

STATE OF NORTH CAROLINA

WAKE COUNTY

Rev. 4/12

**USE AGREEMENT FOR THOMPSON AND STEWART THEATERS
NORTH CAROLINA STATE UNIVERSITY
RALEIGH, NORTH CAROLINA**

THIS FACILITIES USE AGREEMENT (“Agreement”), made and entered into as of the date of the last notary signature below by and between North Carolina State University, c/o University Theatre, Campus Box 7306, Raleigh, NC 27695-7306 (hereinafter referred to as “NC STATE”), party of the first part, and _____ (“USER”), party of the second part.

WITNESSETH:

1. For and in consideration of the fees and charges hereinafter provided, and the mutual agreements contained herein, and subject to the terms and the conditions hereinafter stated, NC STATE agrees to allow USER to use the locations described below located on the campus of North Carolina State University, Raleigh, North Carolina (the “Premises”).

Premises: _____

_____.

2. The term (“Term”) of the Agreement is the following day or days and the period during each day as shown: _____

_____.

3. The USER shall have the right to occupy and use said Premises for the following purposes and no other: _____ (the “Event”).

4. The USER agrees to pay NC STATE \$_____ for use of said space.

The user fee includes existing electric lights, heat and water as may be needed for presentation of the attraction, but only in places and amounts as now installed in the Premises.

USER will have no access to shops or rehearsal spaces or craft center other than listed in this contract.

NC STATE requires an advance payment of 50% the fee as a deposit to secure the event. This is a non-refundable deposit. The deposit, in the amount of \$_____, is due with the return of the executed contract. The balance of the actual expenses is due 30 days following the event.

Labor, technical, administrative and additional expenses specific to the scheduled event and listed as follows:

5. TECHNICAL REQUIREMENTS:

- a. NC STATE cannot guarantee exclusive use of all spaces.
- b. USER shall provide all technical requirements to NC STATE immediately upon receipt of this contract. These requirements are an integral part of this contract and the contract shall not be a complete and legal document until such requirements are specified and agreed to by NC STATE in writing. Any changes made by NC STATE must be approved and initialed by USER.
- c. USER agrees to limit lighting and sound equipment to that owned by NC STATE, as set forth in the University Theatre technical packet. USER shall send light plot and sound requirements and specific crew calls to NC STATE no later than four (4) weeks prior to the performance. If USER requires additional equipment, equipment must be approved by NC STATE and is the financial responsibility of the USER.
- d. USER agrees to allow no less than a one (1)-hour for lunch breaks and no less than one (1)-hour for dinner breaks for technician crews when scheduling crew calls. All crew calls shall be scheduled with NC STATE'S Technical Director.
- e. NC STATE reserves the right to take exception to any technical requirements which it considers unreasonable. USER shall reimburse NC STATE for any additional costs incurred as a result of changes required by USER from the technical requirements previously agreed to by NC STATE.
- f. USER agrees that only those technicians employed by NC STATE shall operate theatre-owned stage lighting, sound or rigging equipment.
- g. USER has reviewed NC STATE's technical information packet and understands that within Stewart Theatre the stage thrust area extends 28 feet in front of proscenium. If USER plays upstage of proscenium, 120 seats are lost due to sight line problems. (See specifications in the technical packet). USER may move downstage onto thrust if set design and staging permit.

6. All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways, and all ways of access to public utilities of the Premises shall be kept unobstructed by the USER and shall not be used for any purpose other than ingress or egress to and from the Premises by the USER. Obstructions in a seating row, such as, but not limited to: camera and video tripods, sound mixing or recording equipment, removes that row from seating availability. There is no standing room. Fire code capacity is the seating capacity.

7. Concessions, receptions or decorations within theatre properties shall be approved by NC STATE in writing no fewer than 60 days prior to the start of the Agreement. NC STATE prohibits concessions within theatre spaces without prior written approval of NC STATE. No food or drink is to be brought into the theatre. An exception may be made, in the sole discretion

of the Production Facilities Manager, for events and productions that require food and drink on stage.

8. NC STATE shall not be responsible for the payment of any taxes arising out of or connected with the use of the Premises by the USER. The USER shall be responsible and required to pay to NC STATE an amount sufficient to discharge all taxes which may arise from or in connection with the USER'S use of the premise upon demand.

9. USER shall use the TICKET CENTRAL office at NC State to handle ticket sales and/or ticket printing. Tickets shall not be sold until USER has met with Ticket Central to plan ticket printing and/or sales. USER shall meet with Ticket Central no fewer than 4 weeks prior to the scheduled event. Additionally, at the discretion of NC STATE for crowd control, tickets may be required for free events that may approach fire code capacity.

10. NC STATE assumes no responsibility whatsoever, for any property placed in said Premises, and said NC STATE is hereby and expressly released and discharged from any and all liabilities for any loss, injury or damages to person or property that may be sustained by reason of the occupancy and use of said Premises under this Agreement. All watchmen or other protective service desired by the USER must be arranged for by special agreement with NC STATE and the USER is responsible for all costs connected therewith.

11. USER shall remove any property associated with the event at the conclusion of the event. Any property left in the Premises by the USER shall, after a period of ten days from the last day of tenancy hereunder, be deemed abandoned and becomes property of NC STATE to be disposed of or utilized at NC STATE'S discretion.

12. It is understood and agreed that the NC STATE hereby reserves the right to control and manage NC STATE Theatre properties and to enforce all necessary and proper rules for the management and operation of the same. The management of NC STATE Theatre properties and employees shall have free access at all times to all space occupied by the USER.

13. The USER shall be liable for all damage to buildings and equipment incident to the USER'S use of said Premises, normal wear and tear excepted. USER and NC STATE will conduct a walk-through prior to and immediately following the run to assess condition of Premises. No painting, atmospheric effects or set construction is permitted in University Theatre properties. Any decorations shall be approved by NC STATE, in writing, prior to the start of the event.

14. INDEMNIFICATION:

- a. NC STATE shall have no responsibility for the safety and/or security of any property belonging to USER or to those persons participating in the use of the Premises by USER. USER expressly releases and discharges NC STATE for any and all liabilities for any loss, injury, or damages to any such property.

- b. NC STATE shall have no responsibility for the safety and/or security of any person participating in the use of the Premises by USER except as may arise from the negligence of NC STATE. USER expressly agrees to indemnify and hold harmless NC STATE, its officers, employees, students and agents, from all cost, loss and expense arising out of any liability or claim of liability for injury or damage to persons resulting directly or indirectly from their participation in USER'S use of the Premises, regardless of whether such use was authorized or not, and regardless of whether the liability or claim of liability arises out of the act or omission or USER.
- c. At all times during the use of the Premises, USER is required to have a policy of comprehensive liability insurance, including public liability, bodily injury, and property damage, written by a company licensed to do business in the state of North Carolina, covering the use contemplated by this Agreement with combined single limits of no less than \$1,000,000 per occurrence and \$3,000,000 aggregate. The USER shall name NC STATE, including its trustees, officers, agents and employees as Additional Insureds for the said purpose and use of this Agreement. USER agrees that that the insurance shall be primary coverage and will contain no terms allowing the insurer to be subrogated to the rights of any injured or damaged person or entity insofar as said person or entity may have claims against NC STATE. The USER shall also maintain Worker's Compensation insurance to meet the requirements of the Workers Compensation laws of North Carolina where applicable. Certificates of Insurance evidencing such insurance coverage shall be provided to NC STATE.

15. The USER hereby expressly waives any and all claims for compensation for any and all losses or damage sustained by reason of any defect, deficiency, failure or impairment of the water supply system, drainage system or electrical system leading to or on the Premises. In the event the Premises or any part thereof is damaged by fire or if for any other reason, including strikes, failures of utilities, or any act of God, which, in the judgment of the Management of University Theatre renders the fulfillment of this Agreement by NC STATE impossible, the USER hereby expressly releases, discharges, and will save harmless NC STATE and its agents for any and all demands, claims, actions, and causes of actions arising out of any of the causes aforesaid.

16. The USER certifies and attests that he has a valid, properly executed, and compatible contract with the performers whose services form the basis of USER'S desire to use the facility. NC STATE reserves the right to review any contract for compliance with technical requests.

17. The USER shall not assign this Agreement without the written consent of NC STATE.

18. The USER shall use and occupy said Premises in a safe and careful manner and shall comply with all applicable and municipal, state and federal laws, and rules and regulations as prescribed by the fire and police departments and other governmental authorities, as may be in force and effect during the tenancy period.

19. USER may not use NC STATE's names or marks, or imply NC STATE endorsement or support, without express permission from an authorized NC STATE official.

20. All fees, charges and other sums herein provided to be paid whether due or not shall be and constitute a first lien on all property of the USER in or upon the demised Premises at the time of any default of the USER hereunder, and the USER hereby mortgages or pledges said property of USER for the purpose of securing the payment of all fees, charges and other sums herein provided to be paid. In the event of such default NC STATE may take possession of any and all of said property including box office receipts and hold the same until such default has been remedied, and if not remedied or satisfied within ten days of such default NC STATE may advertise said property or properties for sale and upon such sale shall apply the proceeds therefrom to the satisfaction of any amounts due NC STATE and shall pay to the USER any sums remaining therefrom, if there be any. This remedy is not exclusive and NC STATE may, at its discretion, pursue any appropriate remedy to recover all or any deficits remaining of the above mentioned fees, charges, and other sums.

21. All matters not authorized expressly by the terms of this contract shall be reserved to the discretion of NC STATE.

22. This Agreement and all and each of its terms and conditions shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, personal representatives, successors and assigns.

23. In the event any material, composition or name to be used or performed under this contract has been duly copyrighted, the USER shall be responsible for securing, before using or employing such material, composition or name, the assent in writing, of the owner or licensee of such copyright. The USER agrees to be fully responsible for any fees, royalties and licensees in connection therewith. Furthermore, the USER shall indemnify and save NC STATE harmless from any and all claims, expenses or suits for copyright infringements which may arise from the performance of the contract.

24. USER agrees that any decision it makes for cancellation or postponement of the event or activities for which the facilities are used, unless permitted by NC STATE in writing, may be considered by the NC STATE as breach of the original Agreement and all costs, advances, fees and charges appertaining to such events or activities shall be due upon demand by the NC STATE from the USER. NC STATE may terminate this Agreement for cause at any time by 30 days notice in writing from NC STATE to USER.

25. If the use of the Premises herein is open to any non-members, then no one shall be denied the equal access to privileges and enjoyment of having free and open access to the said facility on the basis of race, color, or national origin.

26. The State or NC STATE auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with North Carolina General Statute §147-64.7 and Session Law 2010-194, Section 21.

27. If NC STATE provides the USER with personal identifiers as listed in N.C.G.S. §132-1.10 and in N.C.G.S. §14-113.20(b) or any other legally confidential information, USER hereby certifies that collection of this information from NC STATE is necessary for the performance of USER's duties and responsibilities on behalf of NC STATE under this Contract. USER further certifies that it shall maintain the confidential and exempt status of any social security number information, as required by N.C.G.S. §132-1.10(c)(1), and that it shall not re-disclose personally identifiable information as directed by State and Federal laws. Failure to abide by legally applicable security measures and disclosure restrictions may result in the interruption, suspension and/or termination of the relationship with USER for a period of at least five (5) years from date of violation. If USER experiences a security breach, as defined in N.C.G.S. §75.61(14), relating to this information, in addition to the USER's responsibilities under the NC Identity Theft Protection Act, USER shall immediately notify NC STATE with the information listed in N.C.G.S. §75-65(d)(1-4) and shall fully cooperate with NC STATE. USER shall indemnify NC STATE for any breach of confidentiality or failure of its responsibilities to protect confidential information. Specifically, these costs may include, but are not limited to, the cost of notification of affected persons as a result of its unauthorized release of NC STATE data provided to USER pursuant to the Contract.

If NC STATE provides the USER with "personally identifiable information" from a student's education record as defined by the Family Educational Rights and Privacy Act ("FERPA") and its implementing regulation 34 CFR §99.3, USER hereby certifies that collection of this information from NC STATE is necessary for the performance of USER's duties and responsibilities on behalf of NC STATE under this Contract. In this instance, NC STATE considers USER a school official with a legitimate educational interest under FERPA. USER further certifies that it shall maintain the confidential status of education records in their custody, and that it shall not re-disclose personally identifiable information as directed by FERPA. Failure to abide by legally applicable security measures and disclosure restrictions may result in the interruption, suspension and/or termination of the relationship with USER for a period of at least five (5) years from date of violation. If USER experiences a security breach relating to this information or if USER re-discloses the information, USER shall immediately notify NC STATE. USER shall indemnify NC STATE for any breach of confidentiality or failure of its responsibilities to protect the personally identifiable information. Specifically, these costs may include, but are not limited to, the cost of notification of affected persons as a result of its unauthorized release of NC STATE data provided to USER pursuant to the Contract.

28. All amounts due NC STATE under this contract are due and payable within 30 days of the conclusion of the scheduled event.

29. If NC STATE provides any data to USER pursuant to this Agreement then USER shall preserve and maintain the data for a period of three (3) years or as indicated in a litigation hold letter issued by NC STATE, to fulfill NC STATE's obligations under the North Carolina Public Records Act and under the Federal and North Carolina Rules of Civil Procedure. USER shall immediately preserve and maintain data (and any generated email correspondence) upon NC STATE's request or upon notice of litigation or audit and further USER shall make available all data that NC STATE may specify within the time limits required.

30. This Agreement shall be governed by and construed under the laws of the State of North Carolina, which shall also be the forum for any lawsuits arising from or incident to this Agreement. USER consents to the exclusive personal jurisdiction and venue of the courts of North Carolina.

32. In order to provide a safe and secure environment for the campus community and visitors, when there is a threat of disruption of the EVENT, for protection of university property when there is a threat of damage, and to maintain public order for large events, security will be provided for the EVENT as necessary based on a security assessment by University Police. If University Police determine that special event security is required for the EVENT, LICENSEE/USER shall be responsible for paying all costs for the security personnel and for other security measures including, but not limited to, barricades, metal detectors and parking control measures, as specified by the University Police Chief or designee.

31. ADDITIONAL TERMS:

IN WITNESS WHEREOF, the parties have duly executed this instrument the date of the last signature below.

NORTH CAROLINA STATE UNIVERSITY USER

Recommended by:

Name: _____
Project Coordinator
Date: _____

Name: _____
Title: _____
Date: _____

Authorized by:

Name: _____
Title: _____
Date: _____