

Guidance Document — Inducements Rules for Licensed Cannabis Retailers

Guidance for standards 6.4, 6.5, 6.6 and 8.1.10 (effective June 30, 2022)

Inducements between licensed producers and retailers

The updated Standards generally prohibit licensees from entering into agreements for items, benefits, payments, or services with licensed producers (LPs)¹ and their representatives with the purpose to promote or increase the sale of a particular product by the licensee or their employees. In other words, licensees are not allowed to ask for or accept material inducements.

There are several exemptions to this general prohibition, which are listed below, with some additional context.

Items, Benefits or Services of Nominal Value:

The standards on inducements provide that licensed retailers may accept or enter into agreements with an LP or their representative for items, benefits or services of nominal value. Nominal value items, benefits or services, unlike financial or material inducements, are those that are of inconsequential value.

The AGCO does not prescribe a specific monetary value for what constitutes an item, benefit or service of nominal value. The determination is contextual and considers a number of factors which may include:

- Are you likely to change your behaviour toward an LP or the LP's product after receiving an item, benefit or service?
 - *If yes, then this item, benefit or service would not be considered to be of nominal value*
- Is the item, benefit or service valued at an amount that defrays your operational costs?
 - *Nominal value would not be significant enough to defray operational costs*
- How many items, benefits or services have been provided over a period of time?
 - *Nominal value is associated with a low volume of benefits over a period of time (i.e., the benefits are provided infrequently, and do not add up to a substantial value over time)*

The following is a list of examples of items, benefits or services that may be considered nominal. Note that this list is not exhaustive, and it is possible for these examples to be material inducements, depending on the contextual factors above.

- T-shirts
- Hats
- Lanyards

¹ Licensed producers are the only legal growers/producers of cannabis products in Ontario and are regulated by Health Canada.

- Inexpensive cannabis accessories
- Gift bags of inexpensive items related to cannabis

Items, Benefits and Services Related to Education or Training:

The new Standard 6.5 on inducements also allows licensed retailers to accept items, benefits or services that are related to education or training. Examples of items, benefits and services related to education and training may include:

- Education or training sessions or materials
 - Including education or training outside of the licensed retail store (e.g., participating in such a session as part of a tour of an LP's facility)
- Modest meals and refreshments during the education or training
- Cannabis product samples directly related to education or training
 - The expectation is that sample sizes would be a small quantity of a particular strain of cannabis or product available in Ontario
 - Samples of a particular strain of cannabis or product should be received infrequently

Sale of Business Data:

The sale or sharing of personal customer information continues to be prohibited by Canadian law, unless expressly consented to. Licensed retailers may enter into agreements with LPs for the sale of data for business intelligence purposes. The AGCO expects that the fee charged by the licensee and paid for by the LP should be at fair market value. Licensed retailers are expected to follow applicable privacy laws and regulations.

Ownership Interests and Franchise Agreements:

Financing and lease agreements, as well as franchise agreements between retailers and LPs or their affiliates, are permitted under Standard 6.5.

Nature of Permissible Activities

Standard 6.6 sets out constraints on agreements that are permissible under Standard 6.5, to ensure that they are not used as a method for material inducements.

Agreement between retail licensees and LPs must not:

1. Define the amount of product from the licensed producer or its affiliates that must be offered for sale at the retail store;
2. Require a defined amount of display space in the retail store to be dedicated to product from the licensed producer or its affiliates;
3. Provide merchandising, marketing or promotional activities to the licensed producer or its affiliates; or

4. Restrict the ability of the licensed producer or its affiliates to sell its product at other retail stores, or the ability of the licensee to sell products from other licensed producers or their affiliates.

Prohibited Activities

Aside from the exemptions set out in Standard 6.5, the Standards on inducements set out a general prohibition on agreements for items, benefits, or services between licensed retailers and LPs and their representatives.

Examples of prohibited activities include:

- **Sale of in-store or online advertising space**
 - Licensed retailer requiring or receiving payments from an LP for advertising of the LP
 - Licensed retailer co-branding advertisements with LPs (i.e., sharing the cost of content development for the purposes of marketing and promotional activities)
- **Product features in-store or online**
 - Licensed retailers requiring or receiving payments from LPs for advertising space, preferred shelf placement of products, or promotional activities either in-store or online
- **Cannabis for sensory display purposes**
 - Licensed retailers receiving cannabis for sensory display purposes from LPs
- **Fixtures or physical assets**
 - Licensed retailers receiving physical assets (e.g., branded and non-branded refrigerators, televisions, computers, projectors, monitors for product listing boards, appliances such as rosin presses) from LPs
- **Items essential to the operation of the business**
 - Licensed retailers receiving things from an LP that could be considered essential to the operation of their business (e.g., staff uniforms, furniture, refrigerators, appliances, renovations, point of sale system or equipment, security equipment)
- **Sale incentives**
 - Licensed retailers or their employees receiving any benefits from an LP tied to the sales performance of any given product or brand (e.g., concert tickets, gaming consoles, luxury goods)
- **Cash or rebates**
 - Licensed retailers receiving cash or cash rebates, product or product rebates, or price discounts from LPs in exchange for listing particular products at below-market prices
- **In-house brands or white label products**
 - Licensed retailers co-branding cannabis or cannabis accessories with LPs
 - Please note: retailers may continue to sell white label products that have already been produced; however, the AGCO expects retailers to exit any current

agreements and not enter any new agreements with LPs once the updated standards come into effect.

- **Travel or accommodation for education or training**
 - Licensed retailers or their employees receiving travel or accommodation related to education or training, directly or indirectly from LPs
- **Monetary compensation for education or training**
 - Licensed retailers or their employees receiving monetary compensation for receiving education or training from LPs

Recordkeeping

If you enter into an agreement pursuant to Standard 6.5, you must follow the additional record keeping requirements set out in Standard 8.1.10. Ahead of the updated standards coming into effect in June 2022, the AGCO will share a template with retailers in which to track any items, benefits or services received pursuant to Standard 6.5, or agreements that they enter into for such things. As with any other records under Standard 8.1, these records must be made available to the AGCO upon request.