



**Notice:** This guide is for informational purposes only and does not provide legal advice or create an attorney-client relationship. You should contact an attorney to obtain advice with respect to any particular issue or problem.

## Running a Farmer Operated Food Hub

In response to market changes, many local farmers have started selling their farm products directly to customers through other farmers. Farm produce and local value-added products go right from the farmer, cook or baker to another farmer or business where orders are assembled and prepared for delivery or pick-up. This model is generally known as a food hub. If you are considering setting up a local food hub, this guide outlines the following legal considerations to keep in mind:

- Forming a separate entity
- Terms and conditions of agreements between farmers or vendors
- When a warehouse license must be obtained
- Collecting sales tax
- When a 1099-K must be issued

### What is a food hub?

Food hubs are middlemen that connect producers (farmers and local food vendors) with institutional buyers (restaurants, hospitals, schools, etc.) or consumers. They help make a direct connection between local farmers and the communities they serve. Farmers gain access to markets beyond farmers' markets and farm stands and reduce the amount of time spent on marketing and distribution. Buyers also benefit as they can access a range of produce in one place. Because food hubs are highly localized businesses, they often create a personal connection by sharing where and how the food they offer was produced.

Local food hubs typically are established through readily available online sales platforms. The food hub:

- works with producers and vendors to establish a reliable and varied supply of local produce
- creates an online platform for buyers to view and purchase products
- arranges for delivery or pickup of purchased goods to buyers
- is primarily responsible for marketing and business development



In some instances, the food hub purchases the food that is sold on the food hub. In other cases, the farm retains ownership of goods and produce until sold to the end customer. While the comments below apply to this type of food hub, they may be relevant to other food hub models.

## Business structure for a food hub

While a food hub may be a natural next step in marketing and distributing your and other farms' produce, consider operating them as separate businesses. Doing so will help protect your personal assets and your farm operation from the debts and liabilities of your food hub. If the food hub operation is part of your farm business, creditors can demand farm assets to pay for obligations of the food hub (and vice versa). Also, a produce farm and a food hub present different operating risks. For example, a food hub has risks associated with purchasing produce from other farmers or issues arising from the assembly and delivery of customer orders, none of which is related to growing and harvesting food.

Similarly, you may wish to shield your personal assets from commitments and obligations of your business.

Consider forming a separate entity to own and operate the food hub. To learn more about the different business structures and what is right for you, see our lightning guide: [Deciding on the Right Structure for Your Business](#).

## Agreements between food hub and farmers/vendors

A written agreement between the food hub and participating farmers and food vendors will help set expectations and avoid misunderstandings. The agreement should clearly state each party's obligations and responsibilities. Here are terms to consider including:

### Required Product Information

The agreement may set product specifications for participating farmers/vendors to provide uniform product offerings to its customers, such as

- Description
- Volume/weight/count
- Packaging; e.g., require products to meet appropriate state and federal packing and labeling requirements

### Quality Standards (try to make these objectively verifiable)

The agreement may require compliance with quality assurance (QA) guidelines to ensure a uniform, high-quality product.

- Qualifications may relate to food safety or organic certification.

- QA guidelines may be prepared internally by the food hub or the food hub may rely on established guidelines such as GAP certification or USDA Organic certification.

### Payment Details

The agreement should set out terms for pricing, placing orders and payment processing.

### Delivery and Shipment

The agreement should set expectations for delivery of product and establish consistent and timely communication regarding forecasted product volumes and availability, including prior notice of any shortfalls or gaps in supply.

- Notification procedures if expected delivery date and time are no longer accurate
- Delivery mode – do farms deliver or does the food hub pick up?
- Who bears risk of loss during transit? (Note: make sure potential loss is covered by insurance.)

### Term of Agreement and Procedures for Cancellation and Changes

Although entered into with the expectation that everything and everyone will behave as expected, situations change, and it may be necessary to modify or end the agreement. The agreement should specify:

- Start and end dates of the agreement
- Process and conditions for early end to the agreement

### Other issues to consider addressing in the agreement:

#### Quality Issues

How will the food hub deal with products that don't meet quality requirements? Does it have the right of refusal? Do farmers have an opportunity to correct? Will the food hub require that products sold to it be produced, grown or raised on the farm?

#### Market-based Price Changes

How will the food hub and the farmers manage unexpected price fluctuations? Depending on the size of the food hub, you may want a process in place to work with farmers on market-based price adjustments so the food hub can remain competitive.

#### Volume/Supply Issues

What happens if the food hub can't sell the expected volume? What happens if a farmer doesn't deliver the expected volume?

#### New Business

How will new business be acquired? How will farmers handle new direct inquiries from customers in the target market? Will the food hub have any exclusive distribution rights for the

farmers' products? Will farmers have obligation to actively support the food hub on their website and marketing materials?

### Customer Contact

While many farmers will know which customers are purchasing their products, the agreement should specify in what instances (if any) the farmer may contact the customer directly. The hub can request to be copied on any such communication.

### Agreement Breach

The agreement should include the process for how breaches (violations of the agreement terms) will be managed. Be sure to provide some flexibility so that each situation can be addressed appropriately instead of following a rigid process.

You may also want to include a requirement in the agreement that each farmer will be responsible for the legal compliance of his or her own farm operations, which could include the tax, health, and safe handling aspects of each operation.

Review the agreement with the farmers and vendors you work with before they sign it, to be sure they understand the terms. For assistance in reviewing and/or drafting a form agreement between you and other farmers, reach out to the Conservation Law Foundation's [Legal Food Hub](#).

## Infrastructure considerations or 'when a warehouse license must be obtained'

Make an assessment of the operation to determine what infrastructure is needed. Will the food hub be responsible for storing farm products? Before storing another farmer's products, make sure to check with the requirements in the state in which you are operating in order to determine what operating permits are required. For example, state law may require you to obtain a warehouse license or permit, especially if you are storing the products for compensation. Additionally, you may need to meet certain federal or state personnel and food safety guidelines.

Also identify and address potential safety risks for visitors and employees. It is recommended to carry appropriate umbrella liability insurance to cover activities relating to the receipt, assembly, and delivery of produce to food hub customers.

## Collecting sales tax

If you will be selling the products of other farmers, you will be responsible for collecting and paying any sales tax required in the circumstances discussed above. Whether or not sales tax must be collected on the sale of farm products varies from state to state. In Massachusetts food for human consumption that is not sold ready-to-eat is generally exempt from the state's

sales tax.<sup>1</sup> Such tax exempt items include fruits, vegetables, dairy products, meat, grain, and spices. However, meals and certain foods sold in ready-to-eat or prepared format may be subject to sales tax, as well as non-food items such as soap or flowers. Keep in mind the need to collect and pay sales tax if you sell and deliver items that may be seen as a meal or ready-to-eat or non-food items.

If you find yourself in the situation of being required to collect sales tax in Massachusetts, you should first register with the Department of Revenue (DOR) to enable you to collect the sales tax. Once registered, you can collect a sales tax on those products which are taxable by separately stating and charging the sales tax on any invoices or bills. Finally, you should send all sales taxes to the DOR with the appropriate sales tax return in the specified time period. For further information related to collecting sales tax in Massachusetts, refer to the DOR's Sales and Use Tax [Guide](#).

### **When a 1099-K must be issued**

If you are selling the products of other farmers, you may need to provide participating farmers with certain tax reporting forms. For example, if you collect and process more than \$20,000 in payments for any single farmer who makes more than 200 sales through your operation in any given tax year, you will need to issue them an IRS Form 1099-K. It is advisable to consult your accountant about applicable requirements in connection with your new operations.

### **Additional Resources for Food Hubs**

For additional information on home delivery of products, you may want to consult our lightning guide: [Home Delivery of Farm Products](#).

If you are planning to sell your hub products online, you may want to review our lightning guide: [Selling Farm Products Through Online Food Hubs](#).

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<sup>1</sup> See MASS. GEN. LAWS ANN. ch. 64H, § 6(h) (West 2018); 830 MASS. CODE REGS. 64H.6.5 (2017).

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*Looking for legal help?*

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