



Introduction

The [New York State Cannabis Law](#) provides a statutory framework for individuals and entities with an interest in businesses licensed by the Office of Cannabis Management (Office). The Cannabis Law creates a two-tier market structure for the Adult-Use Cannabis Program, whereby individuals or entities having any direct or indirect interest in a licensee authorized for the supply tier (cultivation, processing, distribution, cooperative, microbusiness, Registered Organization with Dispensing or “(ROD)”, and Registered Organization Non-Dispensing (ROND)) are prohibited from holding any direct or indirect interest in a licensee on the retail tier (dispensing, on-site consumption, delivery) of the market and vice versa. The Cannabis Law also includes prohibitions for individuals or entities with an interest in a registered organization or laboratory testing permit holder.

In contrast to the absolute prohibition on holding any direct or indirect interest vertically across the two tiers, the Cannabis Law allows for an individual or entity to have an interest in multiple licenses within the same tier, with several significant restrictions designed to ensure increased competition and access to the industry. In addition to prohibitions related to allowable licensing interests, the Cannabis Law dictates the authorizations and limitations around the provision of goods and services and the extent of relationships between such providers and licensees.

The Office is issuing this guidance for licensees and goods and services providers to give additional information as they continue to grow their businesses. Licensees are responsible for remaining compliant with this guidance and any future guidance, laws, and regulations governing conditional licenses. The Office reserves the right to review all agreements entered into by licensees.

For questions on Management Services Agreements, please consult the [True Party of Interest Guidance](#).

Definitions

For the purpose of this FAQ, the following definitions shall apply:

Person means an individual, institution, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

Financial institution means any bank, mutual savings bank, consumer loan company, credit union, savings and loan association, trust company, or other lending institution under the jurisdiction of the Department of Financial Services.

Financial interest means any actual or future right to ownership, inclusive of all restricted stock units, options, warrants, or any other interest that can be converted into a share of voting stock or equity investment, or compensation arrangement with another person, either directly or indirectly, through business, investment, spouse, domestic partner, parent or child; provided however, that with respect to a compensation arrangement the compensation, over the course of a calendar year, exceeds the greater of: (i) 10% of revenue, (ii) 50% of net profit, or (iii) \$250,000. A person with a financial interest does not include a passive investor or salaried employee earning income in excess of the compensation limits set herein.

Financier means any person, other than financial institution, that provides capital as a gift, provides a grant, or lends capital pursuant to a secured or unsecured financing agreement. Agreements will be assessed based on current and future right to ownership or interest on the licensee, including, but not limited to, interest in the event of default, bankruptcy, or reorganization. A financier may not receive an ownership interest; control of the business; gross profits or net profits; a profit-sharing interest; a percentage of the profits in exchange for a gift, grant, or loan; or a share of revenue in excess of the greater of the following over a calendar year: (i) 10% of gross revenue, (ii) 50% of net profit, or (iii) \$250,000.

Exempt services provider means any person, who is **not** a True Party of Interest (TPI), but provides services that do not inherently introduce a risk of that service provider unduly influencing across the tiers. Exempt services and providers of exempt services include:

- 1) General goods and services (accounting, license application preparation, record-keeping, cleaning and janitorial, leasing equipment, architect services, security, legal services, government relations (registered lobbyist), construction, heating, ventilating, air conditioning, refrigeration, plumbing, lighting, office supplies, and provision of non-cannabis goods from unlicensed persons);
- 2) Landlords; and,
- 3) Financiers and financial institutions.

Non-exempt services provider means any person, who is **not** a TPI, but provides services that could inherently introduce a risk of that service provider unduly influencing across the tiers. Non-exempt services include consulting, advisory, or strategic services related to the licensee's cultivation, processing, distributing, or selling of cannabis or cannabis products.

Passive Investor means a person that is a true party of interest of a licensee with an ownership interest of no more than 5% percent of the outstanding shares or interest of an applicant or licensee whose shares are publicly traded, 10% of the outstanding shares or interest of a non-publicly traded ROD license and microbusiness license, or 20% of the outstanding shares or interest of any other entity.

General Questions

1. What is the main difference between exempt and non-exempt goods and services agreements?

Classification of goods or services agreements as exempt or non-exempt are designed to assist businesses in the procurement of necessary materials and services, while assisting industry stakeholders in understanding the rules and risks associated with having an interest in the supply and retail license tiers, known as, “crossing the tiers,” and potentially exercising “undue influence.” The difference between exempt and non-exempt agreements is based on the potential for control or influence the goods and services providers under such agreements can have on a licensee’s business operations, and specifically how a licensee subject to such agreements interacts with other licensees.

Exempt service providers, such as landlords, and those exclusively providing financing or non-cannabis related services, may have more limited influence over the decisions of a licensee. As a result, exempt service providers are authorized to have agreements across the tiers.

Non-exempt service providers, such as those providing inventory management or advisory services, can more easily impact how a licensee conducts business with other licensees, even if not making those decisions for the licensee or touching cannabis or cannabis product directly. As a result, they are held to a stricter standard than exempt service providers and may be allowed to cross the tiers only if the non-exempt agreements are for a flat rate.

2. Can I be a licensee or true party of interest (TPI) in a licensee in one tier, and have a goods and services agreement with a licensee or TPI in another tier?

No. By becoming a licensee or TPI in one tier, you are restricted from becoming a licensee or TPI or having any type of goods and services agreement with any other tier (including both exempt and non-exempt agreements). For example, a cultivator or a processor or their TPI could not be a lender or a landlord to a retail dispensary or delivery company.

3. Is there a limitation to the number of licensees with which a good and services provider can enter into agreements?

No. A goods and services provider is not restricted in the number of agreements they may enter or the number of licensees with which they enter into such agreements.

4. Can a TPI in a licensee also be a service provider to the same licensee? For example, could a TPI in a licensee be a financier to that same licensee?

The designation of a goods and services provider is reserved for persons who are operating without an interest in the licensee, and therefore are held to fewer restrictions than a TPI. Once a person becomes a TPI, they are no longer entitled to that more limited set of restrictions.

A person may, however, provide exempt or non-exempt goods or services for compensation to a licensee in which they are TPI, including, for example, leasing property or providing debt capital to that licensee.

5. What is the “10/50/250” rule?

Any goods and services provider will be identified as having a financial or controlling interest in a licensee, and therefore be considered a TPI, if they receive compensation in the current calendar year, equal to or greater than the greater of:

- (i) 10% of gross revenue of a licensee;
- (ii) 50% of net profit of a licensee; or
- (iii) \$250,000

This rule applies to all types of goods and services agreements, including exempt agreements.

6. If I am offering two different services to the same licensee, are the compensation limits doubled? In other words, can I take up to the greater of 20% of the revenue, 100% of the net profit or \$300,000?

No. All stacked agreements are held to the 10%/50%/\$250k rule, and the payments from all contracts between those same parties will be combined for TPI analysis.

7. What is considered a flat fee?

A flat fee is a form of compensation that is a pre-determined amount that is not in any way dependent, directly or indirectly, on the licensee’s sales, profits, or revenues. It is not tied to the performance of a business. A flat fee cannot include a per unit royalty, for example.

8. Can I provide different types of services to the same licensee? For example, can I provide financing (exempt service) to the same licensee to which I provide inventory management services (non-exempt service)?

Yes. The agreements, however, would be governed by the stricter of the two standards. So, if you are providing financing and inventory management services to the same licensee, the financing agreement would be treated like a non-exempt agreement.

9. Do agreements stack across multiple licenses? In other words, if I am providing services to a cultivator licensee who also holds a processor license,

and have agreements with both the cultivator and the processor, will OCM view those agreements as a single agreement?

No, agreements do not stack across licenses. However, to avoid being stacked, the contracts cannot be comingled, all services must be offered at their fair market value, and the payments associated with one agreement cannot be used to compensate the service provider for services provided under the other agreement.

10. Can I enter into a goods and services agreement for the provision of labor to perform licensed activities?

No. All licensed activities under a license's authorizations must be performed by employees of that licensee. This provision does not preclude the hiring of seasonal employees.

11. If Goods and Services Provider A becomes a TPI by triggering the 10/50/250 rule, would the TPIs of Goods and Services Provider A also become TPI of Cultivator B?

Yes. All TPI of Goods and Services Provider A would be considered TPI of Cultivator B. If that TPI has a non-passive stake in Goods and Services Provider A, they would be considered to have a non-passive stake in Cultivator B. If that TPI has a passive stake in Goods and Services Provider A, they would be considered a passive investor in Cultivator B.

Exempt Goods and Services Agreements (including financiers and landlords)

12. Are exempt goods and services agreements required to be compensated by a flat fee, or can compensation be tied to business performance?

Exempt agreements are not required to be compensated by a flat fee. For example, a landlord can be compensated by receiving up to 9.9% of a licensee's revenue. Any compensation over the 10%/50%/\$250k threshold, however, would result in a TPI relationship.

13. Can an exempt goods and services provider have exempt agreements with a cultivator and retailer?

Yes. However, service providers should be aware that if they become a TPI in a licensee, or if any aspect of that agreement results in the agreement being considered a non-flat rate, non-exempt services agreement, the service provider will be in violation of TPI rules.

14. If I have a non-flat fee, non-exempt services agreement with a retailer, can I have a flat fee exempt agreement with a cultivator? Similarly, if I have a non-flat fee exempt agreement with a cultivator, can I also have a flat-rate non-exempt agreement with a retailer?

No. A person with a non-flat fee non-exempt services agreement with a licensee in one tier may not have a goods and services agreement of any kind in another tier. So, for example, a person may not have a revenue based non-exempt services agreement, such as providing inventory management services, with a retailer and also have a flat-fee exempt agreement, such as a lending agreement, with a cultivator.

Alternatively, a person with a non-flat fee exempt agreement in one tier could have a flat-fee non-exempt agreement in the other tier. Therefore, if you have a revenue based exempt agreement with a cultivator, you may also be allowed to have a flat-rate non-exempt goods and services agreement with a retailer.

Non-Exempt Goods and Services Agreements

15. Can I have a non-flat fee, non-exempt goods and services agreement, with a licensee? Are there additional restrictions if I do?

A person may have a non-flat fee non-exempt goods and services agreement with a licensee, but they are restricted from having any agreement with a licensee in any other tier as a result. They may still have other agreements with licensees in the same tier.

16. Can a retail dispensary licensee procure a point-of-sale system from a vendor that requires that retailer to use that vendor's payment solution as a condition of contracting for their point-of-sale solution?

No. Under no circumstances may a licensee enter into an agreement with a goods or services provider who conditions the sale or lease of one product or service on that licensee's commitment to take a separate product or service from that same goods or service provider.

Therefore, a licensee would not be permitted to procure services from this service provider.

17. Is a person who has an intellectual property (likeness, logo, motto, formulation, etc.) agreement with a licensee considered a TPI in that license?

It depends. A person who authorizes the use of their intellectual property (IP) to a licensee but does not otherwise attach covenants to that agreement which would restrict the licensee's ability to control licensed activities of their business, would be considered a non-exempt services provider to that licensee.

However, an IP agreement that restricts a licensee's ability to operate their business, including, but not limited to, provisions requiring the licensee to:

- Adhere to a set of standard operating procedures;
- Carry specific products or use specific service providers; or
- Hire certain individuals or board members,

Will result in that person becoming a TPI in the licensee with whom they have that IP agreement.

Third-Party Platforms

18. Can a retail dispensary licensee use a third-party platform, marketplace or aggregator to list the products carried by that licensee if that third-party platform relies on the transmission of data from the State's seed to sale track and trace system?

It depends. Licensees are only permitted to enter into agreements with third-party platforms, marketplaces, or aggregators that:

- Have signed and submitted the Office's Confidentiality and User Agreement, which will be made available on the Office's website in the near future;
- When promoting or listing a specific product, lists all retailers that carry that specific product;
- Provides an open read and write application programming interface access for all data points in a point of a sale or track and trace system;
- Receive explicit opt-in from the licensee to utilize any data acquired from customer transaction, anonymized or otherwise;
- For all digital transactions with a potential consumer:
 - Only displays or sorts listed cannabis products or paraphernalia in an objective manner; and,
 - Redirects all traffic to a platform that supports search engine optimization or SEO credits accruing to the domain of a licensee authorized for retail sale of cannabis, before the price of adult-use cannabis products are displayed.

If any third-party platform violates any of the above, the licensee is prohibited from contracting for services with that provider.