**FACILITY USE AGREEMENT**

This **FACILITY USE AGREEMENT**[[1]](#footnote-1), made on January [\_\_], 20[\_\_] is between [FEE OWNER][[2]](#footnote-2), a New York religious corporation (“Owner”), having an address at [OWNER’S STREET ADDRESS], and [FACILITY USER] (herein referred to as the “Facility User”), having an address at [USER’S STREET ADDRESS].

# DESIGNATED SPACE.

Owner agrees, subject to the terms and conditions herein, to provide the use of the following checked space(s) in its facility, located at [STREET ADDRESS] (the “Facility”):

☐ [Conference Room] (up to [##] guests)

☐ [Worship Space] (up to [##] guests)

☐ [Fellowship Hall] (up to [##] guests)[[3]](#footnote-3)

Additional Notes and Restriction: [INSERT] – e.g. regarding use of audio/visual or other equipment, chairs, and instruments.

# TERM.

This Agreement shall commence on [January \_\_\_, 20\_\_ (“Commencement Date”) and continue for \_\_\_ day(s), until January \_\_\_, 20\_\_ (the “Expiration Date”)]. The period commencing on the Commencement Date and ending on the Expiration Date, subject to earlier termination or extension of this Agreement, pursuant to the terms hereof (the “Term”). During the Term, Facility User hereby agrees to use said space(s), in accordance with terms and conditions herein specified, on [Monday and Friday] from the from [TIME P.M. to TIME P.M.], which includes set-up and clean-up time. The event, program, or activity, and corresponding preparation and clean-up (the “Function”) shall begin no earlier than the scheduled time and the space(s) shall be vacated promptly at the indicated closing time.

# DONATION AMOUNT.

Facility User agrees to donate the amount of [AMOUNT and 00/100 Dollars ($00.00)] (the “Donation Amount”) to Owner for the use of such space(s)[, which amount shall be paid in monthly installments payable on the first (1st) day of each calendar month, commencing on May \_\_\_, 20\_\_]. All donations and payments shall be made to Owner, [via check or other method agreed to by Owner], and paid at, or sent to, the address stated above, or at such address as may be changed from time to time by Owner.

# REIMBURSEMENT OF COSTS.

## [Facility User agrees to reimburse Owner for all direct costs and expenses incurred by Owner, in connection with Facility User arising out of or connected with the Function or the Facility User’s use of the Facility and the space(s). At Owner’s request, Facility User shall provide credit card information, including card number, expiration date, security code and cardholder name, for a valid credit card, and authorizes Owner to charge such credit card for the amount not included in the Donation Amount and assessed by Owner or in the event of any damages and losses to the Facility or Owner’s property, caused by the Facility User or its employees, invitees, guests, agents, and independent contractors.]

## Additional Time. In the event set-up or clean-up time extends beyond the hours specified above in Section 2, Facility User shall be responsible to reimburse Owner an additional fee of [One Hundred and 00/100 Dollars ($100.00) per half hour for functions prior to 5:00 P.M., and Two Hundred and 00/100 Dollars ($200.00) per half hour after to 5:00 P.M.].

# CONDITION OF SPACES.

Except to the extent otherwise expressly provided herein, Facility User accepts the Facility, and any portion thereof, in its present condition “AS IS,” “WHERE IS” and with all defects.

# COMPLIANCE WITH RULES & LAWS.

## Rules. Facility User shall comply, and shall cause its employees, invitees, guests, agents, independent contractors, and vendors, to observe faithfully, and strictly comply with the **RULES FOR USE OF THE FACILITY**, supplied to Facility User in the form of a separate document and attached hereto and made a part of this Agreement as Schedule A, and such other and further reasonable rules and regulations as Owner may from time to time adopt. Facility User, or its employee or agent, shall be present in the Facility during the full length of the Function, and shall guarantee the Facility is used in a considerate manner at all times. Nothing in this Agreement contained shall be construed to impose upon Owner any duty or obligation to enforce the rules or terms, covenants, or conditions in any other lease/license agreement, or against any other licensee/facility user and Owner shall not be liable to Facility User for violation of the same by any other occupants, its servants, employees, agents, visitors, or licensees. In no event shall the halls, corridors and/or stairways be obstructed, encumbered, or used as storage areas.

## Noise Levels. Facility User and Facility User’s invitees[[4]](#footnote-4), guests and employees shall conduct themselves in a businesslike manner and the noise level shall be kept to a level so as not to interfere with the business or occupancy of others inside the Facility and to not disturb the community outside of the Facility. [Specifically, the noise levels shall be kept to a minimum inside and outside of the Facility throughout the [INSERT WORSHIP HOURS]. and outside of the Facility after 5:00 p.m.]Any noise violations or complaints from the community members caused by Facility User’s negligence or willful act shall be deemed a default under this Agreement.

## Laws. Facility User agrees to abide and comply, and shall cause its employees, invitees, guests, agents, independent contractors and vendors to abide and comply, with all applicable laws, ordinances, regulations and directives of the United States of America, the State of New York, any applicable municipality, any political subdivision thereof or any agency, department, commission, board, bureau or instrumentality of any of the foregoing, or any quasi-governmental authority, now existing or hereafter created, having jurisdiction over the Facility, or any portion thereof, including, but not limited to, any certificate of occupancy and any law, ordinance, regulation, covenant, condition or restriction affecting the Facility.

## Without limiting the generality of this Section, if: (i) it is deemed that the Function conflicts with Owner’s principles and beliefs, or (ii) physical violence, of any type, or conduct is deemed disorderly (at the sole discretion of Owner), then this Agreement will be immediately terminated. Facility User is responsible for the actions and conduct of its employees, invitees, guests, agents, independent contractors, and vendors, and providing for the safety of such individuals during the Function.

# INSURANCE.

## Facility User shall procure and maintain, at Facility User’s sole expense, the appropriate insurance[[5]](#footnote-5) indicated below for the entire length of the Term:

(1) ***Commercial General Liability Insurance,*** including Contractual Liability (to specifically include coverage for the indemnification clauses of this Agreement relating to personal injury or property damage), Products & Completed Operations Liability, Broad Form Property Damage, Personal Injury Liability and Advertising Injury Liability, written on an occurrence form, with combined bodily injury and property damage limits of liability of no less than One Million and 00/100 Dollars ($1,000,000.00) per occurrence, Two Million and 00/100 Dollars ($2,000,000.00) per location general aggregate, One Million and 00/100 Dollars ($1,000,000.00) Personal & Advertising Injury, and One Million and 00/100 Dollars ($1,000,000.00) Products and Completed Operations liability with an aggregate limit per location.

(2) ***Workers Compensation Insurance***. If the Facility User is a business, Facility User shall provide evidence of compliance with the requirements of the State of New York with respect to workers compensation insurance including payments due thereunder. The Worker's Compensation Insurance must provide statutory benefits for their employees and Employer’s Liability coverage in an amount that is no less than One Million and 00/100 Dollars ($1,000,000.00).

(3) ***Excess Liability Insurance.*** Facility User shall also procure and maintain, at Facility User’s sole expense, umbrella liability insurance in excess of the above liability limits without any gap, and which excess coverage will “follow-form” the underlying liability coverages, and provides insurance limits no less than indicated below:

1. ☐ For functions where 50 or more individuals are anticipated to be in attendance, Facility User must provide Owner with umbrella liability insurance in an amount that is no less than Two Million and 00/100 Dollars ($2,000,000.00) per occurrence and Two Million and 00/100 Dollars ($2,000,000.00) in the aggregate.
2. ☐ For functions where 49 individuals or less are anticipated to be in attendance, Facility User must provide Owner with umbrella liability insurance in an amount that is no less than One Million and 00/100 Dollars ($1,000,000.00) per occurrence and One Million and 00/100 Dollars ($1,000,000.00) in the aggregate.

(4) All Risk Property Insurance covering damage to all Facility User’s work, equipment, installations, fixtures, and personal property at full replacement cost.

(5) For functions where alcohol will be served, the rider must also include host liquor liability insurance in the amount of not less than One Million and 00/100 Dollars ($1,000,000.00).

## Certificate of Insurance. Facility User shall deliver to Owner, no later than Seven (7) calendar days before the Commencement Date, certificate of insurance, procured by Facility User in compliance with its obligations hereunder. Owner, may at its discretion, request complete copies of all insurance policies to confirm compliance of the requirements in this section.

## Vendor Requirements. Facility User shall cause all contractors or vendors hired by Facility User (including but not limited to its caterers and event lighting consultants) to maintain the same insurance coverages and types as indicated in Section 7.01.

## Additional Insured. For the commercial general liability and excess liability policies, Facility User shall include as additional insureds the following: [(i) Owner, and (ii) LENDERS AND/OR ENTITY THAT HAS ECCLESIASTICAL OVERSIGHT]. Each policy required herein shall contain a clause that the policy and the coverage evidenced thereby shall be primary and non-contributory with respect to any policies carried by Facility User, and that any coverage carried by Facility User shall be excess insurance.

## Damage. Notwithstanding anything herein to the contrary, Facility User shall be responsible for any and all damage caused to the Facility by its agents, employees, or invitees during the Term.

# INDEMNIFICATION.

To the fullest extent permitted by law, Facility User shall indemnify and defend Owner and their officers, employees and agents (collectively the “Church’s Indemnitees”) and hold Church’s Indemnitees from and against all claims, losses, liabilities, or damages to persons or property, government charges, penalties or fines, and costs and expenses (including but not limited to reasonable attorney’s fees) arising out of or connected with the Function or the Facility User’s use of the space(s) (including but not limited to the installation, removal, maintenance, occupancy or use of the facility, or a portion thereof), by Facility User or any employee, invitee, guest or agent of Facility User, or any independent contractor or vendor hired by Facility User, except such liability for damages for injuries to person or property caused by or resulting from the negligence of Owner or its officers, employees and agents in the operation or maintenance of the Facility or the real property containing the Facility.

# FACILITY USER’S PROPERTY.

Owner is not responsible for the security of the Facility User or its employees, invitees, guests, agents, independent contractors, and vendors. Owner shall not be responsible for damages to, or loss of, any merchandise, goods, equipment, or personal property of Facility User or any third-party exhibited, displayed, or left in any space, or other areas of the Facility prior to, during, or following the Function. Without limiting the generality of the foregoing, Owner shall not be responsible for any property left in any space, or other areas of the Facility following the Function, and any loss of or damage to any such property is the sole responsibility of Facility User.

# DEFAULT, TERMINATION & CANCELLATION.

## Default. Notwithstanding anything contained herein to the contrary, Facility User shall be in default of this Agreement if Facility User or any employee, invitee, guest or agent of Facility User, or any independent contractor or vendor hired by Facility User, fail to fulfill any obligation or covenant of this Agreement by which Facility User is bound (including but not limited to if any such person is in violation of the Rules and Regulations, violence occurs, or the Function conflicts with Owner’s principles and beliefs).

a. If Facility User is deemed in default of this Agreement at any time during the Term, Owner reserves the right to terminate this Agreement, and if payment has been received by Owner, Facility User shall not receive any refund. If, at any time while Facility User is in use, violence occurs, or a representative for the Owner, deems that the Function conflicts with Owner’s principles and beliefs, Facility User, and its employees, invitees, guests, agents, independent contractors, and vendors, shall be immediately removed from the Facility.

b. If Owner is in default of this Agreement, Facility User shall, before commencing any action or litigation, give Owner written notice, specifying the details of such default, whereupon Owner shall have a period of Twenty (20) calendar days from receipt of such notice to attempt to cure such default.

c. The rights provided by this Section are cumulative in nature and are in addition to any other rights afforded by law.

## Termination for Convenience. Except as otherwise provided herein, upon ten (10) days prior written notice to Facility User, Owner shall, without any penalty or further liability, have the right, at any time and for any reason, to terminate this Agreement, at which time the Facility User’s license for Function shall cease.

# NOTICES.

Notices under this Agreement shall not be deemed valid unless given in writing by Certified Mail, Return Receipt Requested or nationally recognized overnight carrier, postage prepaid, such addresses may be changed from time to time by either party by providing notice as set forth above. Notices mailed in accordance with the above provisions shall be deemed received on the third day after posting by certified mail or the next day for overnight delivery. All notices sent by mail or hand delivery shall be sent to the addresses given above or to any other address of any party that it has notified the other parties of in writing. If to Owner, to the address shown on the first page of this Agreement with attention to: [MAIN OWNER CONTACT], with a copy, via e-mail, to: Capell Barnett Matalon & Schoenfeld LLP, [OFFICE ADDRESS], with attention to: [CONTACT], Esq. (CONTACT@cbmslaw.com).

# MISCELLANEOUS.

## Force Majeure. Performance of this Agreement is contingent upon Owner’s ability to perform, and Owner shall not be responsible or liable for any failure or delay to perform any obligation under this Agreement to the extent said failure or delay is caused by conditions beyond the control of Owner, including but not limited to, conditions caused by strikes, lockouts, non-availability of labor or materials, war or national defense preemptions, government restrictions and regulations, terrorism or apparent act of terrorism, civil disorder or disturbance and/or riots, travel advisory, pandemics (including but not limited to COVID-19), acts of God (including but not limited to floods, fires and other casualties), emergency or disaster making it inadvisable, illegal, impracticable or impossible for Owner to perform, or other causes, whether or not similar to the foregoing, beyond the reasonable control of Owner. Owner may cancel this Agreement for any one or more such reasons under 12.01 without cancellation penalties and Owner may, in its sole discretion, refund the funds received from Facility User for the time period that Owner is unable to perform.

## Enforcement. Without limiting Section 4, Facility User shall reimburse Owner, upon demand, for all costs and expenses, including but not limited to reasonable attorneys’ fees, incurred by Owner and their officers, employees and agents, seeking enforcement against Facility User or its employees, invitees, guests, agents, independent contractors or vendors, of any of its obligation under this Agreement.

## Release. By execution of this Agreement, Facility User, does hereby forever, to the fullest extent permitted by law, release Owner and its officers, employees, agents, volunteers, officers, directors, trustees and any other corporation, organization, or consistory members, operated, supervised, controlled, or affiliated with, or under the auspices such of and from any and all losses, liabilities, damages, claims, demands, causes of action, costs and expenses, whether known or unknown, arising out of or in any way connected with the Function or the Facility.

## Access*.*Owner, or any individual(s) designated by Owner shall have access to, and the right to enter, the space(s) at all times while in use by the Facility User. Such designated individual(s) shall be present in the Facility during the full length of the Use, and shall have authority, on behalf of Owner, in determining Facility User’s compliance with this Agreement and the rules attached hereto.

## Broker*.*Facility User represents and warrants to Owner that it has not engaged any broker, finder or other person who would be entitled to any commission or fees in respect of the negotiation, execution, or delivery of this Agreement, and shall indemnify and hold harmless Owner against any claim by any other broker or person arising out of the acts of Facility User.

## Assignability*.*Facility User may not assign, transfer, or encumber Facility User’s interest in the Agreement, the Facility, or any space(s) therein.

## Entire Agreement*.*This Agreement contains the entire agreement of the parties and there are no other promises, conditions, understandings, or other agreements, whether oral or written, relating to the subject matter of this Agreement. Owner has not made, and Facility User is not relying upon, any warranties, or representations, promises or statements made by Owner or any agent of Owner, except as expressly set forth herein. This Agreement may be modified or amended in writing only and signed by the parties hereto.

## Governing Law*.*This Agreement shall be construed in accordance with the laws of the State of New York, without giving effect to its principles of conflict of law.

## Severability*.*If any portion of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

## Authority*.* In the event this Agreement is signed in the name of an entity, the individual signing represents and warrants to Owner that the undersigned signatory for such party has full power, authority, and legal right to execute and deliver this Agreement on behalf of such entity.

## Counterparts*.* This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument, and either party hereto may execute this Agreement by signing any such counterpart. Facsimile or other electronically transmitted copies shall be deemed as originals herein. Owner will not be bound to Facility User until Facility User has duly executed and delivered the executed agreement to Owner, along with any payment required herein, and Owner has duly executed and delivered such counter-executed agreement to Facility User.

[*Balance of Page Intentionally Left Blank – Signature Page Follows*]

***Prior results referred to in these materials do not guarantee or suggest a similar outcome in other matters.***

**IN WITNESS WHEREOF**, Owner and Facility User have read and understood and executed this Agreement and have read the enclosed Rules for Use of the Facility as of the date and year indicated above.

|  |  |  |
| --- | --- | --- |
| **FACILITY USER** |  | **OWNER** |
| [NAME OF FACILITY USER] |  | [NAME OF FEE OWNER] |
| **DO NOT SIGN**  |  | **DO NOT SIGN**  |
| Signature |  | Signature |
|  |  | Authorized Signatory |
| Title, if any |  | Title, if any |

**SCHEDULE A**

**RULES FOR USE OF THE FACILITY**

(attachment to follow)

**SCHEDULE A**

**RULES FOR USE OF THE FACILITY**

These Rules for Use of the Facility are attached to and made a part of this Agreement:

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors, or halls shall not be obstructed or encumbered by Facility User or by any invitee or occupant or used for any purpose other than for ingress to and egress from the Facility and for delivery of merchandise and equipment in a prompt and efficient manner.
2. Owner reserves the right to inspect, with Facility User present, all freight to be brought into the Facility and to exclude from the Facility all freight which violates any of these rules or this Agreement of which these rules are a part. All deliveries to, or from, the Facility shall be done only at such times, in the areas and through the entrances reasonably designated by Owner for such purposes. There shall not be used in any space, or in the public halls or common areas of the Facility, either by Facility User or by any sub-Facility User or by jobbers, or others in the delivery of receipt of merchandise, any hand trucks except those equipped with rubber tires and safeguards.
3. The water and wash closets and plumbing pipes and fixtures shall not be used for any purposes other than those for which they were designed or constructed.
4. Owner shall have the right to reasonably prohibit any advertising by any Facility User that, in Owner’s reasonable opinion, tends to impair the reputation of Owner or its function as religious institution and upon written notice from Owner, Facility User shall refrain from or discontinue such advertising.
5. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted, or affixed by any Facility User on any part of the outside of the Facility without the prior written consent of Owner and without all appropriate permits and certificates. In the event of a violation of the foregoing by Facility User, Owner may remove the same without any liability and may charge the expense incurred for such removal to Facility User or Facility Users violating this rule. Facility User shall pay any and all fees, charges, fines, or penalties imposed with respect to Facility User’s signs.
6. Facility User or any agents of Facility User, shall not mark, paint, drill into, or in any way deface any part of the Facility. No boring, cutting, or stringing of wires shall be permitted, except with the prior written consent of Owner.
7. Facility User shall not place a load on any floor of the Facility exceeding the floor load per square foot area that it was designed to carry, and which is allowed by law. Owner reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Facility User at Facility User’s expense in setting sufficient in Owner’s judgment to absorb and prevent vibration, noise, and annoyance.
8. Facility User shall not bring or permit to be brought or kept in or on the Facility, any inflammable, combustible, explosive or hazardous fluid, material, chemical or substance (including, but not limited to: foul or noxious gas), or cause or permit any odors of cooking or other processes, or permit any vibration, noise, light, or other effect to emanate from the Facility, or from any machine or other installation therein, or otherwise suffer, allow or permit the same which would constitute a nuisance or otherwise interfere with the safety, comfort and convenience of any others lawfully in or upon the Facility. No loud-speakers, televisions, phonographs, radios, tape players or other devices shall be used in a manner so as to be heard outside of the Facility. Facility User shall not cause in, at or around, or permit to emanate from, the Facility excessive noise. Facility User shall not permit or suffer the Facility to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the Facility by reason of noise, odors and/or vibrations or interfere in any way with other Facility Users or those having business therein.
9. If applicable, Facility User shall keep the Facility at a temperature sufficient to prevent freezing of water in pipes and fixtures during all hours whether or not Facility User is open for business, if any temperature control unit is within Facility. The plumbing facilities shall not be used for any other purpose than that for which they were constructed; no foreign substance of any kind shall be thrown therein, and the reasonable expenses of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Facility User.

*Prior results referred to in these materials do not guarantee or suggest a similar outcome in other matters.*

1. Note to Draft (”NTD”): This is a SAMPLE facility use agreement. Highlights are meant to draw your attention to an item which will need to be tailor while those highlight and bracketed items should be edited to insert information for the specific situation. [↑](#footnote-ref-1)
2. NTD: In this sample, Owner (as referred to in the accompanying guide, A Guide to Facility Use Agreements), or fee simple owner of the property, is assumed to be a New York religious corporation, and specifically an incorporated church. Fee simple ownership could be held in other entities such as not-for-corporations or a limited liability company. Prior results referred to in these materials do not guarantee or suggest a similar outcome in other matters. [↑](#footnote-ref-2)
3. NTD: Floor plans can be very helpful to attach for clarity, if available. [↑](#footnote-ref-3)
4. NTD: In the event, Facility User has regular invitees like members or congregation specifically include that category of persons. [↑](#footnote-ref-4)
5. NTD: Insurance section should be reviewed with Owner’s insurance broker/carrier or risk manager. Owner’s insurance carrier should be notified of all intended uses a religious corporation may allow to take place on their property. If the use of the property change, the insurance broker/carrier should be notified of any change of use. [↑](#footnote-ref-5)