



Agreement Respecting Development of Website, Support, Warranty, Liability, Indemnification, Confidentiality

This Agreement ("Agreement") is made as of _____, 20____ ("Effective Date"), by and between One Sky Media - Oppenheimer Group, Inc., a Pennsylvania corporation with its principal place of business at 265 Bloomfield Drive Lititz, PA 17543 ("Web Site Developer" or "We"), and

_____, a(n) _____ (state of organization); (mark one) ___ corporation ___ sole proprietorship ___ partnership/LLC ___ individual; with its principal place of business at _____

_____, ("Web Site User" or "You") and the domain name of _____ to which this agreement applies. This contract is a sealed instrument.

BACKGROUND

Web Site Developer is a provider of programming of web pages and software. These services include but are not limited to: Hosting of Web Sites, whether created by Web Site Developer or by others; Development of Web Sites which may or may not contain "databases"; Search Engine Optimization, performed both on existing user Web Sites and Web Sites built for clients by Web Site Developer; and, Registration of domain names.

Web Site User wants to provide a Website accessible to the general public through search engines or directly via a domain name/URL and Web Site Developer wants to develop, operate and maintain such Web Site, on Website User's behalf, all on the terms and subject to the conditions set forth below.

WEB SITE AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and for good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

- 1. Representations and Warranties of Oppenheimer Group, Inc.** We represent and warrant that: (a) it has the right to enter into this Agreement and to grant the rights and licenses granted in this Agreement; and (b) the Web Site and the reproduction, distribution, transmission, public performance and public display of the Oppenheimer Group, Inc. Elements in connection with the Web Site do not and will not (i) invade the right of privacy or publicity of any third person, or (ii) contain any libelous, obscene, indecent or otherwise unlawful material. As used in this Agreement, the Oppenheimer Group, Inc. Elements are the design, layout, and custom graphics we provide to you.
- 2. Representations and Warranties of the Web Site Services Client.** You represent and warrant that you have the right to enter into this Agreement and that you shall in an ongoing manner verify and submit to the Web Site Developer in a timely manner any changes required to maintain the website in compliance with all local, state or federal laws.
- 3. Customer Support.** We shall provide customer support to you between 9:00 A.M. and 5:00 P.M. Eastern Time, Monday through Friday, excluding nationally recognized holidays.
- 4. Domain Name Registration.** We do not warrant or guarantee that the domain name for which you have applied can and will be registered in your name or is capable of being registered. Take no action with respect to your requested domain name(s) until we have confirmed via email that the requested domain name(s) have been successfully registered. We hold domain name(s) in trust for our clients. Upon written request we will transfer your domain name(s) to you at any time, provided full payment for the registration and transfer service has been received by us. The registration of the domain name(s) and its use is subject to the relevant naming authority's terms and conditions of use and you are responsible for ensuring that you are aware of, and in compliance with, those terms and conditions. You irrevocably waive any claims you may have against us with respect of the decision of a naming authority to refuse to register a domain name and, without limitation agree that the administration charge paid by you to us shall be non-refundable in any event. We accept no responsibility with respect to the use of a domain name by you and any dispute between you and any other individual or organization regarding a domain name must be resolved between the parties concerned and we are not



obligated to take part in any such dispute. We reserve the right, upon notice of a dispute, and at our discretion and without particular cause or reason, to suspend the use of or cancel hosting for the domain name(s) in dispute, and make appropriate representations to the relevant naming authority. If you request the transfer of any domain name(s) from us, your account must be paid in full and a fee based on the fee charged by our suppliers plus reasonable labor charges related to the transfer activity must be paid prior to the execution of transfer.

5. **Web Site Hosting.** We offer no warranty as to the accuracy or quality of information received by any person via Oppenheimer Group, Inc.'s servers and in no event will we be liable for any loss or damage to any data stored on the server. You warrant to us that you will only use your Web Site and assigned server storage space and transfer bandwidth for lawful purposes. Specifically, you further warrant to us that: (a) you will not, nor will you authorize or permit any other party to, use the server in violation of any law or regulation; (b) you will not knowingly or recklessly post, link to or transmit: (i) any material that is unlawful, threatening, abusive, harmful, malicious, libelous, defamatory, obscene, pornographic, profane or otherwise objectionable in any way; or (ii) any material containing a virus or other hostile computer program; (iii) you will not post, link to or transmit any material that shall constitute, solicit, or encourage a crime or criminal offense, give rise to civil liability or that violates or infringes any trade mark, copyright, other intellectual property rights or similar rights of any person, firm or company under the laws of any jurisdiction. We will take all reasonable steps to ensure accurate and prompt routing of messages; however. We are not liable for non-receipt or misrouting or any other failure of email. You warrant and agree that you will keep secure any identification, password and other confidential information relating to your account and you will notify us immediately of any known or suspected unauthorized use of your account, or any known or suspected breach of security, including loss, theft or unauthorized disclosure of your password information. We cannot and do not guarantee that our servers will not be violated by unauthorized users or computer hackers. We reserve the right to cancel hosting services at any time without cause, at our sole discretion.

6. **Payment.** Payment in full is due at the time of order for all services other than website design. A 50% down payment is due before work begins for any custom web design project.

Final payment is due when one of the following occurs:

- Prior to making the website live on the internet.
- 15 days from when the site has been presented for review without response.
- 120 days from the date of down payment.

All services and products purchased are non-refundable. All sales are final.

7. **Oppenheimer Group, Inc.'s Rights.** You acknowledge that portions of the Web Site design and any Databases maybe the proprietary property of Oppenheimer Group, Inc. or third-party licensors of Oppenheimer Group, Inc. ("Third-Party Licensors"), that the names and mark "The Oppenheimer Group", and all associated names, marks and logos (collectively, the "Marks"), are the trademarks and/or service marks of Oppenheimer Group, Inc., Third-Party Licensors or Oppenheimer Group, Inc.'s affiliates, and that any trade dress, tag lines, trademarks, service marks or designs related to the Databases and/or the Marks are our intellectual property and are protected by United States copyright laws, trademark laws, trade secret laws, international treaties, and applicable laws of the states and jurisdictions where they are used.

8. **Limited Warranty.** THE WEBSITE AND DATABASES ARE PROVIDED "AS-IS" AND "WITH ALL FAULTS" AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE WEB SITE AND DATABASES, INCLUDING WITHOUT LIMITATION THEIR FITNESS FOR A PARTICULAR PURPOSE, THEIR QUALITY, THEIR MERCHANTABILITY, THEIR PERFORMANCE, THEIR NONINFRINGEMENT OF THIRD PARTY RIGHTS, OR THE RESULTS OBTAINED BY USING THE WEB SITE OR DATABASES. WE DO NOT WARRANT THAT THE DATABASES ARE FREE FROM BUGS, VIRUSES, ERRORS, OR OTHER PROGRAM



LIMITATIONS. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. IN THAT EVENT, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT BY DATING AND SIGNING THIS AGREEMENT.

9. **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE OTHER PARTY'S RIGHTS) FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, LOST REVENUES OR PROFITS, LOSS OF BUSINESS OR LOSS OF DATA, ARISING OUT OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION AS A RESULT OF ANY BREACH OF ANY WARRANTY OR OTHER TERM OF THIS AGREEMENT), REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

10. **Acknowledgment of No Warranty.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, (A) NEITHER PARTY WARRANTS THAT ITS RESPECTIVE WEB SITES OR THE OPPENHEIMER GROUP, INC. WEB SITE WILL PERFORM IN THE MANNER EXPECTED OR WITHOUT INTERRUPTION, ERROR OR DEFECT OR THAT ANY REVENUE TO EITHER PARTY WILL RESULT FROM THE ACTIVITIES CONTEMPLATED BY THIS AGREEMENT, (B) THE WEBSITE AND ANY DATABASE IS PROVIDED "AS-IS" AND "WITH ALL FAULTS" AND (C) NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

11. **Indemnification.** You shall indemnify, defend and hold harmless Oppenheimer Group, Inc. and its affiliates, and their respective officers, directors, employees and agents (each, an "Indemnified Party") from and against any and all claims (including but not limited to trademark infringement, copyright infringement and conversion), demands, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including interest, penalties, reasonable attorneys' fees, costs of investigation and any legal or other expenses or costs (each, a "Liability") incurred or suffered by any Indemnified Party arising out of, in connection with or resulting from the access of the Web Site by any party arriving from search engines or directly to the URL domain name or use by you or any user authorized by you of the password protected portions of the Web Site or Database (or any portion thereof) or the Web Site itself, unless any such Liability is caused by our gross negligence or willful misconduct, in which case the indemnification obligations shall not apply.

12. **Term.** The term of this Agreement shall commence as of the Effective Date and continue for twelve months (the "Initial Term"). The Initial Term automatically shall be extended for 30 day periods (each a "Renewal Term"), unless either party provides written notice to the other party prior to expiration of the Initial Term or of any Renewal Term, of its desire not to renew. Any reference in this Agreement to the "Term" shall include the Initial Term and any Renewal Term.

13. **Termination.** Either party may terminate this Agreement prior to the expiration of the Term immediately upon written notice to the other party, in accordance with the Notice provisions of Paragraph 25 below, upon the occurrence of any of the following events: (a) If either party breaches any covenant, agreement, representation or other provision of this Agreement (including without limitation the obligation to make any payment when due) and fails to cure such breach within forty-five (45) days after being notified in writing of such breach; or

(b) If either party ceases to do business or otherwise terminates its business operations or becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if any such proceeding is instituted against either party and is not dismissed within sixty (60) days.

14. **Force Majeure.** Our non-performance of our obligations under this Agreement with respect to providing access to the Web Site shall not constitute a breach or default under this Agreement if due to a force majeure including, without



limitation, unforeseen emergencies, power failures, severe storms, Acts of God, strikes, fires or other catastrophes, shortage of parts, materials, labor, power or transportation, or other acts beyond our reasonable control. Notwithstanding anything to the contrary above, you shall have the right to terminate this Agreement upon ten (10) days' notice if the Web Site has been unavailable for at least the thirty (30) consecutive days immediately preceding the date of such notice and remains unavailable for the ten (10) consecutive days after the date of such notice. In such event, we shall return all monies paid in advance to the date thirty (30) days prior to such termination.

15. **Confidentiality.** As used in this Agreement, "Confidential Information" shall mean all oral or written information, of whatever kind and in whatever form, relating to past, present or future products, software, research, development, inventions, processes, techniques, designs or other technical information and data, and marketing plans (including such information of third parties that a party hereto is obligated to hold as confidential), provided that such information has been reasonably identified as or could be reasonably considered to be proprietary or confidential, that either party (a) may have received prior to the date of this Agreement, whether directly from the other or indirectly from third parties, or (b) may receive under this Agreement from the other. The terms of this Agreement shall be deemed Confidential Information. Each party agrees that, with respect to its receipt of Confidential Information of the other party, it shall: use the same care and discretion to prevent disclosure of such Confidential Information as it uses with similar Confidential Information of its own; that it does not desire to disclose, but in no event with less than a reasonable degree of care; accept such Confidential Information and use such Confidential Information only for the purposes permitted within this Agreement; and restrict disclosure of Confidential Information solely to those of its employees and agents who have a need to know and are obligated not to disclose such Confidential Information to any third parties. However, the restrictions shall not apply to information that: is or hereafter becomes part of the public domain through no wrongful act, fault or negligence on the part of the recipient; the recipient can reasonably demonstrate, is already in its possession and not subject to an existing agreement of confidentiality; is received from a third party without restriction and without breach of this Agreement; was independently developed by the recipient as evidenced by its records; or recipient is required to disclose pursuant to a valid order of a court or other governmental body; provided, however, that the recipient shall first have given notice to the disclosing party and shall give the disclosing party a reasonable opportunity to interpose an objection or obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued. All notes, data, reference manuals, sketches, drawings, memoranda, electronic media, records in any way incorporating or reflecting any Confidential Information of the disclosing party and all proprietary rights therein shall belong exclusively to such disclosing party and the recipient agrees to return all copies of such materials to the disclosing party immediately upon request or upon termination or expiration of this Agreement.

16. **Independent Contractors.** The parties are independent contractors under this Agreement, and nothing shall be construed to create a partnership, joint venture or agency relationship between us. Neither party has the authority to enter into agreements of any kind on behalf of the other party.

17. **Assignment.** You shall not assign this Agreement or any of your rights or delegate any of your duties under this Agreement without our prior written consent. Any purported assignment or delegation without such required consent shall be null and void.

18. **Governing Law.** This Agreement, its interpretation, performance or any breach thereof, shall be construed in accordance with, and all questions with respect thereto shall be determined by, the internal, substantive laws of the Commonwealth of Pennsylvania. In connection with any judicial proceeding related to this Agreement: (a) you agree that any such proceeding shall be held in Lancaster County, Pennsylvania, whether commenced by you or by us and the parties consent to the exclusive jurisdiction of the state and/or federal courts having jurisdiction over Lancaster, Pennsylvania; (b) both we and you waive personal service and agree that service of any pleading, notice, complaint, etc. may be served by certified or registered mail by one party to the other party at such other party's address for notices; and (iii) such service



shall be deemed effective as if personally served upon the receiving party at its principal place of business. **THE PARTIES WAIVE ANY RIGHTS THAT THEY MAY HAVE TO TRIAL BY JURY WITH REGARD TO ANY CLAIM OR DISPUTE.**

19. **Severability.** If any term or provision of this Agreement shall, to any extent, be determined to be invalid, illegal or unenforceable under present or future laws effective during the term of this Agreement, then in that event: (a) the performance of the offending term or provision (but only to the extent its application is invalid, illegal or unenforceable) shall be excused as if it had never been incorporated into this Agreement, and, in lieu of such excused provision, there shall be added a provision as similar in terms and amount to such excused provision as may be possible and still be legal, valid and enforceable, and (b) the remaining part of this Agreement (including the application of the offending term or provision to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable) shall not be affected and shall continue in full force and effect to the fullest extent provided by law.

20. **Costs of Litigation.** If any action is brought by us against you or by you against us regarding the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorneys' fees and expenses of litigation.

21. **Costs of Collection.** Customer agrees to be responsible for all costs of collection on unpaid balances including, but not limited to, 1.5% interest (18% annually), collection fees (up to 50%), court costs and reasonable attorney fees.

22. **Section Headings.** The headings of Sections in this Agreement are provided for convenience only and do not affect the construction of the Sections.

23. **Integration.** This Agreement contains the entire understanding of the parties with respect to the matters described in this Agreement, and supersedes all previous agreements between the parties concerning the subject matter.

24. **Modification of This Agreement.** You agree that we may modify or revise this Agreement from time to time. The new revisions will take effect on the effective renewal date of the renewed Agreement. A copy of the revisions will be mailed to you before the effective date of the renewed Agreement. All revisions will be considered agreed to by you on the renewed Agreement unless you notify us to cancel the Agreement and not renew for another term within 60 days of the date the new Agreement was mailed to you. You acknowledge that you are not authorized to change or in any way alter this Agreement. Any changes or alterations to this Agreement that are made by you are null and void. You agree that any changes that you would like must be requested in writing and are not effective unless we have given our prior approval in writing.

25. **No Reliance.** Neither we nor you have relied on any statement, representation or promise of any other party or with any other officer, agent, employee or attorney for the other party in executing this Agreement except as stated in this Agreement.

26. **Notice.** All notices, demands and other communications shall be in writing or by written telecommunications, and shall be deemed to have been given: (a) if mailed by certified mail, postage prepaid, on the date five (5) days from the date of mailing, (b) if delivered by overnight courier, when received by the addressee or (iii) if sent by confirmed telecommunication, one business day following receipt by the addressee at the address specified on page 1 of this agreement.

27. **Survival.** The provisions of Sections 10 and 15 shall survive termination or expiration of this Agreement.

28. **Waiver.** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. Neither the failure nor the delay of us in exercising, enforcing or taking action against you with respect to any of our rights or powers shall operate as a waiver of such powers or rights. No single or partial exercise by us of any of our powers or rights will preclude us from exercising such powers and rights



in the future or from exercising other powers and rights. IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

WEB SITE USER (SIGNATURE): _____ (Seal)

Name (PRINT): _____ (Seal)

Title: _____