

DBG AdvisorsTM

Build Full Value

801 East Campbell Road, Suite 250-L, Richardson, Texas
75081 Office: (972) 200-0991

Non-Disclosure and Confidentiality Agreement

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (herein the “Agreement”) is dated and effective as of _____ (“Effective Date”), by and between **Duck Business Group, LLC, d/b/a DBG Advisors**, located at 801 E. Campbell Road, Suite 280-C, Richardson, Texas 75081 (“DBG”) and _____ (“Company”). DBG and Company together referred to as the “Parties” or individually as “Party”.

WHEREAS, in connection with a proposed business transaction, (the Transaction) between a company represented by DBG to be identified immediately upon execution of this Agreement and Company, each has requested that the other provide it with certain confidential and proprietary information and data related to the past, present, and projected future business affairs of the other collectively referred to as “Confidential Information”, and

WHEREAS, in connection with the Transaction, the Parties have agreed to disclose certain Confidential Information to each other,

NOW, THEREFORE, in consideration of the promise and mutual covenants and agreement contained in this Agreement, and other good and valuable consideration, the request and sufficiency of which is hereby acknowledged by the undersigned, the Parties hereto agree as follows:

1. For purposes of this Agreement, the term “Confidential Information” shall mean any information regarding the Parties which is disclosed or exchanged by and between the Parties which (i) has actual or potential economic value to the Parties and which is not generally known or readily ascertainable by proper means to the public or the Parties competitors at the time it is disclosed or exchanged, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain secrecy. Notwithstanding anything to the contrary contained herein, the term “Confidential Information” shall in no event apply to information which (i) is already in the public domain at the time of disclosure; (ii) enters the public domain after disclosure through no fault of the Parties; (iii) is already known to the Parties or their Representatives at the time of disclosure; (iv) is subsequently disclosed to the Parties by third parties having no known obligation of confidentiality to the Parties known to the receiving Party; or (v) was independently developed by the Parties or their Representatives without reference or reliance upon the Confidential Information.
2. Neither Party shall, directly or indirectly, publish, disseminate, divulge or disclose to any person or entity any Confidential Information, which either Party has heretofore or may hereafter give or exchange to the other Party; provided, however, that any of such Confidential Information may be disclosed to affiliates, directors, employees, potential financing sources, advisors, counsel, consultants or other representatives (collectively, those of such individuals and/or entities that actually receive Confidential Information shall be known as a Party’s “Representatives”), of the Parties who need to know such information for the purpose of evaluating or negotiating a transaction between the Parties. The Parties agree to take reasonable steps to insure that Confidential Information is not disclosed or otherwise made available to any third party, other than the Parties’ Representatives, without prior written consent of the other Party; provided, however, that the Parties may disclose such portions of the Confidential Information (i) as may be required under state or federal law or (ii) in connection with any litigation arising out of, resulting from or related to this agreement. In the event applicable law requires the Parties to disclose such Confidential Information, the Parties shall promptly notify each other of any request for disclosure, and to the extent permissible by law, each Party shall

respond to said request. The Parties shall be responsible for any breach of this letter agreement by any of its Representatives from prohibited or unauthorized disclosure or use of the Confidential Information.

3. The Parties shall restrict access to the Confidential Information to those of its Representatives who clearly need such access in order to transact business as contemplated by the Parties herein.
4. The Parties acknowledge that in addition to any other remedy which may be afforded by law, any breach or threatened breach of this Agreement shall afford the non-breaching party the right to seek specific performance by injunction or any other equitable remedies of any court of competent jurisdiction. In no event will either Party be liable for lost profits, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is excluded by agreement of the Parties, regardless of whether such damages were foreseeable or whether the Parties have been advised of the possibility of such damages.
5. Upon receipt of a written request, the Parties shall promptly destroy to the requesting Party, any and all documents, records, memoranda, notes, drawings, financial information and other written, printed or tangible materials pertaining to the Confidential Information of every character and description. Parties are permitted to keep any copies as required by law, regulation, internal policies or legal process, and neither Parties nor their Representatives are required to destroy any computer records or files containing Confidential Information that have been created pursuant to automatic archiving and backup procedures. Notwithstanding the destruction of the Information required by this paragraph, any and all duties and obligations existing under this Agreement shall remain in full force and effect.
6. This Agreement represents the entire agreement between the Parties with respect to the subject matter contained herein and may not be amended or modified except in writing signed by each of the Parties to this Agreement. This Agreement shall be binding on the Parties hereto and their respective employees, agents, legal representatives, successors and assigns. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and together shall constitute one and the same agreement. No waiver of any provision of this Agreement will be deemed to be or will constitute a waiver of any other provision or other application of the same provision, whether or not similar, or will any waiver constitute a continuing waiver.
7. This Agreement and all obligations hereunder shall automatically expire one (1) year from execution.

COMPANY

By: _____

Title: _____

DUCK BUSINESS GROUP, LLC,
D/B/A DBG ADVISORS

By: _____

L. Nolan Duck
Manager, Duck Business Group, LLC