

**ARCHITECTURAL PEERS A PENFACT'S INC WHOLLY OWNED MEDIUM**  
2401 18<sup>TH</sup> TERRACE, SUITE # A GAINESVILLE FL 32609

THIS AGREEMENT (the "Agreement") is made and entered into by and between Architectural Peers ("AP") and the party identified in the "General Information" section above ("Subscriber").

WHEREAS, Subscriber wishes to establish a presence and obtain business services by subscribing to Architectural Peers published on the World Wide Web portion of the Internet (the "World Wide Web"); and

WHEREAS, AP is willing to develop and host the Subscriber and Subscriber's Business Information (as defined herein) on a portion of the AP internet's Medium and provide subscriber with the said AP's Business Services identified as the AP Basic Business Services (defined below), pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

**ARTICLE 1. DEFINITIONS**

**Section 1.1. Acceptance.** "Acceptance" of the AP Work Product means the completion of the process set forth in Section 6 of this Agreement.

**Section 1.2. Consulting Services.** "Consulting Services" means (i) providing Subscriber with advice and services concerning the selection and manufacturing of goods and services offered by subscriber for sale, merchandising image, on-line services, and public-relations activities; (ii) reviewing materials to be used for Subscriber's manufactured products; (iii) organizing meetings concerning subscriber's on-line activities; (iv) reviewing and analyzing, once per month, information from manufacturing databases; and (v) periodically reviewing merchandise updates.

**Section 1.3. Subscriber.** "Subscriber" means the entity identified in the "General Information" section above, including any permitted successor or assignee of Subscriber.

**Section 1.4. Subscriber Content.** "Subscriber Content" means any images, art work or copy which Subscriber is to deliver to AP under any applicable Statement of Work and any computer software or other materials developed by or licensed to Subscriber, including, without limitation, any HTML script<sup>1</sup> or code which is required to enable AP to develop the Subscriber portion of the AP Site.

**Section 1.5. Home Page.** "Home Page" means a presence on the World Wide Web segment of the Internet developed and created by AP, portions of which may be licensed to third parties for the dissemination of information or the sale of goods and services.

**Section 1.6. Subscriber Project Leader.** "Subscriber Project Leader" means a senior-level employee of Subscriber identified on the first page hereof who, in addition to any other responsibilities set forth under this Agreement, shall be responsible for overseeing Subscriber Service under this Agreement.

**Section 1.7. Subscriber Site.** "Subscriber Site" means a facility for Subscriber to display, promote, distribute, and/or sell merchandise to third parties via the World Wide Web by and through either a manufacturing segment, a wholesale segment, or both, on the AP Home Page, using the AP Internet Server and the AP Internet Subscription Services as set forth or described in any Statement of Work. Subscriber acknowledges and agrees that no portion of the AP Home Page shall be used by any of its businesses involved in the sale of Merchandise to display, promote, distribute, or otherwise sell such Merchandise by or through the Subscriber Site.

**Section 1.8. AP Internet Server.** "AP Internet Server" means a computer system identified on a Statement of Work and owned and operated by AP and/or its suppliers to make the Subscriber Site and other related services described in any Statement of Work accessible via the World Wide Web.

**Section 1.9. AP Project Leader.** "AP Project Leader" means a senior level employee of AP identified on the first page hereof who, in addition to any other responsibilities set forth under this Agreement, shall be responsible for overseeing AP Services under this Agreement.

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**Section 1.10. AP Internet Subscription Services.** “AP Internet Subscription Services” means all of those professional services to be rendered to Subscriber by AP in connection with the Subscriber Business pursuant to the terms and subject to the conditions of this Agreement and which are set forth or described in a Statement of Work.

**Section 1.11. AP Work Product.** “AP Work Product” means any and all images, art work or copy furnished by or on behalf of AP, and any and all computer software and other materials developed by AP or its suppliers, including, without limitation, any HTML script or code, and licensed to Subscriber hereunder as part of the Subscription.

**Section 1.12. Specifications.** “Specification” means the mutually agreed upon, jointly developed, detailed specifications for the Subscriber Services and/or the AP Work Product which shall be contained in a Statement of Work.

**Section 1.13. Statement of Work.** “Statement of Work” means, individually and collectively, statements of work to be agreed to in writing between the parties hereto from time to time during the Term and which shall be consecutively numbered and annexed as Exhibit A hereto and which shall include, without limitation, the Specifications.

**ARTICLE 2. SERVICES**

**Section 2.1. AP Internet Subscription Services.** Upon the terms and subject to the conditions contained in this Agreement, including, without limitation, the exhibits and schedules attached hereto, AP agrees to provide Subscriber, either directly or through its authorized subcontractors, and Subscriber agrees to pay AP to deliver, the AP Internet Subscription Services and AP Work Product described or set forth in any Statement of Work in connection with developing, operating and maintaining the Subscriber Business Services. Subject to the terms herein, AP, or its authorized subcontractor(s), shall also provide Consulting Services to Subscriber to format the creation, development, testing, implementation, modification, enhancement, and periodic maintenance of and to the Subscriber Site. In addition, AP, in its sole discretion, may contract with any appropriate access provider to maintain the AP Internet Server necessary to create, develop, modify, update, enhance, or operate the AP Home Page and the Subscriber Site. During the Term, Subscriber may continue to utilize the services of its own internal fulfillment facilities, which it maintains and controls, to facilitate the sale and distribution of its Merchandise (as defined herein) featured or otherwise advertised on the ABC Home Page. In the event that Subscriber does not maintain its own internal fulfillment facilities, or where Subscriber does not elect to use its own internal fulfillment facilities as described in this Section 2.1, Subscriber shall be required to enter into an agreement with a fulfillment company designated by AP to facilitate the sale and distribution of Subscriber’s Merchandise.

**Section 2.2. Subscriber Services.** Subscriber agrees to perform the Subscriber services as set forth or described in Schedule A to any applicable Statement of Work (the “Subscriber Services”). Subscriber acknowledges and agrees that to the extent Subscriber’s failure to meet any of its obligations set forth in this Agreement affects the ability of ISC or its subcontractors to perform ISC’s obligations under this Agreement, ISC shall be relieved of such obligations. Subscriber Services shall include, without limitation, delivery to ISC of any Subscriber Content required to enable ISC to develop the Subscriber Site, which shall be described in an applicable Statement of Work.

**Section 2.3. Statement of Work.** A Statement of Work shall be agreed to in writing between the Parties from time to time during the Term and shall be consecutively numbered and annexed as Exhibit A hereto [omitted]. The Statements of Work shall include, without limitation, the Specifications.

**ARTICLE 3. LICENSE; PROPRIETARY RIGHTS; CONFIDENTIALITY**

**Section 3.1. Work Product License.** ISC hereby grants to Subscriber, and Subscriber hereby accepts, a nontransferable, nonexclusive, limited license for the duration of the Term to use one (1) copy of the ISC Work Product (where applicable, in executable, object-code form only) solely in connection with operating the Subscriber Site. Nothing herein shall be

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interpreted to mean, and ISC does not grant to Subscriber, any right or license to enter into sublicenses or redistribution agreements with respect to any portion of the ISC Work Product, the ABC Home Page, or the Subscriber Site. Subscriber covenants and agrees that it shall not reverse engineer, decompile, translate, or develop derivative works based on, the ISC Work Product, the ABC Home Page or the Subscriber Site, except that such restrictions shall not apply to the Subscriber Content.

**Section 3.2. Acceptance of Software.** Upon delivery by the Internet Service Company (ISC) of the home page site working software to Subscriber, Subscriber shall have thirty days in which to work with ISC to test the software to determine its suitability for Subscriber's needs. If, at the end of the thirty-day period, Subscriber is not satisfied with the operation of the working software, it shall so inform ISC and request that the software be modified or replaced. ISC shall work diligently to correct all problems with the software and to replace it if necessary, all in a timely manner to be agreed upon by Subscriber. Upon such replacement or modification of the working software, Subscriber shall have thirty additional days to work with ISC to test the modified or replaced software to determine its suitability for Subscriber's needs. If the modified or replaced software does not conform to the requirements of Subscriber within this second thirty-day period, Subscriber shall have the right to cancel this contract and demand a refund of all monies paid to ISC.

**Section 3.3. Content License.** Subscriber hereby grants to ISC a nontransferable, nonexclusive license to copy, distribute, and otherwise use the Subscriber Content solely as necessary to provide the ISC Internet Subscription Services to Subscriber hereunder.

**Section 3.4. ISC Proprietary Rights.** Subscriber acknowledges that ISC may use pre-existing ISC Proprietary Materials (as defined herein) in the performance of the ISC Internet Subscription Services and in the design, development, or implementation of the ISC Work Product, and that the ISC Work Product contains ISC Proprietary Materials or information incorporating, based upon, or derived from ISC Proprietary Materials, including reports, notes, whether in oral, written, graphic, electronic, or machine-readable form. Subscriber acknowledges that ISC owns and shall retain all rights, title, and interest in and to the Subscriber Site, the ABC Home Page, the ISC Proprietary Materials, and the ISC Work Product, including, without limitation, all copies thereof and all rights to patents, copyrights, trademarks, service marks, trade secrets, and other intellectual property rights inherent therein and appurtenant thereto, subject only to Subscriber's rights in and to the Subscriber Content. As used herein, the term "ISC Proprietary Materials" shall mean and include all proprietary information, data, and knowledge furnished or made available by ISC or its suppliers to Subscriber, and copies thereof, whether in oral, written, graphic, electronic, or machine-readable form. Subscriber shall own all rights, title, and interest in and to the Subscriber Content, including, without limitation, all copyrights, trademarks, patents, trade secrets, and Subscriber Work Product and any other proprietary rights inherent therein or appurtenant thereto.

**Section 3.5. Nondisclosure/Confidentiality.** The parties hereto acknowledge that any material, data or other information, including the terms of this Agreement and any ISC Proprietary Materials, communicated or disclosed, whether orally, in writing or electronically, during the Term by one party (the "Disclosing Party") to the other party (the "Receiving Party"), and which materials are labeled confidential, are confidential information ("Confidential Information") of the Disclosing Party and may not be disclosed unless otherwise provided in this Article 3. The Receiving Party shall receive and maintain the Confidential Information of the Disclosing Party in confidence and shall safeguard and protect the Confidential Information from theft or disclosure to their Parties with protections it uses to protect its own highly confidential information, but in no event shall such degree of care be less than the minimum reasonable care necessary to ensure the confidentiality of the Disclosing Party's Confidential Information.

**Section 3.6. No Derivative Works.** Subscriber covenants and agrees that it shall not, without the prior written consent of ISC, (i) create or cause to be created, any copies of, or derivative works from, the ABC Home Page or the Subscriber Site or (ii) cause the ABC Home Page or the Subscriber Site or any portion thereof (except the Subscriber Content) to be disclosed or transferred to any third party, for the purpose of securing alternative hosting services, securing alternative hosting services, or otherwise. The restrictions in the preceding sentence shall not apply to (a) providing access to the Subscriber Site or third

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parties via the ABC Home Page in the ordinary course of doing business on the World Wide Web or (b) the Subscriber Content.

**Section 3.7. Proprietary Notices.** ISC shall retain the right to place proprietary notices of ISC and its suppliers on the ABC Home Page or the Subscriber Site in accordance with the terms and conditions of this Agreement.

**Section 3.8. Subscriber Identification.** ISC may use the name of and identify Subscriber as an ISC client in advertising, publicity, or similar materials distributed to prospective ISC clients.

**ARTICLE 4. REVIEW OF SUBSCRIBER CONTENT**

**Section 4.1.** Subscriber acknowledges that Subscriber is solely responsible for Subscriber Content and that ISC has no obligation under this Agreement for monitoring or verifying any information or materials included as part of Subscriber Content. Notwithstanding the preceding sentence, ISC reserves the right to reject and not include on the ABC Home Page any Subscriber Content delivered to ISC by Subscriber or Subscriber's suppliers. Nothing herein shall be construed to mean that ISC is a publisher of any information or content contained in the ABC Home Page or that ISC exerts any editorial control over such information or content.

**ARTICLE 5. PAYMENTS TO ISC**

**Section 5.1. Charges.** In exchange for the ongoing Internet Service Company services to be provided to Subscriber under this Agreement, as further described in various parts of this agreement, Subscriber shall pay to ISC the fees as set forth in a statement to be rendered to Subscriber as set forth in Schedule A attached to such statement. Subscriber will also pay, or reimburse ISC for, any out-of-pocket expenses incurred by ISC in connection with providing the services to Subscriber hereunder.

**Section 5.2. Time of Payment.** Subscriber shall pay ISC in accordance with the Fee and Payment Schedule set forth in Schedule B attached to applicable Statements of Work. Any sum due ISC hereunder for which a time for payment is not otherwise specified will be due and payable within ten (10) days after the due date of an invoice therefor for ISC. If Subscriber fails to pay any amount due within ten (10) days from the due date of the invoice, late charges of the lesser of 1½% per month or the maximum allowable under applicable law shall also become payable by Subscriber to ISC. In addition, failure of Subscriber to fully pay any invoiced amount within sixty (60) days after the date of the invoice shall be deemed a material breach of this Agreement, justifying suspension of the performance of the ISC Internet Subscription Service, and shall be sufficient cause for immediate termination of this Agreement by ISC.

**ARTICLE 6. ACCEPTANCE**

Upon delivery to ISC of the initial payment called for in Schedule B to the Statement of Work (the "Charter Membership Fee") and of any necessary Subscriber Content, Subscriber and ISC shall work together in good faith to develop an initial *[one dimensional]* design of the Subscriber Site (the "Subscriber Site Template") which shall incorporate the Subscriber Content provided to ISC and shall be developed in accordance to the applicable Statement of Work. Following ISC's submission of the Subscriber Site Template to Subscriber, Subscriber shall thereafter have fifteen (15) business days in which to review and request modifications to the Subscriber Site Template (the "Template Review Period"). If Subscriber requests

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additional modifications to the Subscriber Site Template following the Template Review Period, Subscriber will be charged on a time and materials basis at ISC's then-current consulting rate. Following acceptance of the Subscriber Site Template, ISC shall create and deliver Subscriber a preliminary design of the Subscriber Site (the "Preliminary Design"). In the event Subscriber accepts the Preliminary Design by causing an authorized representative of Subscriber to initial the Preliminary Design, ISC will proceed with the development and implementation of the Subscriber Site and the development and implementation of the Subscriber Site shall be deemed completed, and the Subscriber Site deemed accepted by Subscriber, when the Subscriber Site materially conforms to the Preliminary Design. At no additional charge, Subscriber shall have the limited right to make a single written request for any minor revisions to the preliminary design, if such request is made within ten (10) days from its delivery to Subscriber. If Subscriber fails to accept the Preliminary Design as described in this paragraph following such ten (10) day period from delivery, and requests any modifications, then Subscriber agrees to pay ISC for such services at ISC's then-current consulting fee. If, however, Subscriber neither accepts the Subscriber Site nor requests any minor revisions or major revisions as provided above in this paragraph, ISC may terminate this Agreement.

**ARTICLE 7. WARRANTIES**

*Note:* ISC Warranties, "Disclaimer of Warranty," and "Limitation of Liability" have been removed, per above discussion.

**Section 7.1. Subscriber Warranties.** Subscriber hereby warrants that the Subscriber Content and all other materials delivered to ISC and otherwise placed on the ABC Home Page comply with all applicable laws, regulations, and rules, including professional or occupational regulations and licensing, and that Subscriber has properly secured the right to use any trademark, service mark, trade name and/or copyright protected material, whether owned by Subscriber or a third party. Subscriber assumes sole responsibility for the accuracy of material provided to ISC, including, without limitation, descriptive claims, warranties, guarantees, nature of business, and address where business is conducted. Subscriber warrants that this Agreement has been duly and validly executed and delivered by Subscriber and constitutes the valid and binding agreement of Subscriber, enforceable against Subscriber in accordance with its terms.

**ARTICLE 8. INDEMNIFICATION**

Subscriber agrees to indemnify, defend, and hold harmless ISC, ISC's parent, members, affiliates, successors, assigns, managers, officers, employees, and agents from and against any and all liability, loss, damage, expense, claims, or suites, and to pay all expenses, including reasonable attorneys' fees, incurred by them in defense thereof, arising out of or related to (i) the operation of the Subscriber Site and the ABC Home Page, including, without limitation, any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and expenses, arising out of any third-party claims of defamation, illegality, or infringement of any patents, trade secrets, copyrights, trademarks, service marks, trade names, or similar proprietary rights alleged to have occurred with respect to the Subscriber Content or other materials provided by Subscriber or its suppliers to ISC or the ABC Home Page or any Subscriber Site and (ii) the activities of any other person or entity as they relate to the content of the Subscriber Site and/or the ABC Home Page, including, without limitation, any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and expenses, arising out of any third-party claims of defamation or illegality alleged to have occurred with respect to such content.

**ARTICLE 9. TERM AND TERMINATION**

The term (the "Term") of this Agreement shall run through and including two (2) calendar years from the date ISC executes the Agreement. Thereafter, the Term shall be automatically renewed for the period of one (1) year (individually, a "Renewal Period") upon thirty (30) days' prior written notice to Subscriber before the end of the Term (the "Renewal Period Notice"), unless, however, Subscriber notifies ISC within thirty (30) days of its receipt of the Renewal Period Notice that it will not

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renew. Notwithstanding anything to the contrary herein, ISC may terminate the Agreement at any time it deems the venture unprofitable, as evidenced by losses totaling *[number]*% of *[dollar amount]* for a period of three consecutive months. If ISC terminates under this provision, it must produce for inspection by Subscriber the appropriate documents and calculations attesting to such loss. Subscriber may terminate this agreement at any time it delivers to ISC a statement that ISC has breached the agreement by failing to perform as promised. Upon the delivery of the statement, ISC will have 30 days in which to remedy the breach; if no remedy is forthcoming, the contract will terminate.

**ARTICLE 10. MISCELLANEOUS**

This Agreement, including any exhibits and schedules hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and there are no representations, understandings or agreements which are not fully expressed in this Agreement. No amendment, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such amendment, change, waiver, or discharge is sought to be enforced. Except for the payment of any monies due, if the performance of any part of this Agreement by either party is prevented, hindered, delayed, or otherwise made impracticable by reason of act of God or any other causes beyond the control of either party, that party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes. This Agreement will be governed in all respects by the laws of the State of New York and the Parties agree to venue and jurisdiction of the courts in the State of New York, County of New York. Subscriber shall not assign, without the prior written consent of ISC, its rights, duties, or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed a material breach of this Agreement. Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given when mailed by certified mail, return receipt requested to the respective address set forth on the first page hereof. If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable. All provisions of this Agreement relating to confidentiality, nondisclosure, limitation of liability, indemnification, and Subscriber's obligation to pay ISC for services rendered and expenses incurred shall survive the completion of the ISC Internet Subscription Services or any termination of this Agreement.

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Footnotes

- <sup>1</sup> HTML stands for "hypertext markup language," which is the language in which HTML documents that appear on the World Wide Web are written. HTML files on one server can be linked to files on other servers on the Internet.

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