

AVENUE HOUSE ESTATE TRUST

FOR STEPHENS HOUSE & GARDENS

Terms and conditions for personal trainer and group fitness registration and use of the gardens at Avenue House (Stephens House & Gardens)

1) Interpretation

In these terms and conditions: -

“Application” means the application form submitted by the Licensee as varied by any amendment agreed by the Licensee and the Authority or any direction issued by the Authority “Approval” and “Approved” means the written acceptance by the Authority.

“Authority” means Avenue House Estate Trust and includes any person nominated to act as the Authority’s Representative such as the General Manager.

“Authority’s Property” means the following trees, shrubs, railings, fences, lampposts, tables, benches, signs and signposts footpaths and all other such items located within the Park.

“Condition” means a condition within these Terms and Conditions

“Licensee” means the individual or group named in the Application

“Licence” means the Approved Application and these terms and conditions read together

“Licence Period” means the period running from the 1st January to the 31st December inclusive in any year – Unless otherwise specified

“Gardens” means the Property of Avenue House Estate Trust commonly referred to as Stephens House & Gardens

“Trainer” means individuals employed or paid by the Licensee to carry out the training specified in the Application The interpretation and construction of the Licence shall be subject to the following provisions:

- A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
- The headings to Conditions are for ease of reference only and shall not affect the interpretation or construction of the Conditions;
- References to Conditions are references to Conditions in the section of the Terms and Conditions in which they appear, unless otherwise stated.
- Where the context allows, the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa.
- Any notice to be served on the Licensee shall be sent by letter or email to the contact details set out in the Application until the Authority receives written notification of different contact details

2) Registration

2.1 The Licensee and any Trainers must be Approved by the Authority in order to carry out training sessions in the park.

Patron: Henry Edmunds President: Michael Gerson

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Company registered in England & Wales, no. 4099007. Charity commission no. 1093908

- 2.2 In order to be Approved, the Licensee must have:
- 2.2.1 Made an application.
- 2.2.2 Pay the licence fee and have:
- Current REPS level 3 fitness qualifications with evidence of this to be presented with the application.
 - Current public liability insurance a minimum of £2million, but a preferred £5m, for a minimum of 3 months validity at the point of application but to be insured through the Licence Period it is the Licensee's responsibility to ensure that they have valid Insurance at all times and that this covers any Trainer.
 - Current Risk assessment to be submitted signed & dated.
 - Provision of evidence relating to their First Aid provision and a process for accident reporting.
- 2.3 Failure to comply with 2.2 shall entitle the Authority to terminate this Licence in accordance with condition 8.
- 2.4 The Authority shall be under no obligation to Approve an Application.
- 2.5 The Authority reserves the right, when approving an Application, or at any time during the Licence Period by giving written notice to the Licensee, to limit the Licensee's access to the park.
- 2.6 Upon Approval of the Application the Authority will provide the Licensee with an identification card which the Licensee and or Trainer must carry at all times whilst carrying out training sessions in the park and produce upon request by any officer or staff of the Authority. It is the Licensee's responsibility to ensure that its Trainers carry the identification issued at all times whilst carrying out training sessions. The Authority will charge a replacement fee of £20 (Inc VAT) for each subsequent replacement card. At the end of the Licence the Licensee must return all identification cards to the Authority.
- 2.7 Following Approval of the Application the Licensee may carry out training sessions in the park, during the hours which the park is open to members of the public or as specified in any direction issued by the Authority.
- 2.8 The Licensee acknowledges that:
- 2.8.1 This Licence does not guarantee that the park will be open or that there will be space in the park for the Licensee or Trainer to carry out training sessions.
- 2.8.2 This Licence does not grant a Trainer priority over any other lawful user of the park and that any pitch bookings, events or booked group activities will take priority over training sessions and the Licensee or Trainer is expected to relocate if a conflict of interest occurs.

3) Licence fee

- 3.1 The Licence fee payable by the Licensee shall be:
- 3.1.1 In accordance with the Authority's website. If a Licensee wishes to conduct group and individual training sessions they must apply for both and pay the relevant charges for each.
- 3.1.2 If an Application is approved for activities involving 'camps' (A focused number of back-to-back sessions with different participants in each) at different times during the Licence Period then there may be additional charges and or restrictions placed on the Licensee by the Authority.
- 3.2 Where the Application is approved after the 1st January the Licence fee shall be reduced on a pro-rata basis. The Licensee should contact the individual Park concerned to determine the amount of licence fee payable.

4) Duration

4.1 Subject to condition 8, this Licence shall continue until the end of the Licence Period, upon expiry the Licensee may re- apply for to be approved for a further year but nothing in this Licence shall imply any obligation on the Authority to approve a further application.

5) Licensee obligations

5.1 The Licensee shall, and shall ensure that its Trainer will, at all times exercise the rights and duties under this Licence in a proper and responsible way, having regard to the safety of users of the gardens the Authority's staff and other third parties.

5.2 Any equipment used must be hand held only; any equipment used or activities undertaken must not be detrimental to the park, the Authority's Property or any wildlife.

5.3 The Licensee shall ensure that the Authority's Property, with the exception of designated fitness equipment, is not used for the purpose of fitness training.

5.4 The Licensee must not, and if appropriate shall ensure that it's Trainer do not, leave any equipment or rubbish in the park following a training session and shall ensure the garden is left in the same condition that it is found. The Authority reserves the right to charge the Licensee the cost of reinstating the park to its original condition where substantial damage is caused as a result of the training sessions held by the Licensee or its Trainer.

5.5 The Licensee and its Trainer must not cause an annoyance or nuisance or interfere with the reasonable enjoyment of other persons using the park.

5.6 The Licensee or its Trainer must adhere to and comply with the Authority's Code of Conduct at all times whilst conducting training sessions within the gardens. A map depicting the formal garden areas of the park and other unsuitable locations for training is available and the Licensee must avoid training in these areas and other smaller sensitive areas of the park such as; waterside areas, house terrace, long grass, conservation areas etc.

5.7 The Licensee shall comply with Avenue House Estate Trust Regulations.

5.8 This Licence does not allow or permit vehicle access into the gardens provided that this condition does not prevent the Licensee or its Trainer from parking in the car park subject to availability.

5.9 The Licensee shall not display, produce or distribute any sign or advertisement whilst within the park except to clients undertaking training. The restriction of advertising applies to all boards, hoardings, flags, posters etc. displaying any organisation, company or brand name of any goods, including those of the Licensee. The Licensee and its Trainer are permitted to wear branded clothing as part of a uniform if they so wish.

5.10 The Licensee and or its Trainer must not play any music whilst within the gardens [Any music played within the gardens must not be at such a level as to cause a nuisance to other users of the gardens or properties neighbouring the gardens and the Licensee must have the appropriate Performing Rights Society licence to play music]

5.11 The Licensee or his Trainer must not collect monies/fees from his clients whilst in the gardens.

5.12 The Licensee will not be permitted to distribute business cards whilst in the gardens.

5.13 The Licensee must not operate outside of any agreed number of weekly sessions and / or the agreed group capacity size.

5.14 Each party shall notify the other of any health and safety hazards which may arise in connection with the performance of this Licence as soon as they become aware of them

5.15 While on the park, the Licensee shall comply with any health and safety measures implemented by the Authority in respect of users of the park

5.16 The Licensee shall notify the Authority immediately in the event of any incident occurring where that incident causes any personal injury or damage to property and if requested by the Authority shall provide a copy of the incident investigation report if appropriate

6) Independent Operator

6.1 Nothing in this agreement shall be construed as creating a partnership, contract of employment or relationship of principal and agent between the Authority and the Licensee.

7) Indemnity & Insurance

7.1 The Licensee shall throughout the Licence Period maintain public liability insurance of not less than two million pounds (£2,000,000) however a five million (£5,000,000) level is considerably preferred. Copies of insurance documents must be submitted with the Application and a copy of the current policy must be available for inspection by the Authority at any time during the Licence Period upon request.

7.2 The Licensee shall indemnify the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any death or personal injury, loss of or damage to property, which is caused directly or indirectly by any act or omission of the Licensee PROVIDED ALWAYS that the Authority shall be at liberty to settle as it may think fit after consultation with the Licensee any such actions claims or demands by payment of such sum or sums as it in his discretion may consider reasonable and it may in his discretion after giving notice in writing to the Licensee cause any such damage to be made good and the expenses incurred by the Authority in doing or in making any such payment shall be repaid by the Licensee to the Authority on demand PROVIDED NEVERTHELESS that the Licensee shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case and in particular (where the payment is legally enforceable) to the damages which might be recoverable at common law.

7.3 Subject to clause 7.4, the Authority is not liable for:

- (a) the death of, or injury to the Licensee, its Trainers, clients or invitees to the park; or
- (b) damage to any property of the Licensee or that of the Trainers, clients or other invitees to the park; or
- (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Trainer, clients or other invitees to the park in the exercise or purported exercise of the rights granted by this Licence

7.4 Nothing in clause 7.3 will limit or exclude the Authority's liability for:

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

8) Termination of Agreement

8.1 The Authority may revoke this Licence with immediate effect where the Licensee and/or its Trainer:

8.1.1 Is in breach of its obligations under this Licence and, where the breach is capable of remedy, fails to remedy such breach to the satisfaction of the Authority within 7 calendar days of receipt of written notice to remedy the breach.

8.1.2 Acts in any way that is likely to bring the Authority into disrepute or damage its reputation or interests.

8.2 The Authority may terminate the Licence giving not less than one month's written notice.

8.3 Where the Authority terminates this Licence under condition 8.1 the Licensee shall not be entitled to receive any refund of the Licence fee or any compensation for any outlay made by the Licensee in connection with this Licence.

8.4 Where the Authority terminates this Licence under condition 8.2, the Authority shall reimburse the Licensee on a pro-rata basis for the remaining duration of the Licence Period but without paying any compensation for any outlay made by the Licensee in connection with this Licence.

8.5 The Licensee must give not less than one month's written notice to terminate this Licence. No refund for termination of the licence will be given in this instance and any monies outstanding by the Licensee to the Authority will be required to be paid in full.

8.6 For the avoidance of doubt, following termination of this Licence by either party, the Licensee and/or its Trainer shall no longer be licenced and therefore not permitted to run training sessions within the park.

9) General

9.1 Nothing in this Licence shall render or be deemed to render the Licensee or any Trainer an employee or agent of the Authority.

9.2 This Licence contains the entire understanding and agreement between the parties and supersedes all prior representations, documents, negotiations or understandings. The Licensee acknowledges that it has not entered into this Licence in reliance upon any representation by the Authority or anyone acting on its behalf.

9.3 Pursuant to the Freedom of Information Act 2000 the Authority is subject to certain legal obligations in relation to public disclosure of information. The Licensee shall co-operate with and assist the authority with any requests for disclosure which the Authority receives under the Freedom of Information Act 2000 which relate to this Licence. The Licensee understands and agrees that the Authority may be required to provide information relating to this Licence or the Licensee to a third party in order to comply with its obligations under these provisions

9.4 Nothing in this Licence shall fetter the Authority in the exercise or discharge of its functions, powers and duties (Including, without limitation, the power to close all or part of the park either on a permanent or temporary basis or to temporarily use all or part of the park for an event).

9.5 The Authority may, at its discretion, assign or otherwise dispose of any of its rights, obligations and liabilities under this Licence without the consent of the Licensee provided that such assignment or disposal shall not increase the burden of the Licensee's obligations under the Licence.

10) Disputes

10.1 In the event that any dispute arises between parties in connection with this Licence, the parties shall, in the first instance, use their reasonable endeavours to resolve it amicably themselves.

10.2 Disputes remaining unresolved shall, if parties agree, be referred to non-binding mediation.

10.3 In the event that the parties do not agree to non-binding mediation or if the dispute remains unresolved, the dispute shall be referred to the exclusive jurisdiction of the Courts of England pursuant to condition 11 below.

11) Law and Jurisdiction

11.1 This Licence shall be governed by and construed in accordance with English Law and the Authority and Licensee hereby submit to the exclusive jurisdiction of the English courts.

12) Agreement and Declaration

12.1 That this Licence does not nor is intended to confer any legal or other tenancy estate or interest in respect of the park and that the Authority is not empowered to do so

12.2 The benefit of this Licence is personal to the Licensee and is not capable of being claimed by any other person body of persons firm or corporation whatsoever and shall not be assignable in whole or in part by the Licensee to any such person body or persons firm or corporation and for the purposes hereof the parties agree that the Contract (Rights of Third Parties) Act 1999 shall not apply

12.3 The licensee will submit any proposals for marketing and promotion of its services in the parks for approval by The Trust.