

# Katz Box

## Standard Terms and Conditions for Design Services

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### DESIGNER

Katz Box, LLC  
421 W State St  
Columbus, Ohio 43215

Date: Month day, Year

**1. Entire Agreement.** These Standard Terms and Conditions, together with the Professional Services Agreement or Engagement Letter and accompanying Exhibits, which are attached or incorporated herein by reference (collectively, the “Agreement”), constitute the entire and integrated agreement between Client and Designer, as both are identified above, concerning the matters covered by the Agreement and supersedes all prior oral or written negotiations, representations or agreements. Designer’s services are limited to the services described in the Agreement. The Agreement may only be modified in a writing executed by the parties hereto.

**2. Standard of Care.** The Designer shall perform its services consistent with the professional skill and care ordinarily provided by designers practicing in the same or similar locality under the same or similar circumstances. The Designer’s

### CLIENT

Client Name  
Street Address  
City, State, Zip

services shall be performed as expeditiously as is consistent with professional care and the orderly progress of the Project.

**3. Unforeseen, Latent or Hidden Conditions.** Unforeseen, latent or hidden conditions may not be readily ascertainable regardless of the extent of the investigation. Such conditions may impact the design and necessitate extensive revisions to the design. When Designer services are required to address these conditions, those services shall be deemed Additional Services.

**4. Hazardous Substances.** The Designer shall not be responsible for the identification, removal, testing and/or certification of removal relative to any hazardous substance including, but not limited to, PCBs, petroleum, mold infestation, hazardous waste, asbestos, lead, and any other hazardous substances designated as such under applicable laws.

**5. Non-Warranty Statement.** Nothing contained in this Agreement shall be construed to constitute a guarantee, warranty, or assurance either expressed or implied, that the Designer's services will yield or accomplish a specific outcome for this Project. Any verbal opinions made by the Designer are statements of its professional opinion only based on its professional judgment and information known to it. The Designer shall be entitled to rely on the accuracy and completeness of any information provided by the Client or by a third party on the Client's behalf.

**6. Non-Responsibility for Work or Services of Others.** The Designer shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Designer be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Designer shall be responsible for the Designer's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor, the Client's other consultants, or of any other persons or entities performing services for the Project or portions of the Work. The Designer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Contractor's Work. The Designer will coordinate its work with the work of the Client's consultants; however, the Designer shall not be responsible for checking the accuracy or completeness of work prepared by the Client's consultants.

**7. Client's Other Consultants.** If Client retains other licensed professional consultants to perform portions of the Project,

those consultants shall affix their seals on the appropriate documents prepared by them. The contracts between the Client and Client's consultants shall require the consultants to coordinate their drawings and other instruments of service with those of the Designer and to advise the Designer of any potential conflict. Review by the Designer of the consultants' drawings and other instruments of service is solely for consistency with the Designer's design concept for the Project. The Designer shall be entitled to rely upon the technical sufficiency and timely delivery of documents and services furnished by the Client's consultants, as well as on the computations performed by those consultants in connection with such documents and services. The Designer shall not be required to review or verify those computations or designs for compliance with applicable laws, statutes, ordinances, building codes, and rules and regulations, or certify completion or payment for the Work designed by the Client's consultants.

**9. Cost of the Work.** The Cost of the Work shall be the total cost or, to the extent that the Project is not completed, the estimated cost to the Client of all elements of the Project designed, selected, or specified by the Designer. The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Client and equipment designed, specified, selected or specially provided for by the Designer, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Project. The Cost of the Work does not include the compensation of the Designer and the Designer's consultants or any other costs that are the responsibility of the Client as provided in this Agreement. It is

recognized, however, that neither the Designer nor the Client has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Designer cannot and does not warrant or represent that bids or negotiated prices will not vary from the Client's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Designer.

**10. LIMITATION OF LIABILITY.** THE CLIENT UNDERSTANDS AND ACKNOWLEDGES THAT THE DESIGN AND CONSTRUCTION PROCESS FOR THIS PROJECT POSES CERTAIN RISKS TO BOTH THE DESIGNER AND THE CLIENT. THE CLIENT FURTHER UNDERSTANDS AND ACKNOWLEDGES THAT THE AMOUNT OF RISK THAT THE DESIGNER CAN ACCEPT IS TIED, IN PART, TO THE AMOUNT OF COMPENSATION RECEIVED FOR SERVICES RENDERED. THE DESIGNER'S FEE FOR THE SERVICES OFFERED IS BASED ON THE CLIENT'S AGREEMENT TO LIMIT THE DESIGNER'S LIABILITY AS DESCRIBED BELOW. THE CLIENT FURTHER ACKNOWLEDGES THAT WERE IT NOT FOR THIS PROMISE TO LIMIT THE DESIGNER'S LIABILITY, THE DESIGNER'S COMPENSATION WOULD NEED TO INCREASE TO ADDRESS THE RISKS POSED BY THIS PROJECT. THE CLIENT, THEREFORE, ACKNOWLEDGING ITS RIGHT TO DISCUSS THIS PROVISION WITH LEGAL COUNSEL EXPERIENCED IN THE DESIGN AND CONSTRUCTION PROCESS, AS WELL AS OTHER DESIGN PROFESSIONALS, VOLUNTARILY AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF THE DESIGNER AND DESIGNER'S CONSULTANTS AND EMPLOYEES TO THE CLIENT FOR ANY AND ALL INJURIES, CLAIMS, LIABILITIES, LOSSES, COSTS, EXPENSES OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE PROJECT OR THIS

AGREEMENT FROM ANY CAUSE OR CAUSES INCLUDING, BUT NOT LIMITED TO, THE NEGLIGENCE, ERRORS, OMISSIONS OF THE DESIGNER OR ITS CONSULTANTS AND EMPLOYEES OR THE DESIGNER'S BREACH OF CONTRACT, SHALL NOT EXCEED, AT THE TIME THAT THE DESIGNER AND/OR ITS CONSULTANTS AND EMPLOYEES ARE FOUND TO BE LIABLE, THE LESSER OF DESIGNER'S PROFESSIONAL LIABILITY INSURANCE PROCEEDS AVAILABLE TO SATISFY SUCH A CLAIM ARISING UNDER THIS AGREEMENT OR THE TOTAL FEES PAID TO THE DESIGNER UNDER THIS AGREEMENT.

**11. Indemnification.** The Client agrees to indemnify, defend and hold the Designer and its consultants and employees harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees and all legal expenses and fees incurred through appeal, and all interest thereon, accruing or resulting to any and all persons, firms, or any other legal entities, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of the Project, including the services performed by the other consultants of the Client, except to the extent the Designer is found to be liable for such damages or losses by a court or forum of competent jurisdiction.

**12. Additional Services.** The Designer may provide Additional Services beyond the Basic Services described in the Agreement upon the Client's written or verbal request or written confirmation by Designer. Additional Services will be billed at the hourly billing rate set forth in the Agreement. Shall expedited Additional Services be requested which require additional resources or scheduling compromises to accomplish, such as employing outside personnel, overtime work, or

prioritizing work over other projects currently being undertaken by the Designer not related to the Client, may entitle the Designer to additional compensation and shall be discussed and agreed upon prior to authorizing the Additional Services.

**13. Copyrights and Licenses.** All documents prepared or furnished by the Designer and its consultants pursuant to this Agreement are instruments of the Designer's and consultants' professional service. All Instruments of Service or other work product of the Designer and its consultants remains the property of the Designer and its consultants; the Designer and its consultants retain all reserved rights therein, including the copyrights. Provided the Client substantially performs its obligations under the Agreement, including prompt payment of all sums when due, the Designer grants to the Client a non-exclusive non-transferable license to use the Designer's Instruments of Service solely and exclusively for the purpose of constructing, occupying and maintaining this specific Project. The Designer shall obtain similar non-exclusive licenses from the Designer's consultants consistent with this Agreement.

In the event the Client uses or modifies the Instruments of Service without retaining the author of the Instruments of Service, the Client releases the Designer and Designer's consultants from all claims and causes of action arising from such use or modification.

Client agrees to indemnify, defend and hold the Designer and its consultants and employees harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees and all legal expenses and fees incurred through appeal, and all interest thereon, accruing or resulting to any and all persons, firms, or any other legal entities, on account of any

damages or losses to property or persons, including injuries or death, or economic losses, arising out of any use, reuse or modification of the Designer's Instruments of Service when the Designer has not been engaged to provide full services, except where the Designer is found by a court or forum of competent jurisdiction to be solely liable as between the parties hereto as well as between any other persons, firms or other legal entities for such damages or losses.

**14. Terms of Payment.** Invoices shall be submitted upon completion of specific milestones, phases, or monthly based on design fees complete at that time. Payments are due upon the Client's receipt of invoice. Amounts that are unpaid thirty (30) days after the invoice date shall bear interest at a rate of one and one-half percent (1.5%) per month.

**15. Reimbursable Expenses.** Reimbursable expenses shall include, but not be limited to, the following:

1. Consultant fees;
2. Printing, reproduction, or bulk copying of progress or final prints, plots, for Client meetings, design reviews, governmental agency submittals, etc.
3. Renderings, models, mock-ups, professional photography and presentation materials requested by Client or required for design reviews, governmental agency submittals, etc.
4. Postage, courier and/or express delivery or shipping costs.
5. Long distance telephone calls and facsimile costs.
6. Travel expenses to/from the Project site (for auto, based on IRS standard of \$0.55 per mile) and/or other out-of-town travel and subsistence, if required and approved in advance by the Client.
7. Material samples.

8. All sales or similar taxes levied on professional services and on reimbursable expenses.
9. Other project-related expenses.

For reimbursable expenses, the compensation shall be the expenses incurred by the Designer plus an administrative fee of ten (10%) percent of the expenses incurred.

**16. Suspension or Termination by Designer.** If the Client fails to make payments to the Designer in accordance with this Agreement, such failure shall be considered substantial non-performance and cause for termination or, at the Designer's option, cause for suspension of performance of services under this Agreement. If the Designer elects to suspend services, the Designer shall give seven (7) days' written notice to the Client before suspending services. In the event of a suspension of services, the Designer shall have no liability to the Client for delay or damage caused the Client because of such suspension of services. Before resuming services, the Designer shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Designer's services. The Designer's fees for the remaining services and the time schedules shall be equitably adjusted.

**17. Suspension of the Project.** If the Project is suspended by the Client for more than thirty (30) consecutive days, the Designer shall be compensated for services performed prior to notice of suspension. When the Project is resumed, the Designer shall be compensated for expenses incurred in the interruption and resumption of the Designer's services. The Designer's fees for the remaining services and the time schedules shall be equitably adjusted.

If the Project is suspended or the Designer's services are suspended for more than ninety (90) days, the Designer may terminate this Agreement by giving not less than seven (7) days' written notice.

**18. Termination for Cause.** Either party may terminate this Agreement with not less than seven (7) days' written notice should either party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. If the nature of the non-performance requires additional time to cure, the party will be deemed to have substantially performed if it commenced to cure within the seven (7) day period and thereafter diligently proceeds to cure.

**19. Termination for Convenience.** This Agreement may be terminated by either party upon not less than seven (7) days' written notice to the other party for convenience and without cause. In the event of termination not the fault of the Designer, the Designer shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due or incurred.

**20. Mediation.** Any dispute or claim arising in connection with this Agreement shall be submitted to mediation under the auspices of the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement or such other mediation service as the parties shall mutually agree. The Client and Designer shall share the mediator's fee and any filing fees equally. The mediation shall be held in Columbus, Ohio. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

If the parties do not resolve a dispute through mediation pursuant to this Agreement, the method of binding dispute

resolution shall be arbitration if the parties mutually agree, or litigation filed with the Superior Court of the County of Columbus, Ohio. Any arbitration shall also be conducted in Columbus, Ohio.

**21. Attorney Fees.** In the event the Designer initiates a legal proceeding for unpaid fees of less than \$50,000, the prevailing party is entitled to recover its reasonable attorney's fees and costs from the other party. Attorneys' fees shall not be recoverable for other claims or in any other legal proceedings.

**22. Waiver of Certain Insured Claims.** To the extent damages are covered by property insurance, the Client and Designer waive all rights against each other and against the contractors, consultants, agents and employees of the other for those damages. The Client or the Designer shall require their respective contractors, subcontractors, consultants, agents and employees of any of them to provide similar waivers in favor of the other parties enumerated herein.

**23. Waiver of Consequential Damages.** The Designer and Client waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. The Client has obtained a similar waiver from the Contractor and the Contractor has obtained similar waivers from each of its subcontractors in favor of the Client and the Designer. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

**24. Governing Law.** This Agreement shall be governed by the laws of Ohio.

**25. Successors and Assigns; No Assignment.** The Client and Designer, respectively, bind themselves, their partners, successors, permitted assigns and legal representatives to the other party to this Agreement and to the partners, successors, permitted assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Client nor Designer shall assign this Agreement or any obligation, claim, right or cause of action arising under this Agreement without the written consent of the other. The foregoing shall not be construed to limit the subrogation rights of either party's insurers.

**26. Partial Invalidity.** If any term, covenant or condition of the Agreement or its application to any person or circumstance shall be held to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect, and the parties agree that any invalid or unenforceable term, covenant or condition shall be amended to the minimum extent required to make such term, covenant or condition valid and enforceable.

**27. No Third Party Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or Designer.

**28. Publicity.** The Designer and its consultants shall have the right to photograph the Project and to use the photographs in the promotion of its professional services through publication, advertising, public relations, brochures, websites, or other marketing media. The Designer shall be given reasonable access to the completed Project to take photographs.

**29. Defined Terms.** Capitalized terms that are not defined in the Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction. **NEED TO LOOK AT THIS**

**30. Confidentiality.** The Designer shall maintain the confidentiality of information specifically designated as confidential by the Client, unless withholding such information would violate the law, create a risk of significant harm to the public or prevent the Designer from establishing a claim or defense in an adjudicatory proceeding.

#### **Acceptance of the Standard Terms and Conditions**

**Client's Initials:** \_\_\_\_\_