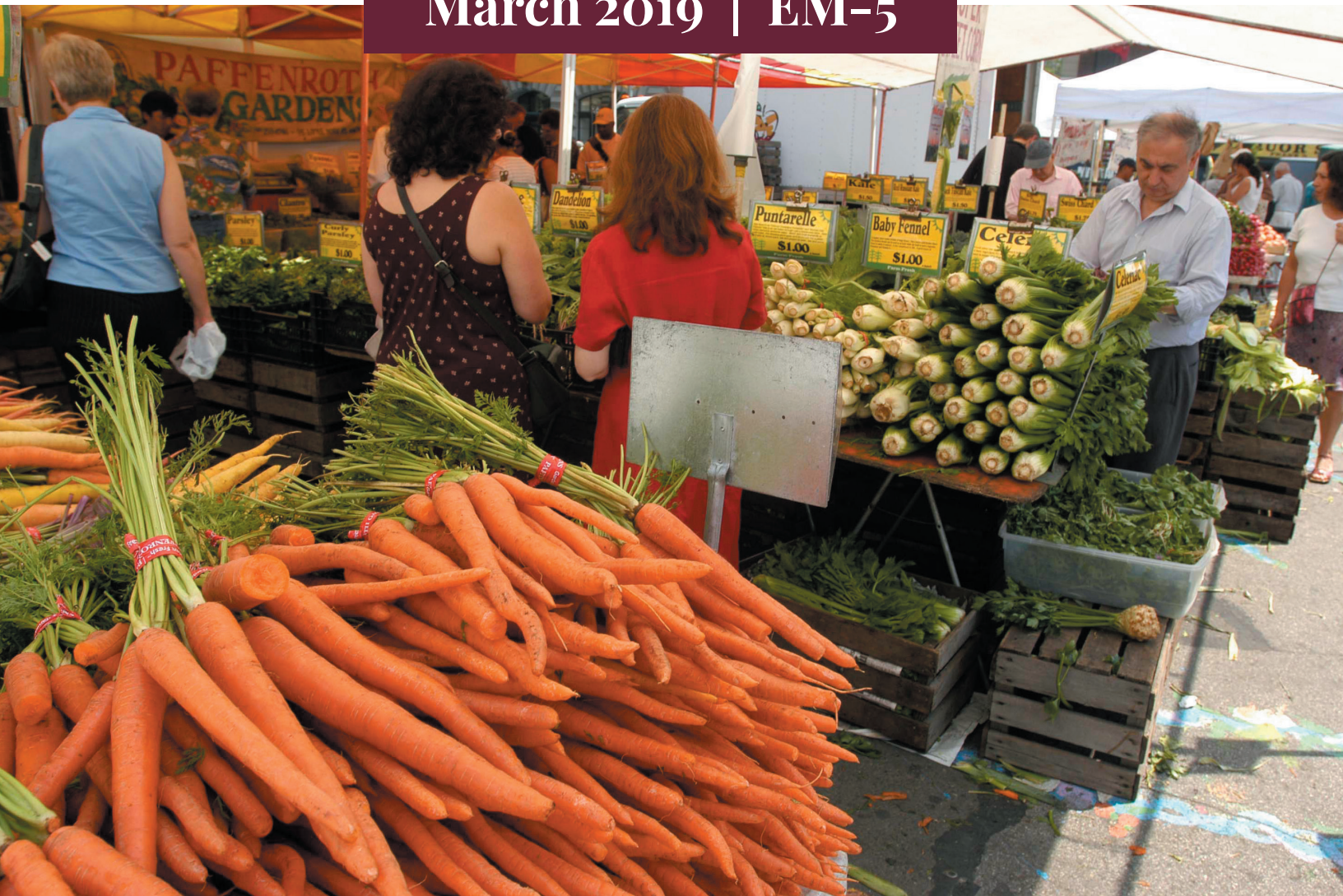


Farmers Market Vendor Agreement Legal Guide

March 2019 | EM-5



Introduction

Farmers markets provide farmers with an opportunity to sell directly to the public and connect with customers. In 2018, there were 8,720 farmers markets listed in USDA's National Farmers Market Directory.¹ This is an approximately 7% increase in the number of markets since 2013.²

Although farmers markets vary in structure, all have rules and procedures vendors must follow. These are typically found in a market's vendor agreement, which is a legally binding contract between the vendor and the market. This legal guide and the Model Vendor Agreement provide basic legal considerations and examples of sample language for market managers to consider and modify for individual use.

Legalities of a Vendor Agreement

Operating a market without a vendor agreement subjects both parties to financial and legal risks. In general, good contracts describe and allocate responsibilities while protecting both parties in a fair and equitable manner. Any document that includes an offer and acceptance of the offer for something of value (in legal terminology, "valid consideration") will generally be viewed as a legally binding contract so long as the deal is between two legal parties and is signed by both. The market and the vendor should both be in good standing to conduct business in the state, and their legal names (the name of the business entity if applicable, i.e., Small Town Farmers Market, Inc. and Old McDonald's Farm, LLC) should be used in the vendor agreement.

Contracts between markets and vendors do not need to be complex and should contain the parties' entire understanding of their agreement. A legal doctrine called the *parol evidence rule* prohibits oral agreements not included in the contract from being admitted as evidence in court to prove the intent or the meaning of the contract.³ It is important, therefore, that contracts are written with specificity and embody the entire agreement between the parties.

Typical Sections Included in a Vendor Agreement

A well-crafted vendor agreement promotes a harmonious environment for farmers to conduct business and helps ensure smooth market operation. It is always advisable to seek the advice of an attorney when creating a contract.

A Vendor Agreement Should Include an Explanation of the Fees Associated with Selling at the Market

Vendor fees are the costs charged to vendors for participating in the market. Vendor fees can vary. For example, many markets charge vendors a flat seasonal fee while others charge a fee per market day and/or a sales percentage fee.⁴ Markets can also include fees for things like electricity usage, liability insurance, and special market events.⁵

A Vendor Agreement Should Contain Clear Standards for Vendors

Depending on how a market structures the admission of vendors, it is advisable to include admission standards in a vendor agreement. Whether or not a market includes admission standards in

a vendor agreement, the market management will most likely want to retain discretion over admission decisions and that authority should be included in the vendor agreement.⁶

Market standards are provisions written into a vendor agreement explaining what products can be sold and how the products can be sold. There are many different types of market standards, such as product standards⁷ (grown in a certain region, organic, prohibition on re-selling, etc.), vendor standards⁸ (*i.e.*, signage requirements, equipment rules, etc.), and market safety and sanitation requirements (*i.e.*, no smoking requirements, prohibition on pets, etc.).

Any standards the market management chooses to incorporate should be clearly explained to define the parameters of selling at the market and to set expectations. If a market is operated pursuant to a lease, all restrictions in the lease should be incorporated into the vendor agreement and fully communicated to vendors.¹⁰ Clearly articulated market standards protect vendors and market management by setting customer and vendor expectations, preventing conflicts between market management and vendors, and/or vendors and customers, and ensuring only market-approved products are sold.

Some markets outline their standards in a separate document instead of incorporating the standards in a vendor agreement. If a market chooses to keep the vendor standards in a separate document, adherence to the standards, as well as the penalties for violation of the standards, should be included in the vendor agreement.¹¹

Inspection Clauses Allow Markets to Verify Compliance with Rules and Quality of Products

Markets with strict product standards often include farm inspection clauses in the vendor agreement. Inspection clauses ensure vendors know and understand what rights the market reserves to ensure the products sold by vendors are within the market requirements and safe for customer consumption. Markets may also want to include product inspection clauses to ensure high quality and stall inspections to allow for market management to verify that stall usage requirements are being followed.¹²

Ensure Vendor Compliance with State and Local Laws and Permitting Requirements

Markets may consider a vendor agreement that includes a provision requiring vendor compliance with all local, state, and federal laws and/or permitting requirements. Markets may require proof of all necessary permits before a vendor can sell at the market by requiring a vendor to send copies of all permits to the market manager. Requiring proof helps the market ensure all vendors have met their requirements, providing a safer atmosphere for customers and protecting the market from liability.

Included within the requirement to abide by all applicable laws is compliance with food safety prevention laws. Markets may also want to specifically require certain food safety certifications or standards. For example, markets can consider requiring vendors selling fruits and vegetables to obtain a Good Agricultural and Good Handling Practices (GAP/GHP) certification to ensure the vendor provides the customer with safe, wholesome produce.¹³ Markets may also require vendors to obtain training in the federal Food Safety Modernization Act, specifically the Produce Safety Rule, to ensure produce is grown safely.¹⁴

Clearly Explain the Hours of Operation of the Market

Identifying, setting, and enforcing specific market hours¹⁵ is integral to operating a successful farmers market. Doing so ensures that the market management, vendors, and customers share an

understanding of the timetable, minimizing opportunities for misunderstanding and maximizing productivity.

Another consideration for markets is whether to allow vendors to sell to market customers before and after market hours. Regardless of whether or not the market decides to allow or prohibit such sales, a clear policy should be set and followed by both market management and vendors.

Consider Vendor Attendance Requirements in the Agreement

Contractual attendance requirements help market managers ensure a baseline number of vendors at the market each week and enable them to promote the market based on the anticipated vendors. Attendance requirements also shape customer expectations and enable customers to plan their market shopping. Markets often require a vendor to show up to a minimum number of days that the market is open. This provision also allows markets to prohibit a vendor from selling at the market if they only appear intermittently. Alternatively, markets may require vendor attendance for a certain number of weeks, after which all absences must be excused.¹⁶

SNAP – Supplemental Nutrition Assistance Program – Payments at the Market

SNAP offers nutrition assistance to millions of eligible, low-income individuals and families, and provides economic benefits to communities. Because SNAP is an electronic benefit on a card, markets may accept SNAP in a few ways: 1) at the market level, where one central machine is shared and the market administers the program; 2) at the vendor level, in which each vendor who wants to accept SNAP applies for their own approval to accept the benefits and has their own equipment to do so; or 3) a hybrid of these two scenarios in which the market accepts SNAP and some of the vendors take it directly as well. Markets need to determine how to accept SNAP and communicate with vendors as to whether they are able to and/or are permitted to accept SNAP directly if there is a market-wide system in place. Further information on federal benefits at the market can be found in the *Maryland Farmers Market Association's Guide to Accepting Federal Benefits*.¹⁷

If a market accepts SNAP payments, the market should place signs making this clear to customers.¹⁸ Markets are also required to train employees, vendors, and vendor employees about the SNAP program because a violation of the rules and regulations could lead to the market losing the license to accept SNAP payments.¹⁹

Market Participation in Food Recovery Programs

If a market offers vendors the option of donating unsold food to food recovery organizations, the market should include a provision in the agreement explaining the program and any associated responsibilities.²⁰

Be Clear About Market Requirements for Vendor Stall Usage and Assignment

The ways in which a vendor is permitted to use the market stall should be outlined in a vendor agreement. For example, if a vendor is responsible for properly securing and weighing down their equipment such as tents, that responsibility should be included in the vendor agreement. To reduce the market's liability exposure, a vendor agreement can include a provision protecting the market in case of vendor negligence in failing to properly secure equipment leads to injuries and/or damages.²¹

A vendor agreement may also include details on how the stall will be assigned and for how long the stalls will be assigned (for the season, on a weekly or daily basis, etc.). Some markets find it best to

assign stalls on a first-come, first-serve basis.²² Other markets may find a lottery system works best for assigning vendors.²³

Markets may also want to describe the required and/or prohibited vendor signage in the vendor agreement. Signage requirements may include the name of the product for sale and its price.²⁴ Many markets also require additional vendor information on signs, such as the name of the farm, information about production practices, and/or identifying what forms of payment the vendor accepts. Additionally, markets may consider requirements related to bilingual/multilingual signage, to ensure that a diverse customer base can understand the signage and make purchases accordingly.²⁵

Some federal nutrition programs require the farm name to be clearly visible, so if a vendor participates in any such program, they must comply with those regulations as well the information on federal programs detailed in previous sections of this factsheet. If there are any restrictions or prohibitions to market signage, those should also be included in the vendor agreement.

Vendor Liability Insurance Requirements Should be Included in the Vendor Agreement

Insurance helps mitigate financial risk by offsetting the costs of personal injuries, lost wages, and attorney's fees should an accident occur. General liability insurance covers property damage and personal injury claims, like someone slipping and falling at a vendor's stall. Product liability insurance protects against problems with the products a vendor is selling, like someone contracting a foodborne illness from food sold by the vendor.

Markets typically require a vendor to obtain and maintain liability insurance and require the vendor to list the market as an additional insured—effectively covering the market under the vendor's insurance plan.²⁶ If requiring vendors to carry individual insurance policies is cost prohibitive, a market may acquire insurance coverage and charge vendors a fee to help offset the cost.

An Indemnification, Hold Harmless and Defend Provision Can Reduce Liability Exposure

If a market desires to reduce liability exposure for the actions of its vendors, it may consider an indemnification, hold harmless, and defend provision in the vendor agreement. For example, suppose a vendor sells food that makes people ill and the injured parties sue the market. If the vendor has agreed in the vendor agreement to indemnify, hold harmless, and defend the market for this type of claim, the vendor will have a legal responsibility to pay for attorneys' fees to defend the claims and any damages awarded to the injured parties.²⁷ For markets that chose to include a provision like this in a vendor agreement, requiring proof of vendor liability insurance is vital so vendors have insurance proceeds to pay for claims.²⁸ Using this type of provision, which puts the burden of liability and associated financial repercussions on the vendor, is something that should be carefully considered and may not be appropriate for every market.

A Termination Section Protects Both Parties in the Event One Party Does Not Perform

A termination provision protects both parties by providing a way out of the contract if one party is not fulfilling their contractual duties. Some markets may choose to establish a process in which a party receives notice of a breach or violation and is permitted to correct (cure) prior to the non-breaching party's right to terminate the contract.²⁹ Regardless of the method chosen to deal with a breach, market management will most likely want to give the market manager discretion in making interpretations of the vendor agreement and determinations related to breach and termination.³⁰

Model Vendor Agreement

This Agreement is between _____ (the Market), located at _____, and _____ (the Vendor) to sell products compliant with not only this Market's standards, but also the laws of the state of Maryland as well as the laws of the United States.

This contract shall begin on _____ (date) and shall last until the end of the _____ (insert year) Market season, save and except the provisions related to indemnification, limitations of liability, governing law, and forum which shall survive termination.

In consideration for the terms described in this Agreement, Vendor agrees to pay the vendor fees and all other associated fees outlined below and adhere to the provisions of this Agreement and the Market agrees to provide the Vendor with an area to sell Vendor's products and adhere to the provisions of this Agreement. This agreement is non-assignable. This agreement may be amended or modified in writing executed by both parties.

Market Manager:

The Market Manager is understood to mean the person designated by the Market to supervise operations of the Market. The Market Manager has the discretion and authority to interpret this Agreement and decide if a Vendor is in breach. The Market Manager's contact information is as follows: _____

Vendor Fees to Join the Market:

Ex. 1: Vendor must pay a fee of \$_____ to sell at the Market for the _____ (insert year) Market season. Additionally, Vendor must submit _____ % of their weekly sales to the Market. The Market retains the right to review Vendor's sales records to ensure compliance with the _____ % fee.

Ex. 2: Vendor must pay a fee of \$_____ to sell at the Market for the _____ (insert year) Market season. Vendor must additionally pay a fee of \$_____ for electricity and a fee of \$_____ for the market's liability insurance for the _____ (insert year) Market season.

Product Standards:

Ex. 1: Vendor agrees to grow or produce at least 75% of all items he/she sells at each market. Vendor may sell any of the following: fresh and unpackaged home-grown vegetables, fruit, nuts, and cut flowers; potted plants and herbs (annuals and perennials); dried flowers; and fresh, home-grown food products that are minimally processed and packaged in new containers by the Vendor such as honey, other syrups, jellies, jams, preserves, persimmon pulp, dried spices and herbs, flour, cornmeal, unpopped popcorn, seeds, canned produce, cider and other pressed juices, dairy products, and vinegars. Only products that have been organically grown by a Vendor who is a certified organic farmer may be labelled as organic. Vendor may not sell non-food items (e.g. jewelry, clothing, books, furniture, etc.).

Ex. 2: The Market is a producer-only Market. All products must be grown, raised, or produced by the business selling the products.

Ex. 3: Vendor is required to adhere to the standards outlined in the "Market Standards" document which is made apart of and incorporated in this agreement.

Inspections and Product Quality:

Vendors will be subject to farm inspections at reasonable times, upon 24 hours prior notice of the Market Manager, to ensure compliance with the Market standards. Additionally, all products sold at the Market must be, in the opinion of the Market Manager, of high quality and free of pests, disease, rot, and spoilage. The Market Manager has the authority to

sample Vendor's products to ensure proper quality is maintained and to deny a Vendor the right to sell products that are of inferior quality. All food items must be kept at the appropriate temperatures at all times. Additionally, all coolers must have a working thermometer.

Compliance with Laws and Permitting Requirements:

The Vendor is required to comply with all applicable local, state, and federal laws and/or permitting requirements at all times. Vendor will be prohibited from selling at the Market until compliance with all laws and/or permitting requirements has been achieved and the Market has proof of compliance.

In order to sell at the Market, Vendors must, at a minimum, be certified by the Maryland Department of Agriculture as having successfully completed the Maryland GAP/GHP program. A copy of the certificate must be remitted to the Market Manager along with this Agreement.

Market Hours of Operation:

Ex. 1: The Market will be open on _____ (insert day(s) of the week here) from _____ A.M. until _____ P.M. beginning on _____ (insert opening date here) and ending on _____ (insert closing date here). Vendor is required to arrive at least _____ (insert time increment) ahead of the opening time to set up their stall. No sales may be made prior to the opening of the Market. However, Vendor can continue to sell after the Market closes so long as Vendor begins cleaning up at closing time and is out of the Market in a reasonable amount of time.

Ex. 2: The Market will be open on _____ (insert day(s) of the week here) from _____ A.M. until _____ P.M. beginning on _____ (insert opening date here) and ending on _____ (insert closing date here). Vendor is required to arrive at least _____ (insert time increment) ahead of the opening time to set up their stall. No sales may be made prior to the opening of the Market or after the close of the Market.

Market Attendance Requirements:

Ex. 1: Vendor is required to come to _____ % of the Market days throughout the year. If the market is cancelled by the Market Manager, the Vendor will not be penalized for their absence.

Ex. 2: Vendor may miss _____ (insert number here) Market days throughout the season. The Vendor is responsible for contacting the Market Manager for purposes of determining if the market will be cancelled.

SNAP – Supplemental Nutrition Assistance Program (optional):

Only those Vendors who have been designated FMNP farmers by the Maryland Department of Agriculture may accept Farmers Market Nutrition Program checks and Senior Farmers Market Nutrition Program checks. These FMNP farmers must follow all regulations and rules set forth by the Maryland Department of Agriculture for program participants. FMNP farmer authorization should be displayed at the Vendor's booth. Vendors eligible to accept WIC Fruit and Vegetable checks may do so following the rules and regulations set forth by Maryland Department of Health & Mental Hygiene (DHMH).

Leftover Food Donations (optional):

Vendor has the option to donate any leftover edible food through _____, (insert partner name here) our partner in fighting hunger throughout the community. Our partner _____, will pick up any leftover food and bring it to those who need it most, free of charge. Additionally, Vendor should be aware that if they decide to donate any edible food to our partner _____, Vendor is protected under the Bill Emerson Good Samaritan Act of 1996 and therefore cannot be held liable for any food that may cause health issues upon consumption, unless that food was donated in bad faith.

Please check this box if Vendor plans to participate in the food donation program

Vendor Stall Requirements:

Ex. 1: Stalls will be assigned on a first-come, first-serve basis and will be assigned on a _____ (insert time period here: yearly, weekly, daily, etc.) basis. Vendor is required to bring their own equipment to the Market. No additional equipment will be provided by the Market. The Market requires Vendor to have weights on all of their equipment of no less than _____ pounds. Vendor is solely responsible for any injury to persons or property caused by Vendor's equipment.

Ex. 2: Stalls will be assigned via a lottery and will be assigned on a _____ (insert time period here) basis. The Market will rent equipment to the Vendor in the form of tables (\$ _____ per day) and chairs (\$ _____ per day). The Market requires Vendor to have weights on all of their equipment of no less than _____ pounds. Failing to comply with this requirement will result in the Vendor being forced to rent weights from the Market at a cost of \$ _____ per day. Vendor shall be solely responsible for any injuries to persons or property caused by the equipment while it is in Vendor's possession.

Market Safety and Sanitation:

Vendors must maintain a clean and sanitary stall. Vendor is responsible for cleaning up their own stalls at the close of the Market. Vendor must take home all of their equipment and must pick up any trash that accumulated at or around their stall throughout the day—including perishable items.

- All Vendors must dress appropriately; shoes and shirts are required.
- Smoking is not permitted by Vendors in or near the Market area.
- Vendors who provide food samples to Market customers are responsible for setting up their own temporary hand washing station.
- No animals are allowed in any of the Vendor stalls with the exception of service animals.
- Vendors must supervise their children at all times, and may not allow any children under 16 years old to wander the Market area without a parent or guardian
- No vehicles are permitted to power coolers or other equipment at the Market.

Vendor Signs:

Ex. 1: Vendor is required to post signs detailing the products for sale and their prices.

Ex. 2: Vendor is required to post signs at their stalls detailing the name of the business, the location of the business, the product for sale, its price, how the item was produced, and any ingredients within the product not made or grown by the Vendor themselves. The sign(s) must be visible, legible, and clear. Although not required, the Market also recommends Vendor bring the same sign(s) in Spanish or provide a Spanish translation.

Liability Insurance:

Vendor is required to maintain an insurance policy covering both general liability and product liability with a minimum of \$1,000,000 in coverage. The insurance policy must name the Market as an additional insured. The Vendor must show proof of such insurance prior to selling at the Market and produce a copy of the insurance certificate upon request. The Market does not provide any insurance coverage for Vendor.

Indemnification, Hold Harmless and Defend:

Vendor shall indemnify, hold harmless and defend the Market, its officers, agents and employees from and against any and all demands, claims, suits, damages, losses, liabilities, costs and expenses, including, but not limited to, court costs and attorneys’ fees, of any nature whatsoever (including, but not limited to, property damage and loss, bodily injuries, sickness, disease or death), directly or indirectly arising out of or in connection with Vendor’s participation in the Market. This provision shall survive the termination of this Agreement.

Breach of Contract and Termination:

If Vendor violates any of the provisions of this Agreement, he or she will be considered to be in breach. The Market Manager shall have the authority to immediately suspend a Vendor’s right to sell at the market if a breach of this Agreement presents a health or safety risk or is, in the opinion of the Market Manager, a serious breach of this agreement. For all other types of violations, the Market Manager shall notify the Vendor of a breach in writing and shall provide a reasonable time cure (at least 5 days). If a breach is not cured or not cured to the Market Manger’s satisfaction, this Agreement may be terminated, without waiving any other rights or remedies of this Agreement and all Vendor fees shall be retained by the Market.

If the Market, by and through its staff, agents, etc., violates any of the provisions of this Agreement, it will be considered to be in breach. Vendor shall notify the Market Manager of a breach in writing and shall provide a reasonable time for the market to cure (at least 5 days). If said breach is not cured or not cured to the Vendor’s satisfaction, this Agreement may be terminated.

In any legal dispute arising under this Agreement, the non-prevailing party shall pay all costs and expenses, including expert witness fees and attorney’s fees, incurred by the prevailing party in resolving such dispute.

Failure of either party to insist on strict compliance with any of the terms of this Agreement shall not be deemed a waiver of such terms. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Maryland, without reference to any conflicts of law provisions. Any dispute arising out of this Agreement shall be heard by a Maryland Court.

Acknowledgement

This agreement sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter described above. I certify that I have read and understand the above terms and conditions and that I meet the Vendor criteria stated therein. I further agree to abide by all Market requirements as outlined above, as well as all federal, State and local laws, codes and regulations, to cooperate with the Market, and to pay all required Vendor fees.

<p>Vendor Name (printed): _____</p> <p>Vendor Address: _____</p> <p>_____</p> <p>Vendor Signature: _____ Date: _____</p> <p>Authorized Member of Market Printed Name: _____</p> <p>Market Address: _____</p> <p>_____</p> <p>Authorized Member of Market Signature: _____ Date: _____</p>

Endnotes

¹ U.S. Department of Agriculture, *Agricultural Marketing Service, Farmers Markets and Direct-to-Consumer Marketing* (last visited Feb. 7, 2019), available at <https://www.ams.usda.gov/services/local-regional/farmers-markets-and-direct-consumer-marketing>.

² *Id.*

³ *Foreman v. Melrod*, 257 Md. 435, 441 (Md. Ct. App. 1970).

⁴ *See*, Model Vendor Agreement, Vendor Fees Section, Example 1.

⁵ *Id.* at Example 2.

⁶ Jay Mitchell, *Farmers Markets Rules and Policies: Content and Design Suggestions (From a Lawyer)*, 13 J. Food L. & Pol'y 181, 183 (2017).

⁷ *See*, Model Vendor Agreement, Product Standards Sections Examples 1-3.

⁸ *Id.* at Vendor Signs Section.

⁹ *Id.* at Market Safety and Sanitation Section.

¹⁰ Mitchell, *supra* note 5, at 188.

¹¹ *See*, Model Vendor Agreement, Market Standards Section, Example 3.

¹² Mitchell, *supra* note 5, at 185.

¹³ *See*, Maryland Department of Agriculture, *Good Agriculture Practices/ Good Handling Practices* (last visited Feb. 7, 2019), available at https://mda.maryland.gov/foodfeedquality/pages/good_ag_practices.aspx.

¹⁴ 21 U.S.C. §§ 2201 et. sec.

¹⁵ *See*, Model Vendor Agreement, Market Hours Section, Examples 1 & 2.

¹⁶ *Id.* at Market Attendance Section, Example 2.

¹⁷ Maryland Farmers Market Association, *Guide for Accepting Federal Benefits*, <https://www.marylandfma.org/resources/accepting-benefits-guide/>.

¹⁸ *See*, U.S. Department of Agriculture, *The Supplemental Nutrition Assistance Program Training Guide for Retailers* (revised January 2018), available at <https://fns-prod.azureedge.net/sites/default/files/snap/Retailer-Training-Guide.pdf>. *See also* U.S. Department of Agriculture and Federal Nutrition Service, <https://www.fns.usda.gov/ebt/snap-authorized-market-and-organization-responsibilities>.

¹⁹ *Id.*

²⁰ *See*, Model Vendor Agreement, Leftover Food Donation Section.

²¹ *See*, Model Vendor Agreement, Vendor Stall Section, Examples 1 & 2.

²² *Id.* at Vendor Stall Section, Example 1.

²³ *Id.* at Example 2.

²⁴ *Id.* at Example 1.

²⁵ *Id.* at Example 2.

²⁶ *Id.* at Liability Insurance Section, Example 1.

²⁷ Mitchell, *supra* note 5, at 190.

²⁸ *See*, Model Vendor Agreement, Indemnification Section.

²⁹ *Id.* at Breach of Contract and Termination Section.

³⁰ Mitchell, *supra* note 5, at 186.

Authored By:



Sarah Everhart
*Managing Director ALEI,
Francis King Carey School of Law
University of Maryland*

Photography by:

Edwin Remsberg

Publication designed by:

FatCat Studios

The Agriculture Law Education Initiative (ALEI) is a collaboration of the University of Maryland Francis King Carey School of Law at the University of Maryland, Baltimore (UMB); the College of Agriculture & Natural Resources at the University of Maryland, College Park (UMCP); and the School of Agricultural and Natural Sciences at the University of Maryland Eastern Shore (UMES). ALEI is an initiative of the University of Maryland: MPowering the State, a strategic alliance between UMB and UMCP created in 2012 to significantly expand research, business development, and student opportunities at both universities.

**University of Maryland
Francis King Carey
School of Law**

500 West Baltimore St.
Baltimore, MD 2120
(410) 706- 7377

www.umaglaw.org

Twitter: @MDAgLaw

Facebook: [facebook.com/MdAgLaw](https://www.facebook.com/MdAgLaw)