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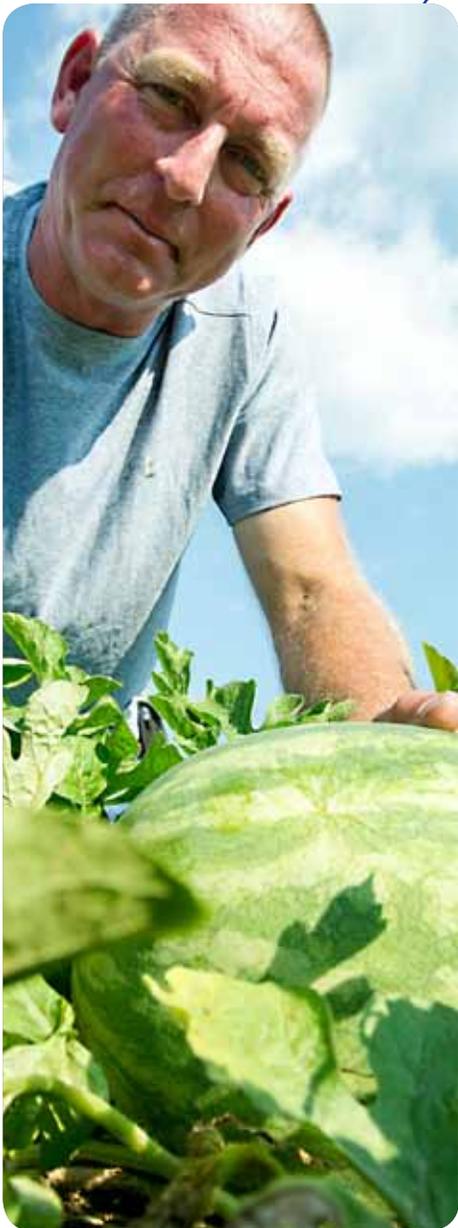
Understanding A Community Supported Agriculture Agreement

What Should Be

Included In A Good

CSA Membership Agreement?





Understanding a Community-Supported Agriculture Agreement:

What Should Be Included in a Good CSA Membership Agreement?

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In a typical community-supported agriculture (CSA), members pledge to help cover the anticipated costs of the farm’s production for part or all of the growing season. In return, the members receive a portion of the farm’s crops over the period of time specified in the CSA membership agreement, usually summer through early fall. The CSA model allows farmers to get needed capital at the start of the growing season while providing members with fresh locally produced fruits, herbs, meats, or vegetables.

Underlying the CSA relationship is the agreement that the farmer and CSA members share the risks inherent in agriculture, including commodity (crops, livestock, and eggs) failure due to drought, disease, etc. As a result, members may not receive their anticipated share. The Maryland Department of Agriculture (MDA) often gets calls from CSA members who

do not understand the potential risks associated with agriculture and are disappointed when farmers are unable to deliver the anticipated shares.

Even with the risks involved, many farmers do not use fully developed or written CSA member agreements (Johnson, 2013). A recent MDA survey of CSA operators found that 55 percent used a membership agreement in their operations (Suri, 2014). One CSA farmer captured the sentiment of those not using written membership agreements stating, “We got into farming to escape corporate America. We don’t need written agreements.” (Johnson, 2013) Well-written membership agreements are not just a good business practice, but can outline and explain to CSA members how the relationship will work and the risks that are shared. A membership agreement, in other words, can help limit future disputes.

Underlying the CSA relationship is the agreement that the farmer and CSA members share the risks inherent in agriculture, including commodity (crops, livestock, and eggs) failure due to drought, disease, etc.

With that in mind, we have developed a model CSA membership agreement to aid farmers in preparing their own membership agreements. The model CSA membership agreement

reflects UME legal specialists' opinions and opinions of legal specialists at the University of Maryland Francis King Carey School of Law and UMES on the components of a good CSA membership agreement. The model membership agreement provides the basis for individual producers to develop membership agreements specific to their situation. The following guide will explain the various terms in the model membership agreement, why they were included, and the possible legal protections they offer.

When developing an individual CSA membership agreement, it is always advisable to seek the counsel of an attorney well-versed in this area of the law. You can find a list of Maryland attorneys specializing in contract law at umaglaw.org. An attorney can

also explain to CSA members any membership terms that they don't understand.

Let's Start at the Beginning: What Is a Contract?

A "contract" is defined by Black's Law Dictionary, 9th ed. as "an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law." Simply put, to be a contract there needs to be an offer by one party, acceptance by a second party, and there must be consideration given.

As you see, there are three elements required for a contract:

1. **Offer:** An intention by an individual offering goods or services for sale that can be accepted or rejected by a second party;

2. **Acceptance:** When the second party accepts the offer;
3. **Consideration:** Consideration is a legal term that requires the two parties to exchange something of value, a legal detriment to the parties giving consideration. This will become clearer with an example.

Let's see how this terminology applies in a typical agricultural sale. Suppose a farmer proposes to sell 100 bushels of tomatoes to a restaurant (the *Offer*) for \$5,000 and the restaurant agrees to the offer (the *Acceptance*). The *Consideration* for the farmer would be giving up ownership of the 100 bushels of tomatoes and for the restaurant would be paying \$5,000 if the tomatoes are delivered. The offer, acceptance, and consideration form a



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For more information:

Maryland Contract Law is located in Md. Code Ann., Commercial Law Art., Section 2-206.

The elements of offer and acceptance in contract formation are clearly spelled out in § 2-206.

valid contract. In membership disputes, if one of the three elements is missing, the contract could be deemed invalid and the parties will not be bound by it. Keep the three elements—offer, acceptance, and consideration—in mind to make sure your CSA contract is complete.

Parol Evidence Rule Is a Common Law Rule Used to Interpret Contracts

As you use the model membership agreement or develop your own based on this guide, be sure to consider adding details that you may not have included in previous contracts. Detailed contracts are important because of the Parol Evidence Rule which can limit evidence which might add to or contradict a written agreement, such as your CSA membership agreements. The theory behind the Parol Evidence Rule is that a written agreement contains all the agreed-upon terms of a contract and anything not included in the contract was not a part of the deal and cannot be introduced in court as evidence of the deal.

Your operation’s website and other marketing materials likely already include much of the information discussed in the model membership agreement. These information sources are useful

for encouraging consumers to participate in your CSA. However, the terms and conditions outlined on websites and in marketing materials will not benefit you if a dispute arises because a court will disallow this evidence if the information is not included or referenced in your CSA membership agreement.

The model membership agreement includes descriptive sections, such as available products and delivery schedule, explanation of crop failure, etc., where you can incorporate references to pages on your website. If you are using an online membership agreement, you can provide hyperlinks for the relevant pages on your website. The goal is to include sufficient detail in the CSA membership agreement so the agreed upon terms are clear and admissible in court, if necessary.

Keep “Legalese” to a Minimum

Plain language is important because the CSA membership agreement is an extension of your operation and should help ensure that your members understand your farming methods and standards.

Growing Practices on the Farm

Your CSA membership agreement should clearly explain the farming practices you use in your operation. Are you certified or in the process of becoming certified organic? Do you grow in accordance with some organic practices but with no certification? Is your meat free range? Is it grass fed?

Describing your operation can be helpful for your members but be careful not to use terms or language that could be considered deceptive. For example, if you are not going to renew your organic certification, you may not want to include the term “organic” in the membership agreement.

Your operation’s website likely outlines the farming practices you use. However, potential CSA members will undoubtedly look at many CSA websites before deciding on yours. Putting farm operation information in the membership agreement provides future members another opportunity to review your practices



The model membership agreement includes descriptive sections, such as available products and delivery schedule, explanation of crop failure, etc., where you can incorporate references to pages on your website.

and helps eliminate any potential confusion about your farming methods versus those described on other CSA websites. Do not pass up this final opportunity to clarify to members the practices you are currently using in production.

Detail the Products and Delivery Schedules

Your contract should describe the products that a CSA member can expect to receive, broken down by the harvest schedule. New members accustomed to shopping for produce in grocery stores may not be familiar with the availability of seasonally grown foods. A simple chart or list will give members an idea of what they can expect throughout the term of the share. For example:

Between these approximate dates, you can expect the following:

- June 25 – Sept. 15: Sweet Corn
- July 1 – Sept. 1: Cucumbers
- July 4 – Sept. 15: Tomatoes
- July 1 – Sept. 30: Potatoes
- July 15 – Aug. 30: Okra
- Aug. 15 – Nov. 5: Apples

This type of listing should be accompanied by a qualifier such as “this description is based on our best estimate, but of course, weather, pests, and other events will affect actual production and we cannot guarantee the quality or quantity of any particular item.”



Your contract should describe the products that a CSA member can expect to receive, broken down by the harvest schedule.

For meat producers, including the form of the product you deliver such as whole chickens, bulk sausage, unsliced bologna, etc., is a good practice. Make it clear in the membership agreement that the description of expected products is only an example and not a contractual promise to produce the exact items listed. Include a general statement that the member is responsible for properly refrigerating, thoroughly washing, and inspecting all of the food prior to eating it.



For meat producers, including the form of the product you deliver is a good practice.

You will need to check with the MDA’s Weights and Measures Division if your contract includes the specific weights of commodities you will provide to members; for example, “delivery will be 6 lbs. of produce per week.” MDA may need to inspect the scales you are using to ensure true weight. Before including a

weight in your CSA membership agreement, contact the Weights and Measures Division at 410-841-5790, or http://mda.maryland.gov/weights_measures/Pages/weights_measures.aspx.

The membership agreement should detail specific information about the times and locations for members to pick up their CSA shares. If you can offer more than one time and location for pick up, include these options in the membership agreement and ask members to place an X next to their choices. You should also include information about what happens if a member fails to pick up his or her share. For example, the share could be distributed to other members or donated to a local food bank.

Explain That Crop Failure Is Always a Possibility

Although you may understand the risks you face in your operation, your members may not. Explaining these risks on your website and in the membership agreement will ensure members understand there are no guarantees they will receive their shares of all products if a crop fails or livestock become diseased.

The model membership agreement includes a section informing members that buying a commodity



Make it clear in the agreement if you will sell crop surplus to other markets or if you will not be able to harvest the surplus, so that CSA members understand that they may not receive larger shares of the surplus crop

directly from a farmer involves risks. MDA cites the most common complaints from CSA members are for a farmer who was unable to deliver the product(s) due to crop failure.

If your farm has a policy for handling crop failures, it should be included in the membership agreement. Do you supply produce from a neighboring farm? Do you supplement their share with crops that are ready to be harvested? Do you offer any refund of the share price? Clearly state if you do or do not offer refunds in the event of crop failure.

Do the Members Benefit From a Crop Surplus?

Just as crop failures can happen, in some years there may be a surplus. Your member agreement should contain an explanation of how you prioritize your production and if members will share in the bumper crop.

Make it clear in the agreement if you will sell the surplus to other markets or if you will not be able to harvest the surplus, so that CSA members understand that they may not receive larger shares of the surplus crop. On the other hand, if you produce exclusively for the CSA and its members, include that information in the membership agreement. The model membership agreement includes language for both scenarios. If you have a different plan for the surplus than those outlined in the model membership agreement, add that information in the blank spaces provided.

If you are not sure what you will do with a crop surplus, include a statement in the membership agreement indicating that the surplus will be sold in other markets or distributed to CSA members at your discretion.

Clearly Indicate the Cost and Benefits of CSA Membership

Membership fees allow you to grow produce, for example, and provide fresh, local food to CSA members. Members need detailed information on the



Membership fees are typically priced depending on such factors as the market for the products you are offering, the size of the shares, and the cost of production, among other criteria.

cost of each share and the type of products they will receive. Clarify when payment should be made, can credit card be used, and what happens if a payment is not made. Providing all information up front in the membership agreement will help ensure that there are no surprises or disappointed members down the road.

Deciding how much to charge for a membership fee can be difficult, making it necessary to do your research before listing your fees. Membership fees are typically priced depending on such factors as the market for the products you are offering, the size of the shares, and the cost of production, among other criteria. If you have a wait list for membership, people likely will be willing to pay more per share. If you offer half shares, they are usually priced at more than half the cost of a full share.

You may want to try to anticipate some of the questions or issues that may arise and include information in the “membership” section of the membership agreement which spells out the rules and limits to CSA membership. For example, is a membership transferable to another person? Is there ever a time when refunding a membership fee is the best course of action? You also should include the details of the process for each course of action. For

example, let’s assume you will allow cancellation of a membership but will not provide a full refund. What is your basic formula for determining a refund? This should be spelled out in the membership agreement.

Keep the Lines of Communications Between Producer and Members Open

Make it very clear in the membership agreement how a CSA member may contact you and be certain you have all the members’ email and phone information. Complete contact information can relieve a lot of stress when questions or concerns arise about the pick-up location or time, or if a weather emergency makes it difficult to arrive at the appointed place or time.

Problems can and likely will arise at some point so clarify the communications process, as well as how and when you will alert members of any changes or get back to them if they have questions or concerns. If email or social media is not the best way to get in contact with you, please include a phone or cell number of one or more persons.

Edit the model membership agreement to fit your farm operation. If you do not have a website or won’t be updating the one you have regularly, you should consider editing or deleting the portion of the agreement concerning social media outlets.

Including a Short Indemnification and Hold Harmless Provision Will Provide Some Protection from Potential Lawsuits

An indemnification and hold harmless provision means that upon signing the membership agreement, the member has waived or agreed not to pursue legal action against you for the broad categories listed in the clause. For example, “By signing this Agreement, the Member hereby releases, indemnifies and agrees to hold harmless the Farm, its agents and employees from any and all claims and/or liability from being on the Farm property, being at any of the CSA pick up locations, from the purchase of a CSA membership or the use or consumption of food provided by the Farm.” This clause will reduce your legal exposure



Your membership agreement should include a short section clearly giving you authority to terminate the membership agreement if the member violates any provisions of the membership agreement and allowing you to keep any member fees already paid.

for incidents such as a member being injured while visiting your farm.

It is worth noting that this clause only limits your potential legal exposure. There may be circumstances where waivers would not be effective and would not immunize you from lawsuits. Along with a waiver such as this one, consider other risk management tools, such as liability insurance, use of a business entity, etc. To understand the impact of an indemnification and hold harmless provision in your membership agreement, please check with a competent attorney in your area.

What Happens If a Member Cannot Fulfill Contractual Obligations?

When a member is in breach of the membership agreement, the farmer will need to end the contractual relationship. If a member does not fully pay the membership fee or refuses to follow the parking procedures at the pick-up location, for example, he/she has breached the membership agreement. Your membership agreement should include a short section clearly giving you the authority to terminate the membership agreement if the member violates any provisions of the membership agreement and allowing you to keep any member fees already paid.

If you end up being drawn into litigation over the CSA membership agreement, the only way you will be able to get a judge to award payment of court costs and attorney's fees is if the membership agreement clearly states that you are entitled to those expenses in the event of a contract breach. You should talk to an attorney to determine if these are provisions you want to include in your membership agreement.

What Happens If There Is a Dispute With a Member: Mediation

Let's face it: going to court can be a long and expensive process. Including a mediation clause in your CSA membership agreement is one potential way to limit litigation costs. Mediation is a low-cost non-adversarial process through which a neutral third party works to facilitate a discussion and negotiate a favorable outcome for both parties. Mediations often happen in a timelier manner than going to court. For these reasons, you may consider including a mediation clause in the CSA membership agreement that requires both you and your customer mediate any disputes before going to court.

MDA offers free to low-cost mediations through the Agricultural Conflict Resolution Service (ACReS). This service makes available trained mediators who can help resolve issues related to your CSA membership agreement. For more information on ACReS, see their website at <http://mda.maryland.gov/Pages/acrs.aspx>.

References

- Burch, M.L. and M.D. Ernst. *A Farmer's Guide to Marketing through Community Supported Agriculture (CSAs)*. Knoxville, TN: University of Tennessee Extension, PB1797, Dec. 2010.
- Goeringer, L.P, A. Newhall, S. Everhart, and W. Elangwe. *Community Supported Model Contract*. University of Maryland, Mar. 2015. Internet site: <http://drum.lib.umd.edu/handle/1903/16329>.
- Johnson, N.R., R. Armstrong, and A.B. Endres. *Community Supported Agriculture: An Exploration of Legal Issues and Risk-Management Strategies*. 28-FALL Nat. Resources & Env't 26 (2013).
- Maryland State Bar Association. *2015-16 Legal Services Directory*. Baltimore: MSBA, 2015. Internet site: <http://drum.lib.umd.edu/handle/1903/16374>.
- Suri, M. *Community Supported Agriculture (CSA) Survey: Summer of 2014*. Unpublished Manuscript: Maryland Department of Agriculture, Aug. 2014.

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Maryland Community Supported Agriculture Model Agreement

Member Agreement for _____ (insert season/year)

Name of Farm: _____

Address: _____

City, State, Zip: _____

Phone Number: _____

Email: _____

This Agreement is entered into on _____, 20_____, between

(insert legal owner of Farm name) (hereinafter referred to as “Farm”) and

(insert Member(s) name(s)) (hereinafter referred to as “Member”) who resides at

(insert Member(s) address), phone number is _____, and email is

In consideration of the terms described in this Agreement, Member agrees to pay the membership fee and in exchange, the Farm promises to provide Member with fresh, local, seasonal food for the growing season indicated above, as available.

Growing Practices of the Farm

The Farm is _____ (insert practices: is the farm Certified Organic, working on a certification, not certified organic but use organic practices such as, naturally grown, free range, grass fed, etc). _____

(consider discussing what these practices mean and how a Member can receive more information on the practices used).

Products and Deliveries Members Should Expect

The Farm's CSA runs for _____ weeks or from approximately _____ (month) to _____ (month).

Member will receive on average _____ (insert Farm's specific products) for each distribution during the CSA season. This will typically mean _____ (1 or 2 grocery bags or boxes) each pick up or _____ bags/boxes during peak season, which is usually _____ (insert what is average for your farm on the type of products they can expect).

Below is a table of products the Farm expects to deliver to a Member during the season. This chart is based on our best estimate, but of course weather, pests, and other events will affect actual production and we cannot guarantee the quality or quantity of any particular item.

Month of Harvest	Expected Crop/Meat/Dairy Product

Member will be expected to pick up your share _____ (*insert frequency – once a week, twice a week, etc.*) from a drop off site. Please check the pick up site you would like to use (*if you only have one location, delete table and just put address, day, and time of pick up*).

Check Selection	City	Name of Location	Address	Day	Time(s)

Member is responsible for observing the Farm’s following pick-up rules:

1. Bring own bag/return box from last week to collect products.
2. Pick up Member’s share within the allotted timeframe. Farm’s products can deteriorate if not picked up on time and stored properly.
3. Follow rules for pick up site, such as parking limitations, as provided by the Farm.

If Member cannot pick up Member’s share, Member must arrange for substitute to pick up share. Member will need to explain the pick up site location and procedures to Member’s substitute (*you may want to require some form of proof to confirm person is actually a substitute*). Any shares not retrieved in a timely fashion will be _____
(explain what happens to unpicked up shares: donation to food bank, selling to other markets, etc).

Risk of Crop Failure

By joining Farm’s CSA, both Farm and Member are agreeing to share in the risk of crop failure, due to factors such as inclement weather, pests, and acts of God. If a crop failure does happen, Farm’s normal policy is as follows: (*describe your policy; for example, do you give Members other crops ready to harvest, buy crops from other local farms, or a combination of the two*). _____

In the event of a substantial crop failure, a refund of the share fee (*choose either: is/is not*) available. However, Farm reserves the right to deviate from these policies. _____

_____ Initial

Crop Surpluses

(Select one of the following):

- Farm's production is exclusively for the CSA and Members. When Farm has surplus crops, Farm will provide Member with as much as possible, but Farm does not want to overwhelm Member with products that may go to waste. When Farm experiences surplus, Farm will make excess crops

(Will you donate to local food pantry, let members harvest excess crops, set out excess crops for members to pick up on own, etc.?).

- Farm also sells produce to _____ *(insert other markets)*, but Farm keeps the CSA production separate by _____ *(insert how you segregate production)*. When Farm experiences a crop surplus with segregated CSA crops, Farm will provide Member with as much as possible, but Farm does not want to overwhelm Member with products that may go to waste. When Farm experiences surplus, Farm will make excess crops _____

(Will you donate to local food pantry, let members harvest excess crops, set out excess crops for members to pick up on own, etc.?).

- Farm also sells produce to _____ *(insert other markets)*. Farm does not segregate CSA production, but CSA production does receive our priority. In the event of a crop surplus, other markets will be served after Farm has satisfied Member's shares.

- Farm also sells produce to _____ *(insert other markets)*. Farm does not segregate CSA production; production is balanced between the CSA and other markets.

Members Fees

Selling CSA memberships helps the Farm reduce the burden of up-front costs (such as seeds, tillage, and other inputs) before the season starts. Farm appreciates Member's commitment to the Farm. Use table below if Member has multiple shares. Feel free to add additional rows (*vegetable/fruit, meat, dairy, etc.*) but if Member has only 1 share, delete table and write out the share.

Check Selection	Type of Share	Share Size	Price if before [date]
	Total Amount Due		

Check Selection	Payment Preference (Only include if you allow options)
	Member will pay full membership fee up front
	Member will pay membership fee in _____ number of installments, due on X date(s)

If Member is paying full membership fee up front, enclose a check for the total amount due _____, made payable to _____ with this agreement signed. If you are paying in installments, please enclose _____ checks for _____, one dated _____ and check(s) dated _____ with this signed agreement. By signing and submitting the agreement, you are agreeing to pay the membership fee for share indicated above. (*indicate if payments are refundable by a date or non-refundable*).

The Farm may, in its discretion, consider a request from a Member to downsize a share and may or may not grant a refund upon downsizing.

Communications between Farm and Member

The best way to communicate with the Farm is via email. Our email is _____ . Farm will do our best to respond as soon as possible, but please understand that we spend much of our time in the field growing your food and are not always able to send a same day response. Please contact us with any news of the following: changes to your postal or email address, problems with your pick up location, or dissatisfaction with your share.

We will communicate with Members primarily by email. When you sign up, you will be added to our distribution list. Please regularly read your email from the Farm. We depend on being able to communicate important information such as necessary changes to your distribution schedule or notices of our Farm events. We will do our best to post on our website information about the crops available that week (*insert link to site*). We will also regularly post recipe ideas and farm-related news.

Indemnification and Hold Harmless

By signing this Agreement, Member hereby releases, indemnifies and agrees to hold harmless Farm, its owners, agents and employees from any and all claims, damage and/or liability he or she might suffer from being on the Farm property, being at any of the CSA pick-up locations or from the purchase of a CSA membership, including but not limited to, the use or consumption of any food provided by the Farm.

Termination

If Member violates any of the provisions of this Agreement, he or she will be considered to be in breach of contract and Farm may terminate this Agreement and retain all Member fees. If the Farm violates any of the provisions of this Agreement, the Farm will be considered in breach of contract, the Member may terminate the agreement and receive a refund of the membership fee minus the value of any products received during the season.

Mediation

All claims and disputes arising under or relating to this Agreement are to be first submitted for mediation through the Maryland Agricultural Conflict Resolution Service. Both parties shall equally share the mediator's costs and fees. This provision may be enforced by any court of competent jurisdiction and the party seeking enforcement may seek all costs, fees, and expenses associated with enforcing this provision.

Acknowledgment

I agree to purchase the membership share indicated in the Membership section. I understand that, although unlikely, Farm may change parts of this Agreement related to production and distribution from time to time. I understand that Farm will contact me via email in advance of any changes to this agreement.

By signing this Agreement, I acknowledge that I have read, understand and agree to the terms contained herein.

Member Name (please print): _____ Date: _____

Signature: _____

The Agriculture Law Education Initiative is a collaboration between the [University of Maryland Francis King Carey School of Law](#) and [College of Agriculture & Natural Resources](#), University of Maryland, College Park. Through the [University of Maryland Extension](#) - the statewide, non-formal agriculture education system - the collaboration partners with the [School of Agricultural and Natural Sciences](#), University of Maryland Eastern Shore.

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