



St. Ninian's Church, Corstorphine

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FULL TERMS AND CONDITIONS FOR THE USE OF PREMISES

between

St Ninian's CHURCH OF SCOTLAND CONGREGATION,
Scottish Charity No. SC016557 (the "Congregation")

and

the User (as defined below)

1. DEFINITIONS

1.1 For the purposes of this Agreement:

User means (full name/company name and number)

..... (address/company registered office)

..... (address)

Charge is (full amount due)

Deposit is (amount)

to be paid on:

..... (date)

Permitted Use is

Premises means

together with the use of:

..... (for example only: kitchen/toilets/storage
cupboards etc.)

Time of Use means (times from - to/date/year)

.....

- 1.2 Clause and paragraph headings shall not affect the interpretation of these Terms and Conditions and any references to clauses are to the clauses of these Terms and Conditions.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.
- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Any obligation on a party not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
- 1.6 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.7 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.
- 1.8 A reference to **writing** or **written** includes e-mail.
- 1.9 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.10 Unless expressly provided otherwise, the obligations and liabilities of the User under these Terms and Conditions are joint and several.
- 1.11 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in Scotland.

2. LICENCE TO OCCUPY

2.1 The Congregation CONSENTS to the User using the Premises for the Charge at the Time of Use on the terms and conditions following.

2.2 The User acknowledges that:

- (a) no relationship of landlord and tenant is created between the parties;
- (b) the Congregation retains control, possession and management of the Premises and the User has no right to exclude the Congregation (or others authorised by the Congregation) from the Premises at any time so long as its beneficial use of the Premises is not impeded or prevented;
- (c) the licence to occupy governed by these Terms and Conditions is personal to the User and not assignable in whole or in part to another party. The rights given in Clause 2.1 may only be exercised by the User and its employees and permitted visitors.

3 OBLIGATIONS OF THE USER

3.1 The User agrees and undertakes:

- (a) to pay the Charge, without deduction, to the Treasurer of the Congregation in advance of the Time of Use as directed by the Treasurer by any means reasonably required by the Congregation. No written demand will be given for the Charge. The Charge shall be reviewed from time to time by the Congregation. The Congregation shall provide notice in writing should there be any change in the Charge.

To secure the booking of the Premises, the User will pay the Deposit. Cancellation by the User may render the Deposit non-refundable.

- (b) to pay to the Congregation interest at the rate of five percent per annum above the base rate of the Royal Bank of Scotland from time to time calculated on a daily basis on any part of the Charge if it is unpaid from the due date until the date that it is paid (whether formally demanded or not). However, in the event that the User fails to pay the Charge when due, the Congregation may at its sole discretion terminate this Agreement with immediate effect;
- (c) to use the Premises for the sole purpose of the Permitted Use and to ensure that the use is compliant with the Planning Acts and any other statutory provisions or licencing requirements. In particular, the User shall ensure that all Necessary Consents are in place and shall exhibit these to the Congregation, if requested. If additional rates are at any time levied on the Congregation with respect to the Premises due to the User's use of the Premises, the User will be bound to reimburse the Congregation for the additional amount. The User will not do anything which will or might vitiate in whole or in part any insurance effected by the Congregation in respect of the Premises from time to time;

Necessary Consents means all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any competent authority for the Permitted Use, including without prejudice to the foregoing generality any Safety Certificate, Public Entertainment Agreement or licence, Theatre Licence or any other licence, certificate or permission issued or required in respect of the Permitted Use.

- (d) not to do or permit to be done in the Premises anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Congregation or any owner or occupier of any neighbouring property and the User will observe any reasonable rules and regulations the Congregation makes and notifies to the User from time to time;
- (e) not to make any alteration or addition whatsoever to the Premises;
- (f) to submit the User's COVID-19 Risk Assessment and COVID-19 Operating plan to the Congregation for review prior to commencement of use, to comply with the Congregation's COVID-19 Risk Assessment and COVID-19 Operating Plan, and in accordance with the congregation's Operating Plan to leave the Premises in a clean and tidy condition and clear of all rubbish at the end of the Time of Use, including the thorough wiping down of all surfaces which have been touched in the Premises with disinfectant at the end of the Time of Use, and to dispose of cleaning products safely;
- (g) to ensure that all persons in the Premises during the period of use comply with current Scottish Government and Health & Safety Executive guidelines and regulations on prevention of the spread of COVID-19 and adhere to all physical distancing and infection control measures and mitigations recommended or required by the Scottish Government;
- (h) to refuse entry to the Premises to any person displaying symptoms of COVID-19, and to notify the Congregation immediately if they become aware of any person in the Premises subsequently being diagnosed with COVID-19.
- (i) to supervise and control all persons present within the Premises and their exit and entry to and from the Premises, and ensure the provision of an adequate number of attendants or supervisors to ensure compliance with these Terms and Conditions, the safety of all persons present in the Premises and the immediately surrounding area and the preservation of order therein during the Time of Use; declaring that should any delegates/visitors or third parties entering the Premises under the auspices of the User behave in a manner unacceptable to the Congregation (acting reasonably), the Congregation shall have the right to remove such party from the Premises;
- (j) to comply with the Health and Safety and Fire Safety policy of the Congregation and in advance of using the Premises to nominate a competent person to take charge in the event of fire to ensure that all persons in the Premises (including those who may require assistance) can escape unimpeded through a fire exit and assemble in the nominated assembly; to ensure that the fire exits, exit corridors and all stairways (if any) are kept clear of obstruction at all times; and to ensure that the fire exit doors are kept closed except when the alarm sounds;

- (k) to lock and secure all entrances to and exits from the Premises after the Time of Use, if required;
- (l) not to display any advertisements, signboard, nameplate, inscription, flag, banner, placard, poster, signs or notices at the Premises without the prior written consent of the Congregation;
- (m) to observe all reasonable instructions of the Congregation regarding taking precautions to prevent any damage to any part of the Premises and to make good any damage caused to the Premises or surrounding property through their use of the Premises; to report any accidental damage to the Congregation as soon as possible after the event;
- (n) To report to the Congregation any accidents, giving details of the date, nature of the incident and steps taken, including a statement of any First Aid items used;
- (o) not to permit any dogs (with the exception of guide dogs) or other animals to enter any part of the Premises during the Time of Use;
- (p) not to conduct or suffer to be conducted in the Premises any collection, game of chance, sweepstake, lottery or betting of any kind whatsoever without the prior written consent of the Congregation;
- (q) not to permit any person to smoke, vape or consume any illegal substance within the Premises nor allow any person to sell any intoxicating liquor or other alcoholic beverage, food or other beverages in the Premises;
- (r) not, without the prior written consent of the Congregation, to permit any beverage or food to be consumed within the Premises;
- (s) not to cause or permit to be caused any damage to the Premises or any neighbouring property or any property of the Congregation within the Premises;
- (t) not to use smoke machines or pyrotechnics without the prior written consent of the Congregation;
- (u) not to bring on to the Premises any items of a particularly inflammable or explosive nature;
- (v) not, by any act or default, do anything whereby the Service Media or any part of it serving the Premises or neighbouring property may become choked, obstructed or damaged nor whereby any deleterious matter, grease or effluent shall be passed into or deposited into any drains or sewer serving the Premises or any adjoining property;

Service Media means all media for the supply or removal of heat, electricity, gas, water, sewage, air-conditioning, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media.

- (w) to vacate the Premises and leave them in a clean and tidy condition and to remove any of the User's furniture, equipment and goods from the Premises at the end of the Time of Use, declaring that should the Premises be left in a dirty or untidy condition, the

Congregation shall be entitled to arrange for them to be cleaned and recover from the User the reasonable cost of doing so;

- (x) to ensure that any third parties employed or appointed by the User to perform any services in connection with the use of the Premises are made aware of these Terms and Conditions and comply with them in all respects;
- (y) to indemnify the Congregation (including the Trustees vested in the Premises) against all loss, damage, actions, proceedings, costs, claims, demands or other liability arising from these Terms and Conditions, any breach of the User's obligations undertakings contained within these Terms and Conditions and the exercise of any rights conferred by these Terms and Conditions;

4 SAFEGUARDING

- 4.1 The User is aware of the requirement to safeguard the welfare of children and young people and keep them safe from harm and abuse. The User has adopted a recruitment procedure for working with children and young people which, where appropriate, includes requiring employees and volunteers to be members of the Protection of Vulnerable Groups Scheme as laid down by the Protection of Vulnerable Groups (Scotland) Act 2007 ("the Act") and will comply with the Act in all respects. If the User is found to be in breach of these undertakings, the Congregation shall have the right to terminate this Agreement with immediate effect.ⁱ
- 4.2 The User is aware of the requirement to safeguard the welfare of protected adults and keep them safe from harm and abuse. The User has adopted a recruitment procedure for working with protected adults which, where appropriate, requires employees and volunteers to be members of the Protection of Vulnerable Groups Scheme and will comply with the Act in all respects. If the User is found to be in breach of these undertakings, the Congregation shall have the right to terminate this Agreement with immediate effect.ⁱⁱ

5 NO WARRANTY

- 5.1 The Congregation does not warrant in any way that the Premises are fit for the purpose for which the User intends to use them or possess the Necessary Consents for the Permitted Use. The Premises and all related fixtures, fittings and equipment are deemed to be in good working order at the commencement of the Time of Use but should the User discover any defects it must immediately notify the same to the Congregation in writing.
- 5.2 The Congregation shall have no liability whatsoever for any loss, damage, actions, proceedings, costs, claims or demands by any party of any kind and any loss or damage, howsoever occurring, to any materials, equipment or other property belonging to or under the control or custody of the User.

6 INSURANCE

The User will be responsible for arranging all necessary insurances for its property in or on the Premises, and shall also maintain insurance against employers' liability and third party risks, such amount to be a minimum of FIVE MILLION POUNDS (£5,000,000) STERLING in

respect of any one claim, and shall exhibit the relevant policy to the Congregation together with evidence that the premiums necessary to keep the policy in force have been paid.

7 TERMINATION

- 7.1 These Terms and Conditions may be terminated at any time by either the Congregation or the User giving 4 weeks' notice in writing to the other party. The Congregation shall be entitled to retain all payments made to it in terms of these Terms and Conditions.
- 7.2 Notwithstanding the foregoing, the Congregation shall be entitled to terminate this Agreement forthwith and without penalty should there be a material breach by the User of any of the terms and conditions of these Terms and Conditions providing such breach is not remedied by the User immediately on receipt by the User of notice (or, as appropriate, verbal intimation) that it is in breach. If these Terms and Conditions are so terminated by the Congregation in terms of this clause, the User shall have no claim whatsoever against the Congregation in damages or otherwise howsoever caused.
- 7.3 Termination of these Terms and Conditions shall not affect the rights of either party in connection with any breach of any obligation under these Terms and Conditions which existed at or before the date of termination.
- 7.4 Should the User be in breach of these Terms and Conditions and whether or not the Congregation has terminated this Agreement the Congregation shall be entitled to payment from the User of damages for all losses reasonably and necessarily incurred by the Congregation (including economic and consequential loss) as a result of said breach.

8 NOTICES

- 8.1 Any notice or other communication given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service to the relevant party as follows:
 - (a) to the Congregation at the address stated herein marked for the attention of the Session Clerk; and
 - (b) to the User at the address stated herein;or as otherwise specified by the relevant party by notice in writing to each other party.
- 8.2 Any notice or other communication given in accordance with clause 8.1 will be deemed to have been received:
 - (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or other communication is left at the proper address; or
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting.
- 8.3 A notice or other communication given under these Terms and Conditions shall not be validly given if sent by e-mail.

8.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

9 LIMITATION OF CONGREGATION'S LIABILITY

9.1 Subject to clause 9.2, the Congregation is not liable for:

- (a) the death of, or injury to, or infection with COVID-19 of, the User, its employees, associates or invitees to the Premises; or
- (b) damage to any property of the User or that of the User's employees, associates or other invitees to the Premises; or
- (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by User or the User's employees, associates or other invitees to the Premises in the exercise or purported exercise of the rights granted by clause 2.

9.2 Nothing in clause 9.1 shall limit or exclude the Congregation's liability for:

- (a) death or personal injury, or damage to property caused by negligence on the part of the Congregation or its employees or agents; or
- (b) any matter in respect of which it would be unlawful for the Congregation to exclude or restrict liability.

10 FORCE MAJEURE

If by reason of an Act of God, accident, fire, failure of any technical or electrical facilities not within the Congregation's reasonable control, enactment, rule, order or act of Government, war, threat of terrorism, riot, state of emergency, civil commotion or disturbance, lock-out, strike, shortage of materials, failure of any previous User to vacate the Premises or any part thereof or other cause outwith the control of the Congregation (each being a "Force Majeure Event"), the Congregation is or anticipates that it will be prevented or hindered from fulfilling its obligations under these Terms and Conditions then the Congregation shall forthwith advise the User accordingly, whereupon these Terms and Conditions shall be terminated and the User shall be excused performance of its obligations hereunder (including payment of the Charge) during the continuation of the Force Majeure Event.

11 GOVERNING LAW

These Terms and Conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland.

12 JURISDICTION

Each party irrevocably agrees that the Scottish courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms and Conditions or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF these presents consisting of this and the preceding pages are signed as follows:

At

On

..... (Session Clerk/Clerk to the Congregational Board)

..... (Print Name)

..... (Witness)

..... (Name, address, occupation of witness)

.....

.....

At

On

..... (User/Company Director)

..... (Print Name)

..... (Witness)

..... (Name, address, occupation of witness)

.....

.....

ENDNOTES

ⁱ This clause is only relevant when the use will involve “regulated work” with children or young people as defined in the Protection of Vulnerable Groups (Scotland) Act 2007.

ⁱⁱ This clause is only relevant when the use will involve “regulated work” with “protected adults” as defined in the Protection of Vulnerable Groups (Scotland) Act 2007.