

**SHOPKO<sup>®</sup>**

**Vendor Partnership Manual**

**Section 4 – Agreement on  
Confidentiality**

# What's New

*No changes have occurred in this chapter  
since our last update in  
July 2017.*

## TABLE OF CONTENTS

1.	Agreement on Confidentiality.....	1
----	-----------------------------------	---

## 1. Agreement on Confidentiality

**WHEREAS**, in the course of Shopko Stores Operating Co., LLC (Shopko) business dealings with various vendors of merchandise, such vendors may obtain information or data with respect to Shopko's business operations, which may include, without limitation, information about Shopko's business, customers, sales and other financial performance, financial projections, descriptions of Shopko's strategic plans, the identity of one or more other parties with whom Shopko does business, descriptions of non-public transaction structure proposals, description of Shopko's and other entities' business operations, computer systems, inventory systems, distribution networks, strategies, store operations, billing and receivable operations, systems development, and software, technical systems and product development methodologies and strategies, marketing and operational procedures and strategies, financial information and projections, business plans, client lists and other similar information. Any such information, whether provided before or after the date of this agreement, will hereinafter be referred to as the "Confidential Information"; and

**WHEREAS**, Shopko has agreed to provide such Confidential Information to any vendor which executes a Vendor's Acknowledgement of Shopko's Vendor Partnership Manual ("VENDOR"), which information is only to be used in furtherance of the business relationship between Shopko and VENDOR (the "Permitted Use"), and only upon the terms and conditions set forth herein; and

**WHEREAS**, Shopko and VENDOR (collectively the "Parties") wish to set forth in this Agreement on Confidentiality ("Agreement") their agreements concerning use and protection of the Confidential Information;

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Shopko and VENDOR hereby agree that:

1. **Acknowledgment.** The Confidential Information is proprietary to Shopko. Any disclosure or unauthorized use thereof may cause irreparable harm and loss to Shopko.
2. **Use of the Confidential Information.**
  - a. VENDOR shall hold all of the Confidential Information in strict confidence, and, except as expressly set forth herein, will not disclose such Confidential Information to any third person(s) (which term as used in this Agreement will be broadly interpreted to include without limitation any corporation, vendor, group, partnership, agency, or individual).
  - b. VENDOR shall: (i) use the Confidential Information only in connection with the Permitted Use; (ii) disclose the Confidential Information only to its officers, directors, and/or employees who need to know the Confidential Information to accomplish the Permitted use; and (iii) safeguard the Confidential Information with the same degree of care to avoid unauthorized disclosure as VENDOR uses to protect its own Confidential Information of a similar nature; but in no case less than reasonable care. It is VENDOR'S responsibility to ensure that any officers, directors, or employees who have access to the Confidential Information will, prior to being provided with any or all of the Confidential Information, agree to be bound by the terms of this Agreement. VENDOR shall not use the Confidential Information in any respect to compete with Shopko at any time or provide to a third party to compete with Shopko.
  - c. Immediately after VENDOR's use of the Confidential Information for the Permitted Use, or earlier upon written request by Shopko, VENDOR will return to Shopko all of the Confidential Information, together with all copies, computer disks and/or summaries of the Confidential Information, without retaining any copy thereof.
  - d. Shopko will use its best efforts to ensure the accuracy and completeness of the Confidential Information but Shopko does not make and will not be deemed to have made any warranty as to the accuracy or completeness of any of the Confidential Information. Shopko will not be liable for any damages arising out of the use of the Confidential Information disclosed hereunder.

- e.        VENDOR will assume the liability for all damages, losses, costs, or expenses which result from: (i) the use of the Confidential Information by VENDOR for any purpose other than the Permitted Use; (ii) disclosure of the Confidential Information by VENDOR to third parties or entities, or (iii) the use of the Confidential Information by any person or entity other than VENDOR, caused by the unauthorized disclosure or dissemination of same by any employees, agents, or contractors of VENDOR.
- f.        The foregoing obligations of VENDOR will not apply to the extent that the Confidential Information: (i) at the time of its disclosure by Shopko to VENDOR, is part of the public domain or, after disclosure by Shopko to Vendor, becomes part of the public domain by publication or otherwise through no action or fault of VENDOR; (ii) VENDOR can show was in its possession at the time of disclosure and was not acquired, directly or indirectly, from Shopko; or (iii) was received by VENDOR from a third party having a legal right to transmit the information (VENDOR must show that such Confidential Information was rightfully in its possession at the time of execution of this Confidentiality Agreement and was not subject to a non-disclosure obligation to Shopko).
- g.        Subject to section 3 below, the foregoing obligations of VENDOR will not apply to the extent that VENDOR is required by law to provide the Confidential Information to a government agency or regulatory body.
- h.        VENDOR acknowledges its responsibilities under the federal securities laws, including without limitation, Section 10(b) of the Securities Exchange Act of 1934, as amended and Rule 10b-5 thereunder, with respect to trading Shopko's securities while in possession of material non-public information.
3.        **Legally Compelled Information.** In the event that VENDOR or anyone to whom it transmits any Confidential Information becomes legally compelled to disclose any of the Confidential Information, VENDOR will provide Shopko with prompt written notice before such Confidential Information is disclosed so that Shopko can seek a protective order or other appropriate remedy. In the absence of a protective order obtained by Shopko or Shopko's failure to quash the legal process requiring disclosure or other measures effectively removing the legal compulsion, VENDOR shall have no duty to resist the production of Confidential Information and the production thereof shall not constitute a breach of this agreement.
4.        **Reasonableness; Remedies.** VENDOR acknowledges that these covenants are reasonable and necessary for the protection of the proprietary interests of Shopko and that irreparable injury will result to Shopko and its business if any provision of this Agreement is breached and agrees that if there should be any breach or threatened breach, Shopko shall be entitled to an ex parte injunction prohibiting such conduct, in addition to any other remedies or damages available to it, and VENDOR will reimburse Shopko for all court costs and legal fees, including reasonable attorney's fees, incurred in enforcing this Agreement or obtaining relief hereunder. Further, upon VENDOR'S breach of this Agreement, Shopko shall be entitled to reasonable liquidated damages equal to an amount which is the greater of: (a) the amount of loss to Shopko from the misappropriation of the Confidential Information, (b) the amount of gain by VENDOR or any third person(s) from the misappropriation of the Confidential Information, or (c) Two Hundred Fifty Thousand dollars (\$250,000.00).
5.        **Other Commitments.** Nothing contained in this Agreement or in any discussions undertaken or disclosures made pursuant hereto shall be deemed a commitment by Shopko to engage in any business relationship, contract or future dealing with VENDOR.
6.        **Miscellaneous.**
- a.        No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred directly or by implication, estoppel or otherwise, by this Agreement or any disclosure hereunder, except for the right to use such information in accordance with this Agreement. No warranties of any kind are given with respect to the Confidential Information disclosed under this Agreement of any use thereof, except as may be otherwise agreed to in writing.

b. This Agreement shall be effective as of Shopko's first submission of Confidential Information to VENDOR (the "Effective Date") and shall continue until terminated by either party upon thirty (30) days prior written notice. All obligations undertaken respecting Confidential Information and other obligations of VENDOR hereunder prior to the date of such termination shall survive any termination of this Agreement and remain in effect for a period of five (5) years after disclosure of the Confidential Information.

c. This Agreement may not be assigned by either party without the prior written consent of the other, except to any of its affiliates upon prior written notice. No permitted assignment shall relieve a party of its obligations hereunder with respect to Confidential Information disclosed to that party prior to the assignment. Any assignment in violation of this Section shall be void. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

d. If any provision of this Agreement shall be held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and replaced by a valid and enforceable provision which so far as possible achieves the Parties' intent in agreeing to the original provision. The remaining provisions of this Agreement shall continue in full force and effect.

e. VENDOR warrants that it has the authority to enter into this Agreement and to lawfully make the covenants and agreements contemplated hereunder.

f. All notices and other communications required under this Agreement shall be sent by: (a) United States certified mail, postage prepaid, return receipt requested, or (b) for delivery on the next business day with a nationally-recognized express courier. All such notices being sent to Shopko shall be sent to Attn: Legal Department, 700 Pilgrim Way, Green Bay, WI 54304. All such notices being sent to VENDOR shall be sent to the current address on file with Shopko for VENDOR. It shall be the obligation of VENDOR to keep an updated address on file with Shopko.

g. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin without giving effect to the conflict of law's provisions thereof. The Parties consent to the exclusive jurisdiction and venue in any court of competent jurisdiction in Wisconsin and in the United States District Court for Wisconsin, and to service of process under the statutes of Wisconsin.

h. This Agreement represents the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior communications, agreements and understandings relating hereto. The provisions of this Agreement may not be modified, amended or waived, except by a written instrument duly executed by both Parties. This Agreement shall be governed in all respects by the laws of the State of Wisconsin, without regard for conflicts of laws principles.

**The Parties hereby expressly agree that VENDOR's execution of the Vendor's Acknowledgement Form shall constitute VENDOR's agreement to be bound by the terms of this Agreement.**