not be adequately remedied by an award of damages. Therefore, a breach or threatened breach of this Agreement by the receiving Party shall entitle the disclosing Party, when seeking to enforce any of the provisions of this Agreement, to obtain immediate injunctive relief without the necessity of posting bond, to the extent permitted by law. Such injunctive relief shall be cumulative and not in lieu of any other remedies at law or in equity available to the disclosing Party.
13. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, any such provision(s) will be severed from this Agreement and the remaining terms of this Agreement will remain in full force and effect.
14. This Agreement is governed by and will be construed in accordance with the substantive and procedural laws of the State of Utah, U.S.A. without regard to or application of any conflicts of law principles. Any suits, actions and proceedings to enforce this Agreement will be brought and resolved in and by the courts of Salt Lake County, Utah, U.S.A. To the extent permitted by law, each Party hereby irrevocably and unconditionally (i) consents and submits to the exclusive jurisdiction of such courts, (ii) waives any immunity to service

of process in respect of any such suit, action or proceeding to which it might otherwise be entitled, and (iii) waives any and all objections, claims and defenses that such venue and forum is/are improper or inconvenient. In the event of any lawsuit or legal proceeding arising out of or related to this Agreement, the rights or obligations of any Party under this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party all of the prevailing Party's costs and expenses incurred in connection therewith, including court costs and reasonable attorneys' fees.

15. This Agreement may be signed in two or more identical counterpart originals, all of which, when taken together, constitute the Agreement after a duly authorized representative of each Party has signed a counterpart. The Parties may deliver to each other this Agreement via electronic or facsimile transmission and return to each other their signed counterpart via electronic or facsimile transmission. When a counterpart is delivered and signed in this manner, the Agreement has the same force, effect and evidentiary value as if it were delivered by hand or via U.S. Mail or courier by a Party and as if it bore that Party's original signature.
16. Neither Party may assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder without the other Party's prior written approval, except that a Party may assign or transfer this Agreement, upon notice, to (a) a successor as a result of a merger, consolidation, acquisition, reorganization or sale of all or substantially all of such Party's assets, or (b) an Affiliate.

In witness whereof, the undersigned have executed this Agreement as of the Effective Date first above written.

Honeyville, Inc.:

By: _____

Title: _____

Print Name: _____

Counterparty:

By: _____

Title: _____

Print Name: _____