

**PITTSBURG STATE UNIVERSITY
BICKNELL FAMILY CENTER FOR THE ARTS
FACILITY USE CONTRACT**

This Facility Use Contract is made and entered into by and between PITTSBURG STATE UNIVERSITY, c/o Bicknell Family Center for the Arts, 1701 S. Broadway, Pittsburg, Kansas 66762 (PSU), the Party of the first part and _____ (USER), the Party of the second part for the use of the Pittsburg State University Bicknell Family Center for the Arts (Facility).

1. User Information

Name: _____

Contact Person: _____

Status: For-Profit Non-profit

2. Full Event Disclosure

- a. 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, PSU agrees to allow USER to use the Facility Premises described below located in the Bicknell Family Center for the Arts on Pittsburg State University campus in Pittsburg, Kansas.
- b. USER shall fully disclose the intended use of the Facility when they request a reservation.
- c. PSU reserves the right to cancel the reservation or adjust rental fees to align to the actual use of the Facility if the content of the Event was not fully disclosed during the booking process.

3. Reservation

- a. The term for use of the Facility Premises shall be the following date(s) and the period of time during each date:

Date(s) and Time(s): _____

- b. The USER shall have the right to occupy and use said Facility Premises for the following purpose and no other:

Event Title: _____

Event Type: _____

- c. In accordance with the Rental Rates and Staff Rates, as published in the Bicknell Family Center for the Arts Pittsburg State University Scheduling Procedures, the USER shall pay PSU _____ for the use of said space and estimated staffing.

Facility Area(s) of Use (CHOOSE FROM LIST):

- Linda & Lee Scott Performance Hall (1031+ Seats) + Green Room and Dressing Rooms
- Dotty and Bill Miller Theater (280 seats) + Green Room and Dressing Rooms
- Paul Bergant Family Lobby (Sales, Concessions [SODEXO], Gathering Space)
- University Gallery Dean Family VIP Room Hamilton Green Room
- William T. Kemper Foundation Office Gordon & Bev. Elliott Green Room
- Performance Hall Dressing Rooms Miller Dressing Rooms

4. Billing and Payments

- a. USER is required to pay a 50% deposit to PSU within ten (10) calendar days of entering into this Agreement unless the Facility Director approves other arrangements.
- b. Additional services or fees incurred by the User on the day of the Event will be billed out following the Event on the Final Invoice.
- c. USER is to pay the Final Invoice within 15 days of the billing date, or late fees will be applied.
- d. Alternative payment procedures may be approved by the Director when applicable.

Describe alternative payment procedures:

5. Merchandise

- a. The User must request permission to use the lobby to sell performance related merchandise at least two (2) weeks in advance of Event.
- b. User is responsible for the collection and payment of all applicable sales tax.
- c. 15% of net proceeds (gross proceeds less sales tax) will be paid at the conclusion of the Event unless otherwise approved by the Director.
 - i. The User may pay cash or by check.
 - ii. Checks should be made payable to "Pittsburg State University, Bicknell Family Center for the Arts."

6. Cancellations and Refunds

- a. USER is entitled to a full refund of the reservation deposit if the USER provides PSU with written notice of cancellation forty-five (45) days or more prior to the date reserved.
- b. If the USER provides PSU with written notice of cancellation twenty (20) to forty-four (44) days prior to the date reserved, USER is entitled to a refund of half of the reservation deposit unless tickets were on sale.
 - i. If tickets were on sale:
 - 1. Any cost incurred by the box office for refunding tickets will be deducted from the deposit before the balance of the deposit is refunded.

2. The USER will not receive a refund until completion of the refund process to all ticket purchasers to allow for proper refund expense calculations.
- c. If written notice of cancellation is received less than twenty (20) days prior to the date reserved, USER shall forfeit the reservation deposit.

7. Force Majeure Clause

- a. Force Majeure shall mean an Act of God; earthquake, severe inclement weather, terrorist acts, riots, epidemics, utility failure, strikes, unavoidable interruption of transportation service, any act or order of public authority, including but not limited to University Officials, or any other legitimate cause beyond the control of the Bicknell Family Center for the Arts' Staff.
- b. In the event of a Force Majeure, PSU is hereby relieved of any liability whatsoever to the User should any performance be missed, canceled, or should BFCFA be unable to meet its obligations under this Contract. "User Force Majeure" shall include the same elements as BFCFA Force Majeure beyond the control of User and shall, in addition, mean the serious illness or death of either User or a member of the User immediate family, or User pregnancy.
- c. In the case of a Force Majeure event, each Party shall be relieved of its obligations hereunder with respect to performance(s) so prevented on account of such cause.
- d. In the event a performance does not occur because of a force majeure event, the Parties shall use their best efforts to reschedule the performance(s) at the earliest date(s) that is/are convenient for both Parties and under the terms of this Contract.
 - i. No provisions in the Contract can be misconstrued to provide for any payment for anything other than a successfully executed event.
 - ii. Any expenditure must be clearly described in the Contract and technical rider at the time of contract signing.
 - iii. No cash payments will be made for any reason. No changes can be made to the technical rider after contracts are signed that would raise costs for the BFCFA, unless those changes are mutually agreed upon, in writing, by the facility Director.
- e. 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, in, or from the Facility.
- f. In the event, the Facility 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 Administration of University Theater renders the fulfillment of the Contract by PSU impossible, the USER hereby expressly releases, discharges, and will save harmless PSU and its agents for any and all demands, claims, actions, and causes of actions arising out of any of the causes aforesaid.

8. Ticketing and the PSU Ticketing Office

- a. The PSU Ticketing Office provides ticketing for the Facility.
- b. USER will be responsible for contracting and payment for the ticketing services separately from those of the Facility.
 - i. The Client Services Coordinator can assist the User with the completion of the Ticketing Contract if needed.
- c. Ticketing Fees:

- i. Service fee per ticket issued
 - 1. The service fee is assessed on all tickets, including those given away at no charge.
 - ii. Ticket Office Staffing in the Facility fee
 - 1. Including staff in office and ticket takers at each entrance
 - iii. Payment to PSU Ticketing and the Facility will be withheld from ticketing funds before those funds are paid out to the USER; unless all fees owed to PSU have already been paid.
- d. Alternative ticketing procedures may be approved when applicable and must be approved by the Facility Director.
- e. USER agrees that ticketing for USER's Event will be as follows:
- Not Applicable
 - Provided by the PSU Ticketing Office
 - Alternative Ticketing Procedure

Describe alternative ticketing procedure here:

9. WI-FI

- a. PSU has an extensive internet network in the Center that requires a login to be set up in advance of the Event. Please contact a member of the BFCFA Staff a minimum of two business weeks prior to the Event to arrange for internet access.
- b. Instead of hardwiring connections, we reserve the right to substitute the use of our wireless system.

10. Catering Services

- a. PSU's food service provider (Sodexo) is the exclusive vendor of all beverages and food items served/consumed in the building.
- b. USER agrees to make arrangements for catering through Sodexo (620-235-4995) for all food or beverage served or consumed during the Event.
 - i. Per Sodexo, orders are required to serve a minimum of ten (10) people.
- c. No Group(s) may bring outside food or drink into the building without the consent of Sodexo or the Director of the Facility.
- d. The User agrees to abide by PSU's policies on the consumption of alcoholic beverages.
 - i. User(s) that wish to consume alcoholic beverages, must request such uses in writing AND receive special permission from PSU President.

11. Copyright Laws

- a. Copyright laws must be followed in the Center.
 - i. In the Event any material, composition, or name to be used or performed in the Center has been duly copyrighted, the User shall be responsible for securing, prior to use, or employing such material, composition, or name, the approval of the owner or licensee of such copyright. The User agrees to be fully responsible for any fees, royalties, and licenses in connection to it. Furthermore, the User shall indemnify and hold PSU harmless from any claims, expenses, or suits for copyright infringements, resulting from the performance as Contract.
- b. The USER agrees to be fully responsible for any fees, royalties, and licensees in connection therewith.
- c. The USER shall indemnify and save PSU harmless from any and all claims, expenses, or suits for copyright infringements, which may arise from the execution of this Contract.
- d. PSU reserves the right to edit the Event for length when producing the production for broadcast.
- e. The User has unrestricted permission to use the production and raw material provided to them.
- f. PSU makes no claim to ownership over any use of the material on the part of the User or their agents, excluding any PSU or BFCFA Logos overlaid on the video.

12. Audio, Visual, Lighting and Other Special Equipment

- a. Performance space rental includes performance Video Projection, Lighting, and Sound equipment.
- b. The operation of the equipment in the Facility is restricted to the professional staff approved by the Facility.

13. Rigging Professionals

- a. USER shall use only approved Rigging professionals for rigging work in the Facility.
- b. Rigging professionals will be arranged for by the Center's Staff and billed back to the User plus a 5% administration fee.
- c. PSU reserves the right to refuse the USER access to the Catwalks and Grid.

14. Sets, Decorations, Scenery

- a. The BFCFA Director or his designee must approve sets, Decorations, and Scenery in the BFCFA prior to installation. All Sets, Decorations, and Scenery must be fire retardant and safe.
- b. Removal of Sets, Decorations, Scenery, and Props
 - i. The User is responsible for the removal of all Sets, Decorations, Scenery, and Props immediately following the Event unless alternative arrangements are approved by the facility Director or his/her designee.
 - ii. Facility staff will remove any Sets, Decorations, Scenery, and Props they install.

- iii. Sets, Decorations, Scenery, and Props left behind after an event are considered abandoned property and will be disposed of according to the abandoned property policy. (Section 18. Responsibilities, Line g.)
- c. A per day/per item storage fee may be charged to the USER if the USER leaves items in the building after the end of their Event or has items delivered to the building more than twenty-four (24) hours before their Event.
- d. PSU shall have no responsibility for the safety and security of any property belonging to the USER or those persons participating in the use of the Facility by USER.
 - i. USER expressly releases and discharges PSU for any and all liabilities for any loss, injury, or damages to any such property.

15. Performance Support Areas

- a. The Miller Theater Green Room, two Theater Dressing Rooms, and hallways behind the theater will generally be reserved together with the Miller Theater unless these spaces are needed for another event.
- b. All portions of the sidewalks, entries, doors, passages, vestibules, hallways, corridors, stairways, passageways, and all ways of access to public utilities on 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.

16. Prohibited Uses and Exceptions

It is understood and agreed that the USER shall comply with the following Facility restrictions:

- a. Damage
 - i. USER shall be liable for all damage to Facility and equipment incident to the USER'S use of said Facility, normal wear and tear excepted.
 - ii. USER shall be held financially responsible for any damages resulting from their Event.
 - iii. Damage repairs will be billed back to the USER at cost plus a 5% service fee to cover administrative costs.
- b. Candles/ Open Flames/ Burning
 - i. No candles, open flame, or the burning of any substance are allowed.
 - ii. There are limited exceptions;
 - 1. The facility Director may approve candles in globes (and the lighters used to light them) as long as the top of the flame is at least one inch below the top of the globe.
 - 2. Welding is allowed in the scene shop and construction as long as strict safety conditions are observed.
 - 3. Lighters and matches can be used with approval and under the supervision of the Facility's Technical Coordinator or University Theatre staff within productions.

- c. Pyrotechnics
 - i. Pyrotechnics are strictly prohibited unless they are used with the approval and under the supervision of the Facility's Technical Director or Director.
- d. Confetti/Stage Snow
 - i. No confetti or Stage Snow is allowed in the building. The Confetti / Stage Snow can get into the floor air ducts and equipment. It is difficult to clean out once introduced.
 - ii. There are limited exceptions; the BFCFA Director may approve Confetti / Stage Snow if its use is critical to the success of the production.
- e. Fog Machines, Dry Ice, or Smoke Machines
 - i. No fog machines or dry ice or smoke machines are allowed without prior inspection and approval from the Technical Director or Facility Director.
- f. Gambling
 - i. Any gambling-related activity that is a violation of the law is prohibited within the Center, including any and all support areas.
- g. Hanging Items
 - i. Nothing is to be affixed to the drapes, vinyl wall covering, ceilings, wood surfaces, windows, columns, doors, or walls. All decorations must be fire retardant and safe.
 - ii. The Center's Director must approve, and the Center's staff must install any item to be hung in the Center, with the exception of theatrical items on stage hung by a professional stage crew approved by the Facility Director.
 - iii. All OSHA Rules and industry best practices must be followed for the use of ladders and lifts.
- h. Helium Balloons
 - i. Helium Balloons are not allowed in the building! When they get free (as they always do), they interfere with the operation of the Center's Fire Detection System and will fly above the reach of any lift we have on-site.
 - ii. If a Helium Balloon does get loose in the Center, the cost of lift rental to remove it will be billed back to the User plus a 5% administration fee and all staff hours needed to facilitate for the removal of the balloon. Lift rental for the Performance Hall can exceed \$5000 per day.
- i. Reckless Behavior
 - i. Reckless behavior is prohibited and is defined as (but not limited to) any behavior that could lead to injury, damage to the building, or disruption of activities in the Facility.
- j. Tobacco Products (Smoke-Free Campus)
 - i. The use of tobacco products, including smoking, vaping, and smokeless tobacco on the campus of PSU, is prohibited.
 - ii. Real lit cigarettes are not permitted in the Facility.
 - iii. For theatrical productions, electronic non-nicotine cigarettes can be used when necessary with permission of the facility Director and must follow the standard "best practice" protocol for the profession.

1. A notice in the production's program is required that states, "The cigarettes used in this production are electronic non-nicotine stage props and are not actually burning."

k. Controlled Substances

- i. The use of Controlled Substances on the campus of PSU is strictly prohibited and will constitute a contract breach.
- ii. No Drugs should be brought on-site; any drugs or drug paraphernalia will be reported to the local police authorities if seen without any warning. As an agency of the State of Kansas and public school, we have a zero-tolerance policy.

l. Weapons

- i. Weapons are prohibited on campus by University policy and, as such, are not allowed in the Bicknell Family Center for the Arts, except for those carried by Police or covered under the concealed carry law of Kansas. We discourage even the legal possession of weapons in the Center by performers and crew since it is difficult to secure them at all times properly.
- ii. Prop firearms are defined as weapons that are incapable of firing a projectile.
- iii. Edged weapons must be handled and stored according to industry "best practices" protocol.

- m. USER agrees not to bring onto the premises any material, substance, equipment, or object which is likely to endanger the life or cause bodily injury to any persons on the premises or which is expected to constitute a hazard to the property.

- i. The BFCFA shall have the right to refuse to allow such material, substance, equipment, or object to be brought onto the premises and further require its immediate removal if found on-premises.

17. Endorsements and PSU/BFCFA Logo(s)

- a. USER may not use PSU's names or marks, or imply PSU endorsement or support, without written permission from an authorized PSU official. For directional purposes only can PSU's name be used in this way: "Your Event Name, located at the Bicknell Family Center for the Arts on the campus of Pittsburg State University on the corner of Homer St. and Ford Ave" Do not imply that PSU is hosting or is a supporter of your event.

18. Responsibilities

- a. The BFCFA staff reserve the right to control and manage the Center and reserve the right to enforce all necessary and proper rules for the management and operation of the same.
- b. The administration of the BFCFA and its employees shall have full and free access to all spaces at all times occupied by the User.
- c. User shall use and occupy the Center safely, carefully, and shall comply with all applicable municipal, state, and federal laws, rules, and regulations as prescribed by the fire and police departments and other governmental authorities, as may be in force and effect during the term of use.
- d. Groups shall comply with all applicable PSU policies, rules, and regulations as may be in force and effect during the term of use, including, but not limited to, the provisions of this document.

- e. The group sponsoring an activity or Event is responsible and liable for the actions of their guest(s) or participants and their proper use of the Facility, furnishings, and equipment.
 - f. The BFCFA does not assume responsibility for damages to or loss of any materials or equipment brought to the Center by outside groups or left by groups. Abandoned/lost items that are found in the Center are held in our lost and found for a limited period but may be disposed of at any time without liability to the BFCFA.
 - g. PSU assumes no responsibility for the safety and security of any property belonging to User or those persons participating in the use of the Center. User expressly indemnifies, release, hold harmless and discharge PSU for any liabilities of loss, injury, or damages to any such property.
 - h. It is the responsibility of all groups using the Facility to maintain a safe working environment at all times. If groups are working in an unsafe manner, they will be compelled to stop work immediately until they can safely resume their work. No event or performance is more important than maintaining a safe working environment.
 - i. The BFCFA Director or his/her designee must approve all backstage security control or access limitations. If backstage passes are to be issued, they must be provided to all Facility Staff at the sole cost of the User or group.
 - j. PSU shall have no responsibility for the safety and security of any person participating in the use of the Center by request of the User except as may arise from the negligence of PSU
 - k. The User expressly waives any claims for compensation for any losses or damage sustained because of any defect, deficiency, failure, or impairment of the water supply system, drainage system, or electrical system leading to or in the Facility.
 - i. In the event, the Facility 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 the Center renders the fulfillment of the Agreement by PSU impossible, the User hereby expressly releases, discharges, and will save harmless PSU and its agents for any and all demands, claims, actions, and causes of actions arising out of any of the causes aforesaid.
 - l. Users will refrain from any roughhousing, fighting, protest, or civil disturbance during their time at the Facility or within the community.
 - m. All matters not authorized expressly by the terms of this document shall be reserved to the discretion of PSU
 - n. If User or their guest(s) abuse their usage of the facilities may be denied future use and can be charged for time and materials plus a markup as needed to correct those abuses, including but not limited to, time and expenses put into Public Relations and Box Office services to rectify abuse as deemed necessary by PSU
- 19.** The USER shall not assign this Contract without the written consent of PSU.
- 20.** This Contract and all and each of its terms and conditions, including the Contractual Provisions Attachments, shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, personal representatives, successors and assigns.
- 21.** This Contract shall be governed by and construed under the laws of the State of Kansas, which shall also be the forum for any lawsuits arising from or incident to this Contract. USER consents to the exclusive personal jurisdiction and venue of the courts of Kansas. All provisions of the State of Kansas

Department of Administration DA-146a (Rev. 06-12) Contractual Provisions Attachment will apply to this Contract as applicable.

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

PITTSBURG STATE UNIVERSITY:

USER: _____

Name: _____

Name: _____

Title: Director _____

Title: _____

Date: _____

Date: _____

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement.

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This Contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this Contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges-hereunder, state may terminate this Agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this Contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided state under the Contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the Agreement by State, title to any such equipment shall revert to contractor at the end of the state's current fiscal year. The termination of the Contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this Contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third Party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (KSA 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (KSA 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (KSA 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 USC 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at KSA 44-1031 and KSA 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of Contract and the Contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of Contract and the Contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such Contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This Contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this Contract shall find that the state or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (KSA 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this Contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this Contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this Contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this Contract, nor shall this Contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (KSA 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this Contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to KSA 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."