

**EXHIBIT D**

**Confidentiality and Non-Disclosure Agreement**

1. **Confidential Information**. In connection with discussions concerning a future business relationship between Boscov's and Vendor and/or in connection with an ongoing business relationship, Boscov's and Vendor may disclose to the other certain information that is confidential and proprietary to the disclosing party (whether or not such information is marked as "Confidential") for the purpose of bidding, negotiating—and, if successful—providing Boscov's with goods and/or services and/or participating in Boscov's Supplier Direct Fulfillment program pursuant to the terms and conditions of the Supplier Direct Fulfillment Vendor Agreement and the Supplier Direct Fulfillment Program Vendor Participant Policies (the "Permitted Use").

As used herein, the term "Confidential Information" shall mean any and all information disclosed to a receiving party (whether previously disclosed, disclosed simultaneously herewith or hereafter disclosed), in whatever form or medium (whether oral, written, graphic, visual or computer generated), which has or could have commercial value or other utility in the business or prospective business of the disclosing party or any information of which unauthorized disclosure could be detrimental to the interests of the disclosing party. By example and without limitation, Confidential Information includes, but is not limited to:

- (a) **Intellectual Property** – trade secrets, patent applications, ideas, formulas, client lists, private or secret processes of the disclosing party as they exist from time to time, inventions, methods, designs, blueprints, drawings, customers, suppliers, mailing lists;
- (b) **Business Information** - strategic plans, the identity of business partners, descriptions of non-public transaction structure proposals, descriptions of business operations, store operations, billing and receivable operations, healthcare information including claims, marketing and operational procedures and strategies, other business plans and strategies, products, services;
- (c) **Technical Information** - computer systems, inventory systems, distribution networks, systems development, technical systems, product development methodologies and strategies, technical data, know-how, discoveries, manufacturing data, engineering data, test data, materials, costs, tolerances, specifications, software, equipment;
- (d) **Financial Information** - financial performance figures, financial information and projections, credit and financial information and techniques, procurement and sales activities and procedures, promotions, pricing; and/or
- (e) **Other Nonpublic Information** – any information received from others that the disclosing party is obligated to treat as confidential, any information that (under the circumstances surrounding disclosure) ought to be treated as confidential.

Each party further acknowledges and agrees that all information disclosed by a disclosing party hereunder and all other information to which a recipient may have access by virtue of any such disclosure or relating

to the disclosing party shall be presumed by the parties to be Confidential Information unless the disclosing party shall advise the recipient that any item or items need not be regarded or treated as confidential.

2. **Use of Confidential Information.** The receiving party acknowledges the economic value to the disclosing party of all Confidential Information. With respect to Confidential Information, the recipient shall:

- (a) use Confidential Information only for the Permitted Use;
- (b) restrict disclosure of (i) Confidential Information; (ii) the fact that Confidential Information is being disclosed by or to either party; and (iii) the fact that discussions, proposals, meetings and/or work in connection with the Permitted Use are taking place; solely to those employees of such party with a “need to know” and those representatives of such party with a “need to know” (but only after first informing the representatives of the obligation of confidentiality and receiving from the representatives an executed confidentiality agreement containing similar restrictions as those found herein) and not disclose it to any other person or entity without the prior written consent of the disclosing party;
- (c) advise those employees and representatives who gain access to Confidential Information of their obligations with respect to the Confidential Information;
- (d) make only the number of copies of the Confidential Information necessary to disseminate the information to those employees and representatives who are entitled to have access to it, and ensure that all confidentiality and proprietary notices and legends affixed to or set forth on Confidential Information are reproduced in full on such copies;
- (e) safeguard Confidential Information with the same degree of care to avoid unauthorized disclosure as recipient uses to protect its own confidential and private information of a similar nature (but in no event less than a reasonable degree of care); and
- (f) notify the disclosing party immediately upon discovery of any suspected unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by the receiving party, and cooperate with the disclosing party in every reasonable way to help the disclosing party regain possession of the Confidential Information and prevent its further use or disclosure.

For the purposes of this Agreement only, a “need to know” means that the employee or representative requires the Confidential Information in order to perform his or her responsibilities in connection with the Permitted Use.

All communication between the parties with respect to the Permitted Use will be channeled only through designated individuals at each party's respective offices at the above-referenced addresses. Except to the extent required by law, neither party will make, or permit to be made by any of their directors, officers, employees, representatives or agents any public statement or press release regarding the Permitted Use or the fact that discussions, proposals, meetings and/or work with regard to the Permitted Use are taking place without first consulting with the other party so that such public statement or press release may be jointly issued by the parties. No such public statement or press release shall be made or issued by either party unless and until jointly approved by both parties.

3. **Exceptions:** Notwithstanding the foregoing or anything to the contrary expressed or implied herein, "Confidential Information" shall not include any item of information which the recipient can demonstrate with written evidence:

- (a) is or becomes available to the public through no breach of this Agreement;
- (b) was previously known by the recipient without any obligation to hold it in confidence;
- (c) is received from a third party free to disclose such information without restriction;
- (d) is independently developed by the recipient without the use of Confidential Information of the disclosing party;
- (e) is approved for release by written authorization of the disclosing party, but only to the extent of and subject to such conditions as may be imposed in such written authorization;
- (f) is required by law or regulation to be disclosed, but only to the extent and for the purposes of such required disclosure; or
- (g) is disclosed in response to a valid order of a court or other governmental body of the United States or any political subdivisions thereof, but only to the extent of and for the limited purposes of such order; provided, however, that the recipient shall first notify the disclosing party of the order and permit the disclosing party to seek an appropriate protective order.

4. **Securities Laws.** Each party acknowledges that it is aware (and that its employees and representatives who have access to Confidential Information have been or will be advised) that federal and state securities laws prohibit any person or entity who has material, non-public information about a publicly-traded Vendor (such as the Confidential Information) from purchasing or selling securities of such Vendor, or from communicating such information to any other person or entity under circumstances in which it is reasonably foreseeable that such person or entity is likely to sell or purchase such securities. Each party further acknowledges that if one of its employees or representatives uses Confidential Information that it receives from the other party in a manner that violates federal and state securities laws (as set forth above), such use will be deemed a violation of this Agreement and the disclosing party will be able to seek any remedies available to it pursuant to the terms contained herein as well as at law or in equity.

5. **Return of Information.** Confidential Information, including permitted copies, is and at all times shall remain the property of the disclosing party. Each recipient shall, upon the termination of its business relationship with the other or upon a written request by the other party, whichever is earlier, promptly return to the disclosing party all Confidential Information, including all copies, reproductions or summaries thereof and all records, notes and other written, printed or tangible materials in its possession pertaining thereto, or, if so directed by the disclosing party, provide written certification that all of the aforementioned has been destroyed in a manner which preserves its confidentiality. The return of Confidential Information, copies thereof and other written materials pertaining thereto shall in no event relieve the recipient of any obligation of confidentiality and non-use contained herein with respect to the Confidential Information.

6. **Reasonableness; Remedies.** Both parties acknowledge that these covenants are reasonable and necessary for the protection of the proprietary interests of each other and agree that an impending or

existing violation of any provision of this Agreement may cause the disclosing party irreparable injury for which it would have no adequate remedy at law, and that the disclosing party shall be entitled to seek immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it at law or in equity. Each party further agrees to indemnify the other party against any and all losses, damages, claims, and expenses incurred or suffered as a result of a breach of this Agreement, including the reimbursement of the other party (if successful on the merits) for all court costs and legal fees, including reasonable attorney's fees, incurred in enforcing this Agreement or obtaining relief hereunder.

7. **Miscellaneous.**

- (a) Nothing contained in this Agreement or in any discussions undertaken or disclosures made pursuant hereto shall (i) be deemed a commitment on the part of Boscov's to engage in any business relationship, contract or future dealing with Vendor or any other party, or (ii) limit either party's right to conduct similar discussions or perform similar work to that undertaken pursuant hereto, so long as said discussions or work do not violate this Agreement.
- (b) No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement or any disclosure hereunder, except for the right to use such information for the sole purpose of the Permitted Use. Unless otherwise agreed to in writing by the parties, no warranties of any kind are given with respect to the Confidential Information disclosed under this Agreement, except each party warrants to the other that: (i) the party providing the Confidential Information is the owner of such information; and (ii) the provision of any of the Confidential Information hereunder shall not violate or conflict with any third party's legal (contractual or otherwise) rights with respect to such information.
- (c) This Agreement shall be effective as of the date first written above and shall continue until terminated by either party upon thirty (30) days prior written notice. All obligations undertaken respecting Confidential Information already provided hereunder shall survive any termination or cancellation of this Agreement.
- (d) This Agreement may not be assigned by either party without the prior written consent of the other. 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 any permitted assigns.
- (e) If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, 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.
- (f) Each party (i) warrants that it has the authority to enter into this Agreement and to lawfully make the disclosures contemplated hereunder and (ii) expressly agrees that, with respect to this Agreement, facsimile signatures are binding on the parties.



April 2013

- (g) 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 thereto. The provisions of this Agreement may not be modified, amended or waived, except by a written instrument duly executed by both parties. This Agreement and the parties' rights and obligations hereunder shall, in all respects, be governed by, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania without regard for its conflicts of law principles. The parties hereto agree that the exclusive jurisdiction for any claim or suit brought to enforce a party's rights under this Agreement shall be the courts of the Commonwealth of Pennsylvania, Berks County or the U.S. District Court for the Eastern District of Pennsylvania and each party hereby waives any claim that Berks County or the Commonwealth of Pennsylvania is an inconvenient forum.