

Rare Earth Interactive General Terms of Service

Effective 14-Feb-2016

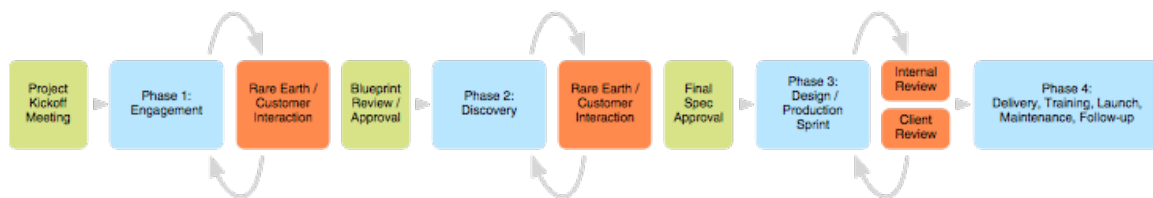
Rare Earth Interactive's General Terms of Service are intended to afford the simplest means of understanding how we conduct ourselves throughout your engagement with our organization.

In this document, "Us," "We," and "Our" refer to Rare Earth Interactive Design, Inc. while "You," "Your," and "Yours" refer to our Customer. The terms "website" and "solution" refer to the work we're doing for you, to create and maintain your website.

While we like to think of this as a "How to" guide on effectively working with us, this is still a legal document. So please give it the attention it deserves and note that accepting any services from Rare Earth after the effective date of this document constitutes your acceptance of these terms. Also, these terms of service may be updated from time to time. When that happens, the updated Terms of Service will be available at www.rareearth.us/tos, and you will receive notification of the update.

1. Overview

- ❑ **How we do things:** All Rare Earth Interactive's website development projects follow a uniform process, illustrated below:
- ❑ **Better cost management:** Our approach to eBusiness solution development is different than that of most of our peers, in that we've transformed the nebulous negotiation process, into a buying experience for our customers, with fair values and costs associated with each phase of a deployment project.



- ❑ **Accurate time commitments:** This approach allows us to make an uncommon commitment: the price you're quoted is the price you pay, and we will deliver your solution as specified, when we promise it will be delivered. The only time your price or timeframe will change, is if you request or we recommend a change in the specifications that moves our engagement outside the the scope we've both agreed to on your quote or proposal. This approach avoids costly surprises both in terms of money and time. See Section 7 of this document for more details about Project Expansions.
- ❑ **Flexible rollout:** Each phase is distinct and can stand on its own, granting you the freedom to move forward to the next phase, or place the project on hold at each phase's conclusion.
- ❑ **You're the boss:** Job #1 for us is satisfying your expectations and priorities for your marketing services. So, unless you tell us differently, we assume that you have the authority to contract for and approve our services on behalf of your organization, and will likewise make the proper advisements within your organization to avoid any surprises. If this is inaccurate, please immediately tell us so and we will act accordingly.
- ❑ **How we bill:** As a digital media firm, Rare Earth bills electronically via email for its products and services. Accordingly, we must have an valid email address on file that delivers to a live human being for you to receive invoices, quotes, statements and other service notices. In order to ensure you receive these communications, we encourage you to whitelist all communications from senders at the rareearth.us domain name, in addition to other services detailed in Section 2 of this document.

You may also provide a separate billing contact to receive billing-related communications from Rare Earth. If you wish to receive paper billing, invoices and statements, you must request those separately.

- ❑ **How to pay:** Rare Earth prefers credit card payment for fastest turnaround, and welcomes payment for its products and services by MasterCard, Visa and American Express. Rare Earth also gladly accepts your business/personal check or money order.

Please note that if you have provided us with a credit card to keep on file as a payment instrument, all future billings will be applied to that credit card, unless otherwise requested. Likewise, in circumstances where payment is due upon receipt under Section(s) 7, 8 and 9 of this document, unless you request otherwise payment will be immediately processed against the credit card on file when the order is written.

- ❑ **Sometimes, things change:** At once, one of the greatest and most vexing aspects of our industry is that things can and often do change rapidly. Accordingly, we reserve the right to amend these terms at any time. You will be notified via email when such amendments are made.

2. Communications

As a virtual, digital media firm, most communications between us and our customers take place electronically through various channels. Please make note of them and add the following domain names to your email whitelist.

- ❑ **Basecamp:** [rei.basecamp.com] You and the other members of your project team will be invited to join our online project management system, called Basecamp by 37Signals. Basecamp helps us deliver projects on time and on budget, because from here all members of the project team can transparently communicate, share files, images and ideas from a central, secure, spam-free, and spam-filter free location. Additional details on how we recommend using Basecamp will be provided with your invitation. More information about the Basecamp product is available from the [37Signals website](http://37signals.com).
- ❑ **Email and Broadcast email:** [@rareearth.us] While direct email can be problematic in the context of project communications, because it ties communications to a specific individual and in turn impairs the team dynamic of our engagement leading to unnecessary delays, email does have its place for conversations that need to be either confidential or otherwise “off the record.” We encourage the use of email for these purposes.

We will also make use of broadcast email to inform you of any updates to our products and services, most support alerts and any new or noteworthy items we feel might be of interest to you.

- ❑ **Quickbooks:** [quickbooks-email@intuit.com] You will receive estimates, invoices and statements from REI via our Quickbooks Online installation. In order to avoid awkward service interruptions, please ensure the email address you provide to us for these communications is routinely monitored.
- ❑ **Help Desk:** [help.rareearth.us and support@rei.zendesk.com] The Rare Earth Help Desk and ticketing system is your access point for urgent, support related communications. From here, you and other members of your organization can view known issues, previous problems that have been resolved, as well as make a new support request. In the event of a major, system-wide issue, news, information and updates on the outage will be posted on the Help Desk, as well as on our Twitter feed @rareearthus.
- ❑ **Virtual Meetings:** [meetings.ringcentral.com or join.me] One of the coolest parts about our industry is the ability to be anywhere and communicate with anyone within minutes. If we need to see or want to share something with you in real-time or have an online meeting, we will use one of these two systems to do it.

3. The Phases of your project, what's included, and when to pay for them

Phase 1: Engagement

- ❑ This is the phase where we get to know one another, to learn more about your project, your goals, objectives and benchmarks, and get ideas from you on what you expect success to look like one month, three months, 6 months and one year after launch. Except in very unusual circumstances, there is no charge for this phase.
- ❑ All of the information we acquire through our interactions with you is formatted into either a written specification or a Marketing Engagement Matrix, depending on the nature of the project.
- ❑ The Engagement Phase includes two rounds of revisions to the Blueprint or specification at no charge. Additional rounds of revisions are billed at \$175.00 per round.
- ❑ If a complete re-planning of the solution is required by fundamental changes in the solution specifications, then it is considered a new project. Depending on the nature of the changes we may elect to bill for the new specification, or we may elect to decline the engagement if we feel it is no longer a good fit for either you or us.
- ❑ The Engagement phase generally lasts between one and two weeks.

Phase 2: Discovery

- ❑ The Discovery phase is where we get to work collecting your existing marketing assets, writing your content and getting everything in place for our team to design and build your solution, as we've specified in Phase 1. Our fee for Discovery is payable in full (100%) at Phase inception.
- ❑ This phase culminates in a comprehensive Blueprint with any additions or updates we've learned since the Engagement Phase.
- ❑ The Discovery phase generally lasts between 3 and 6 weeks, but can take longer if developments warrant additional time.

Phase 3: Design and Production

- ❑ All production fees are payable in full (100%) at Phase inception, and typically run from one (1) to three (3) weeks. We may elect to schedule the project prior to receiving payment, however *no work shall commence until payment is received in-full*. If non-payment results in a delay in the start of your sprint, it may be necessary to reschedule your project to our next available opening.
- ❑ We will need to meet with you each day of your Production Sprint for around 15 minutes, to check in with you, show you what we've done and to get your feedback for our next steps.
- ❑ All ongoing maintenance, updates, consulting and technical support not covered by your Application Subscriptions Agreement or Hosting Agreement shall be billed at Rare Earth's prevailing hourly rates.
- ❑ We assume all content, layouts, drawings, or any other materials provided by you are error free to your satisfaction. If we are required to make changes to assets you provide, such changes are billable per our published schedule. See Sections 6 and 7 of this document for details.
- ❑ Treatment of materials supplied by you: ***We maintain a DTD (digitize-then-destroy) policy for all physical materials provided to us. If you wish materials to be returned to you, you must request that they to be returned to you in writing either enclosed with the supplied materials, or on your Basecamp project. You must additionally pay any postage, shipping, handling and/or insurance costs associated with their return. Rare Earth Interactive accepts no responsibility for materials damaged or destroyed in transit.***
- ❑ **Warranty:** We want you to love your website solution. So we warrant that when we're done, the website solution that we create for you will be functional per the parameters defined in your proposal, Blueprint and/or project specification.

This warranty is an Express Warranty and is made in lieu of any and all implied warranties, and shall be void in the event of any editing, altering or otherwise tampering with the solution as we deliver it to you, which includes hacking by any third-party or any attempt by a member of your team to do something the solution was not designed to do. Any claim for damages, if any, shall be limited to those proven as directly attributable to us in a court of law. Moreover, we shall not be liable under any circumstances for any lost profits or consequential damages, even if we have been advised of the possibility of such damages, and in no event will our liability under or related to this agreement, pursuant to your solution or any other services provided to you, exceed one year's fees payable under this agreement for the applicable services.

This warranty does not apply to Search Engine Optimization, CPC Advertising or other professional services, nor does it apply to any code or technology that is not sourced by, created by, or provided by Rare Earth Interactive.

4. Subscriptions and Hosting

- ❑ It is necessary for us to provision hosting and software to build your website. Accordingly fees for these services begin on the first day of your Production Sprint, and are pro-rated for the current calendar month.
- ❑ On the first of the month following the start of your Production Sprint, you will begin receiving recurring invoices for your Subscription and Hosting services on or around the 15th of the month before these services are delivered. **Invoices for all recurring services are due on or before the first of each calendar month.**
- ❑ Domain Name Registrations/Renewals and/or SSL Certificates related to your relationship and service with Rare Earth will be automatically renewed, in order to ensure service continuity. You will receive a renewal invoice 60 days in advance of such renewals. Unless or until you a) terminate your relationship with us or b) notify us in advance of the renewal date that you do not wish to renew such services or c) fail to maintain a satisfactory payment history with us or d) advise us in writing that you do not wish such services to be automatically renewed as a part of your account relationship with us, we will continue to renew these services on your behalf. Once renewed, these services are nonrefundable.
- ❑ If you wish to cancel your subscription for any reason, you must provide us with thirty (30) days' written notice (via email, fax or snail mail), and receive confirmation that your request has been received.
- ❑ All our solutions are hosted on our servers (managed by GoDaddy, Peer1, Digital Ocean, Accrinet or a combination of these), and are subject to the accompanying terms and conditions, referred to in the accompanying Schedule B.
- ❑ If you have other relationships in association with your website, such as domain name registrations, mail services, commerce services, payment gateways or merchant accounts, terms and conditions for those services apply under the agreements of those providers, independently of this agreement.

5. What's included in your Monthly Subscription

- ❑ Your monthly subscription generally covers two services: the license for the software that both powers your solution and allows you make changes to your website (a.k.a. the Blue Interface), as well as the hosting space and resources necessary to support both your website's tools and the visitor traffic to your website. These are an ongoing charges and must be paid for as long as your website is live and active.
- ❑ Using your website's software, you or anyone whom you designate from your team can make as many changes as you want, as often as you want either through your website's Blue Interface or other administrative interface. We do not bill for any changes that you make, and you can use any and all of the modules available to the fullest extent of the functionality provided to you. It makes no difference how many web pages you create, how many news articles you publish, how many events you promote, how many donations you take, how many products you sell, or even how many broadcast emails you send (up to 12,000 emails per month).

- ❑ We provide unlimited technical support for functionality that is already established for you, ensuring that all of your website systems function as-specified. In other words, if we deliver something that we promise will perform a specific way, and at some point it no longer functions in the way you've come to expect, we will commit whatever time is necessary to make certain that it is restored to its original working state. This applies chiefly to your software, your hosting and your access. It also applies if a member of your team inadvertently does something that causes the website to misbehave, or if that person has questions about how to make the website do something specific through the Blue Interface. You will never receive a bill for technical support. If however, we see a common pattern of using your software that leads to difficulties with your website, we may recommend a training to correct the usage pattern, so that you may avoid trouble in the future. To request support, simply send an email to support@rareearth.us
- ❑ We provide unlimited introductory training sessions, which your team members can attend as many times as you like. These are conducted through [RingCentral Meetings](#) or [JoinMe](#), and are conducted at a mutually agreeable time. To enroll, simply contact our office at support@rareearth.us.

6. Inbound Marketing and Advertising Campaigns

- ❑ Inbound Marketing services are provided based on the parameters outlined in your Marketing Engagement Matrix. The precise means by which we achieve our specified benchmarks may change from time to time, as newer and better tools become available.
- ❑ All Inbound Marketing engagements are contracted on an annual term, and billed on a recurring monthly basis. All fees for our Inbound Marketing Services are due on or before the first of each calendar month. See Section 12 of this document for details on our collection practices.
- ❑ Cost per Click (CPC) advertising campaigns through Google AdWords must be funded with a valid credit card and will be billed directly by Google. If at any time, Google is unsuccessful in obtaining the required funds from your credit card, your campaign(s) will be paused by Google.

7. Content Marketing

- ❑ Content Marketing is one of the most successful things any organization can do for its organic search presence. We'll perform in-depth research to learn about your business and its target demographic. Next, we'll interview and hire writers with experience in your industry. You'll have the opportunity to audition the finalists and choose those candidates whose expertise and 'voice' best represents your brand. Your writing team will engage those who are searching for your products and services. Our approach accomplishes this in a way that engages visitors' interest and ultimately, converts their visits into leads and customers.

A key tactic in this strategy involves casting a wider net than what exclusively focusing on your products and services can achieve. In other words, we develop content that our research data show is relevant to those most likely to engage your services or purchase your products, which may or may not align with your own perception about your products and services.

This is what distinguishes content marketing from advertising. It's informative, educational and - when done properly - delivers an aspirational message to your audience.

This approach also encourages Google's indexing of your content, by drawing parallels between what people are searching for and what you have to offer. This improves your relevancy and domain authority, while yielding engagement on social networks that include valuable backlinks to your site when people share your content.

In short, content marketing captures people's attention and delivers useful information when they are looking for you, but don't yet realize it.

To achieve this, we have a four-step process:

1. **Proposal: Titles.** We coordinate with your team to write titles for your blog posts what we feel mirror your brand identity and market messaging. We will deliver these to you 3-4 weeks ahead of the delivery date. If delivered by Thursday, your approval or revision request is due within 1 business day. If delivered on Friday, your approval or revision request is due within 2 business days. We will submit the revised titles in either 1 business day (request received by Thursday) or two business days (request received on Friday) .

2. **Outline: Bullet points.** Based on your approved titles, we will expand on those concepts to deliver an outline of 4 -6 bullet points which will inform the narrative that our writers develop. Your approval or revision request is due within 2 business days. We will approve outlines and submit them to the writers for production. A typical blog post is turned around within 3-4 business days.
3. **Presentation: Delivery of content:** Once a writer has completed the post, we will submit it for your final review. Your feedback on the final content is due within 3 business days.
4. **Post:** Once approved, the content is posted in your CMS and embargoed until the publication date, at which time the content automatically becomes available to your audience, and posted on the social networks.

- ❑ **It's important to note that time is of the essence and there are HARD deadlines that require your engagement in this process.** Lack of response at any stage can lead to delays in publication and in turn, impair the effectiveness and the success of the work we are doing on behalf of your brand. Moreover, if we do not receive timely feedback and/or approval of your content at each stage of the development process, we reserve the right to charge a **rush fee** in order to meet the prescribed deadlines, which can substantially and unnecessarily increase the cost of your content development.

Most importantly, once we hand off the approved titles and outlines to our writers, we are contractually obligated to compensate them when they meet the content specifications approved in the outline. While we do have the option of declining content on a variety of grounds, if no changes are made to a writer's submitted content within a certain period of time, the content *automatically approves* and becomes a part of the body of work for your brand.

8. Project expansions

- ❑ If during the course of the project, you or we gain some new insight that changes the direction that we proceed with your project, there is no additional charge, so long as the resulting work can be completed within your scheduled Sprint.
- ❑ If either you or we elect to broaden the scope of the project in a manner that requires more time than is available in your scheduled Sprint, we will notify you of this development and document the additional proposed work in your Basecamp project. We will in turn extend the production sprint by the appropriate number of weeks and bill you accordingly. In such case, the additional fees are due upon receipt; we likewise reserve the right to suspend production until approval and/or payment are received.

8. Post-launch change requests

- ❑ After launch, we are happy to make changes to your website. We can update your design; your layout; write blog posts; or anything that you can think of to advance the appeal and visibility of your site. Your solution is very flexible and can evolve with your needs. We can even create an entirely new design to overlay on top of your website's existing content.
- ❑ When it comes to handling change requests (e.g. changing the existing state of your site's functionality, your site's layout or design), simple things that take less than 15 minutes at any one time for one of our team members to accomplish, are objectively considered technical support. There is no charge for such changes, and though we note the request being received, in addition to when and how it was completed, we generally do not track the time we spend on such requests.
- ❑ More complex changes are billed per the following schedule, and will be accompanied by an appropriate specification:
 - Mini Project: \$195.00
 - Basic Project: \$375.00
 - Midrange Project: \$695.00
 - Extended Project: \$995.00
 - Custom Project: priced per specification
- ❑ **A special note on after hours, emergency changes:** Emergency changes which you request outside of our normal business hours (9:00am - 5:00pm, Monday through Friday, excepting holidays) and arise through no fault of ours, our technology providers, or our personnel, shall be made at the convenience of an available REI staff member, and billed at 200% of our normal rates.

9. Professional Services

- ❑ Professional services are billed either as a Project or on a monthly retainer, at either our published rate or your contracted rate.
- ❑ Professional services retainers are due on the first day of the month served by the retainer, while Project services are payable on receipt.
- ❑ If your professional services involves regularly-scheduled meetings or teleconferences, we will configure our automated systems to send out invitations and reminders. However it is your responsibility to ensure that you also schedule such meetings on your own personal information manager or calendar.
- ❑ Planning and production meetings that are on-site or extend longer than 15 minutes are considered a billable professional service.
- ❑ We commit to starting a series of regularly scheduled meetings; date and time to be mutually agreed by Rare Earth and the client. In the event that our representative may be late or unable to make a scheduled meeting, you will be notified at least 30 minutes in advance. If we fail to notify you for any reason, we will credit your account \$100 as a professional courtesy. It is likewise your responsibility to notify us if you cannot make a scheduled meeting. If we do not receive notice that you are canceling or unable to attend a scheduled meeting by the time the meeting starts, we reserve the right to bill for a maximum of \$50, multiplied by the number of REI personnel in the meeting.

10. Customer-Side Delays and Progress Billings

- ❑ We take our project scheduling seriously! If we commit to delivering something to you by a certain date, if it's reasonably within our power and capacity to do so, you will have it by that date. As such, we also expect that when you commit to keeping your project moving that you will likewise follow suit, or advise us that your priorities have changed.
- ❑ If your Production Sprint is underway and software has been installed and/or hosting provisioned for your solution, monthly Hosting and Application Subscription fees for those installations begin

the date they were installed. Unless you have requested that your solution be placed on “standby” as defined in the following point and received written confirmation the request has been acted upon and approved, these fees are payable regardless of whether or not the site is available for your intended audience.

- ❑ In cases where customer-side issues result in delays of 3 weeks or more, you may request that your deployment be placed on one of two “standby” statuses:
 - ❑ Warm Standby: While on warm standby, the site’s applications remain active and with restrictions in place to prevent public access. Administrator access is also restricted to existing assets and Menus. Solutions on warm standby will be billed at 50% of our retail rates for your monthly subscription level and may not be opened to your intended audience while on standby. A site may be reactivated from warm standby at no charge.
 - ❑ Cold Standby: On cold standby, your applications are de-installed and hosting space released. Prior to de-installation, your application’s data is captured and archived for reinstallation at a later date. You will not be billed any subscription fees, while your solution is on cold standby. A site may be reactivated from cold standby with a \$175 reactivation fee per installation.
- ❑ In order for your site to be placed on standby status:
 - You must make the standby request via email to support@rareearth.us, and receive a written confirmation that your site will be placed on standby from Rare Earth’s Help Desk. Requests without a supporting written confirmation that your site will be placed on standby are not valid;
 - You must pay any outstanding balance within 15 days of the request.
 - Reductions or suspensions of subscription fees begin the day your solution moves to standby status; they are not applied retroactively.

11. Overpayment

- ❑ In the event you or your organization makes payments to Rare Earth in excess of the amount due for your active project, such payment will be held as a credit balance against your active project and/or any future subscription fees.
- ❑ Any implementation fees, hosting fees and/or subscription fees associated with the project for which the payment was intended, will be deducted from the credit balance.
- ❑ If you request additional work or services, which are separate from the project for which the payment was intended [i.e. a separate project], our standard payment terms apply, subject to Sections 4 and 5 of this document. In such circumstances, your credit balance does not apply to those costs, and additional payment may be required to begin production of the new project.
- ❑ If you do not have an active project and do not have any recurring subscription or hosting fees, then any overpayments will be refunded to you in our next billing cycle.

12. Timely Payment and Collections

- Unless previously agreed to in writing, all accounts are payable under the following terms:
 - Automatic Credit Card Billing (we will bill your credit card on-file on the first of the month) or;
 - Quarterly Advance Billing (due each January 1, April 1, July 1 and September 1) or;
 - Due on Receipt (with valid credit card) or;
 - Net 15 Days
Note: Net 15 accounts that are past-due for three consecutive months, or are past-due four months out of 12 will be automatically converted to Automatic Credit Card or Quarterly Advance Billing.
- Any project work, time billing and/or subscription services for which we invoice you shall become a part of your entire account balance. Accordingly, any invoice which becomes past due likewise causes your account to become past due.
- If your account becomes overdue, you will receive a notice and will be extended an additional 6 days to bring your account current. Following this notice, Rare Earth may incrementally place your solution on stand-by status, per the following schedule:
 - 6 Days Past Due: Website Administrative Tools and any project Work-in-Progress set to stand-by status. Status notification sent to customer contact on-record via email;
 - 15 Days Past Due: Public Website is placed on stand-by. Visitors will be greeted with the message "We're sorry. Our website is temporarily unavailable." \$75 restoration fee added to balance due. Third notice sent to customer contact on-record via email. Payment in full (including fees) must be made by credit card or direct debit.
 - 26 Days Past Due: Email services placed on stand-by. Fourth (72-hour) notice of account termination is delivered via email, fax and FedEx with delivery confirmation. FedEx fee added to balance due.
 - 30 Days Past Due: Account terminated. Applications and user accounts deleted. Domain Name Services terminated and domain name renewals removed from auto-renew status.
 - Post-termination Collections and Legal Action: If Rare Earth is required to take any action to collect payment following termination of an account, it shall be entitled to receive in addition to any balance due, any and all costs associated with such collection including, but not limited to, reasonable attorney's fees and fees charged by the collection agency we retain.

13. Right and Title

- You retain the exclusive rights to your proprietary data and written copy that you or members of your team develop for your solution. This also applies to your registered trademarks, logos and other visual assets that you provide to us, in addition to anything you create after your website launches. Your content is always your content.
- We are providing your solution to be deployed from our web servers for delivery over the Internet, and we retain full right and until we receive payment in full for your project. Licensing fees for Rare Earth's line of products and services as well as other proprietary intellectual property, shall be governed by the rates set forth by us at the time you request them.
- Once we receive full payment, you are entitled to an exclusive, royalty-free license to a static snapshot of your site, which we will provide through an online channel of our choice, one time, and free of charge upon request by you. Additional requests are available for a processing fee of \$50 per request. This snapshot does not include any supporting software or web applications, which contain proprietary intellectual property.
- Unless otherwise agreed to separately and in writing, you have no other rights or licenses with respect to any of our products, or any other material we provide to you. We also retain the right, title and possession of all source code and development files, in addition to other assets created by us in the development of your solution.

14. Miscellaneous other legal stuff

- ❑ We would love to let this be all that there is to read. And really, this is all the important stuff. Our lawyers though, say there's pages of other contract law that need to go along with it. It's thick, it's dry, and while it's all standard stuff, we want to keep things as simple as possible up front. So rather than make you wade through what you'll probably just breeze past anyway, we've included all of the additional legal content as attached Schedules A & B, which these Terms of Service are also subject to.
- ❑ Please also note that there may also be other end-user licensing agreements that our technology partners require you and us agree to before their products can be used. These parties may also change their agreements at their sole discretion from time to time.

Schedule A: Miscellaneous

1. **CHOICE OF LAW** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed laws of the State of New York, without regard to its law of conflicts.
2. **ATTORNEY FEES PROVISION** In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.
3. **NOTICE** Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, (d) by email or (e) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

**If to Rare Earth
Interactive Design, Inc:**

534 Delaware Avenue
Suite 201
Buffalo, NY 14202
Attention: Craig C. Chapman
(716) 883-1601 ext. 705
email: craig@rareearth.us
Fax: (877) 813-3498

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice which has been received by the party to whom it is sent as evidenced by confirmation slip. Further, a notice sent by facsimile or email shall be followed by a mailing to the other party by first-class mail.

4. **MODIFICATION OF AGREEMENT** This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties in writing and signed by all parties.
5. **ENTIRE AGREEMENT** This Agreement and all other agreements, exhibits, and schedules referred to in this Agreement constitute(s) the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the parties. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Agreement.
6. **SEVERABILITY OF AGREEMENT** If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.
7. **SEPARATE WRITINGS AND EXHIBITS** The attached proposal, engagement letter and/or schedules constitute a part of this Agreement and are incorporated into this Agreement. Should any inconsistency exist or arise between Schedule A and any other provision of this Agreement, the provisions of the other provision shall prevail.
8. **SURVIVAL** Except as otherwise expressly provided in this Agreement, representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of this Agreement, shall survive for two years after the date of this Agreement.
9. **AMBIGUITIES** Each party has had the full opportunity to have its counsel have participate in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.
10. **WAIVER** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

11. **HEADINGS** The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.
12. **NECESSARY ACTS, FURTHER ASSURANCES** The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.
13. **EXECUTION** This Agreement may be executed in counterparts and by facsimile.
14. **JURY TRIAL WAIVERS** To the fullest extent permitted by law, and as separately bargained-for-consideration, each party hereby waives any right to trial by jury in any action, suit, proceeding, or counterclaim of any kind arising out of or relating to this Agreement.
15. **REPRESENTATION ON AUTHORITY OF PARTIES/SIGNATORIES** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.
16. **FORCE MAJEURE** Except for the obligation to pay proceeds due under this agreement, no party shall be liable for any failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).
17. **ASSIGNMENT** Neither party shall voluntarily or by operation of law assign, hypothecate, give, transfer, mortgage, sublet, license, or otherwise transfer or encumber all or part of its rights, duties, or other interests in this Agreement or the proceeds thereof (collectively, "Assignment"), without the other party's prior written consent. Any attempt to make an Assignment in violation of this provision shall be a material default under this Agreement and any Assignment in violation of this provision shall be null and void.
18. **MEDIATION** Any controversy, claim or dispute between the parties arising out of this Agreement will attempt to be settled by the employment of a mediator acceptable to both parties.

Hosting Terms and Conditions: Schedule B

1.0 Definitions.

- 1.1 Rare Earth Interactive Design, Inc. (we, us, our) and the party specified hereon (you, your) agree to the following:
- 1.2 "Customer" means the person who orders the Virtual Private Server and has ownership and control rights and obligations for the Virtual Private Server.
- 1.3 "Customer Data" means all supporting data files and data structures provided by the Customer for its Virtual Private Server.
- 1.4 "Virtual Private Server" means the server space and software services provided to the Customer including but not limited to the HTTP service, FTP service, SMTP service, POP service, server extensions, third-party software, and CGI library scripts.
- 1.5 "Physical Server" means the serving computers, hardware and operating system, and software necessary to operate and support the Virtual Private Server in accordance with this Agreement.

By accepting hosting services from Rare Earth Interactive Design, Inc. you agree to the following:

2.0 Scope of Services. We will provide you with the following specific services:

- 2.1 Physical Server Hardware and Software Services. We will provide the Physical Servers and other computer and operating system software to operate and support the Virtual Private Server in a manner acceptable in the industry. Although we will make reasonable efforts to protect and backup data for you on a regular basis, we are not responsible for the Customer Data residing on the Virtual Private Server. You are ultimately and solely responsible for the backup of Customer Data stored on your Virtual Private Server.
- 2.2 Physical Server Set-Up and Updating. We will configure the Virtual Private Server, and Customer will load the Customer Data onto the server computers so as to create a fully functional Internet presence. After the Virtual Private Server is loaded, set up with the Customer Data, and is fully operational, Customer will be responsible for all Web Server content management, unless Customer otherwise engages Rare Earth for such management under a separate agreement.
- 2.3 Physical Server Connection and Access. We will provide connection of the Virtual Private Server to the Internet, including all telecommunications equipment and connections for the Virtual Private Server to provide public access. We will use our best efforts to provide uninterrupted Physical Server Connection and Access, except for scheduled maintenance downtime which shall be commercially reasonable in time and duration and any interruption to Physical Server Connection and Access beyond our control caused by, for example, acts of nature, third-party equipment or transmission failures, or security breaches, provided any such interruption does not exceed four (4) total hours within any 24-hour period.
- 2.4 Maintenance Services. We will perform maintenance services as we determine reasonably necessary to maintain the continuous operation of the Virtual Private Server. You agree to periodically-scheduled maintenance downtime periods, provided the same are commercially reasonable in time and duration. We will provide prior notice of the maintenance downtime, except when circumstances beyond our control limit our ability to do so.
- 2.5 Hardware, Equipment and Software. You are responsible for and must provide all telephone, computer, hardware and software equipment and services necessary to access us. We make no representations, warranties, or assurances that your equipment will be compatible with our service.

3.0 Payment Terms. You agree to the following payment terms in consideration for the services provided:

- 3.1 Cancellation. In the event you cancel your service, you will be charged in full for the entire calendar month in which you canceled your service. In the event you have elected to prepay subsequent, additional months' Service Fees, we retain the right to charge you an administrative fee and deduct the administrative fee from the subsequent, future months' Service Fees before refunding them to you.
- 3.2 Breach. In the event we terminate this Agreement because of a breach, you will be charged in full for the entire calendar month in which the breach occurred. In the event you have elected to prepay subsequent, additional months' Service Fees, we retain the right to charge an administrative fee and deduct the administrative fee from the subsequent, future months' Service Fees before refunding them to you.
- 3.3 Tax. These fees are exclusive of any and all federal, state, and local sales, use, value added, excise, duty and any other taxes assessed with respect to the services provided under this Agreement, except that your income taxes and any sales or similar taxes on the sale of the Customer products and services to end users shall be the sole responsibility of the Customer.

4.0 Representations and Warranties. Our obligations under this Agreement are conditioned upon the following representations and warranties:

- 4.1 Compliance with Law. Each party to this agreement represents and warrants that it will comply with all applicable state and federal laws in performance of this Agreement and in the use and operation of the Virtual Private Server, including laws governing technology, software and trade secrets.
- 4.2 Authority to Contract. Each party to this agreement represents and warrants that it has full authority and right to enter into this Agreement and that there are no conflicting claims relating to the rights granted by this Agreement.
- 4.3 Non-Infringement. Each party to this agreement represents and warrants that its performance of this Agreement and use of the Virtual Private Server, including the software or data files, shall not infringe the intellectual property or other proprietary rights of any third party.

- 4.4 Our Performance. We represent and warrant that our services shall be performed in a professional and workmanlike manner, and the computer servers will be operated in accordance with our obligations as defined by this Agreement.
- 4.5 Disclaimer of Warranties. EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED ABOVE, WE MAKE NO WARRANTY RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT, AND ALL SERVICES ARE PROVIDED ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF NON-INFRINGEMENT.
- 5.0 You expressly agree that use of our Virtual Private Server is at your own risk. Neither we, our employees, affiliates, agents, third-party information providers, merchants, licensors or the like, warranty that our service will not be interrupted or error free; nor do we make any warranty as to the results that may be obtained from the use of our service or as to the accuracy, reliability or content of any information serviced or merchandise contained in or provided through our service, unless otherwise expressly stated in this Agreement.
- 5.1 Under no circumstances, including negligence, will we, our officers, agents or anyone else involved in creating, producing or distributing our service be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use our service. We will further not be liable for results from mistakes, omissions, interruptions, deletions of files, errors, defects, delays and operation, or transmission or failure of performance whether or not limited to acts of nature, communication failure, theft, destruction or unauthorized access to our records, programs or services. You acknowledge that this paragraph shall apply to all content on your Virtual Private Server.
- 5.2 Your exclusive remedy for all damages, losses and causes of actions whether in contract or tort (including negligence or otherwise) will not (a) exceed the actual dollar amount which you paid during the 12-month period prior to the date the cause of action arose, or (b) include any incidental, consequential, extemporaneous or punitive damages of any kind, including without limitation, loss of data, file, profit, good will, time, savings or revenue.
- 6.0 Term and Termination. The following describes the effective date, duration and methods of termination:
- 6.1 Effective Date. The Effective Date of this Agreement is the date appearing on the front of this invoice.
- 6.2 Duration. This Agreement will commence on the Effective Date and continue on a month-to-month basis.
- 6.3 Termination for Convenience. Subject to Section 3.3, you may terminate this Agreement at any time for your convenience by providing us with 30-days advance written notice.
- 6.4 Breach or Default. The following constitute a breach or default of this Agreement:
- your failure to timely pay the current month's Service Fee,
 - your violation of Section 8.0,
 - your violation of 9.2, or
 - your violation of Sections 4.1, 4.2 or 4.3.
- 6.5 Material Breach or Default. The following shall constitute a material breach or default of this Agreement for which you shall have the right to immediately terminate this Agreement without any prior notice:
- our failure to perform as required by Sections 2.3 and 2.4,
 - our violation of Sections 4.1, 4.2 or 4.3, or
 - our violation of Section 6.6.
- 6.6 Upon the termination of this Agreement for any reason, we shall immediately cease using and return to you all copies of the Customer Data in our control or possession and any other property belonging to and/or received from you. Additionally, upon termination of this Agreement for any reason, we shall, at no cost to you, provide reasonable assistance to you and any third parties authorized by you in assuming performance of those services necessary for the continued and uninterrupted availability over the Internet of any data residing on Virtual Private Server through and inclusive of the termination date, provided that you wish to maintain such availability. Pursuant to this agreement, "reasonable assistance" shall be defined as:
- approval of InterNIC record modification requests pursuant to the transfer of domain name(s) associated with the Virtual Private Server to the Customer's new provider, within one business day of the receipt of such request(s) by our hostmaster, provided such request is received from an ICANN-accredited domain registrar,
 - delivery of a current, up-to-date copy of the website as it exists on the Virtual Private Server, and
 - up to 1-hour's consulting time with our server administrators.
- 7.0 Ownership Rights. The following shall govern ownership rights with respect to the contents of the Virtual Private Server:
- 7.1 We acknowledge that all right, title and interest in the Customer Data shall be solely owned by you.
- 7.2 We own or have licensed all server software. In the event that we elect, at our option, to provide custom software to you, this software will be licensed to you for use only on your Virtual Private Servers on a non-exclusive, royalty-free, fully-paid basis according to the terms of this Agreement, or other agreement separately entered into, pursuant to such services.

- 8.0 Activities Subject to Immediate Deactivation. Any Virtual Private Server that is used for Illegal, Abusive or Unethical Activity may be immediately deactivated by us without warning to you. Illegal, Abusive or Unethical Activities include, but are not limited to, pornography, obscenity, nudity, violations of privacy, hacking, computer virus, gambling, or promotion of gambling, and any harassing or harmful materials or uses, as determined by us. You agree to indemnify and hold us harmless from any claim resulting from your publications or use of Illegal, Abusive or Unethical materials. Although we will make reasonable efforts to alert you to such activities and allow you an opportunity to cure them within a 12-hour period after discovery, we are not required to give notice before deactivating your use of our services if, in our discretion, your use is or results in Illegal, Abusive or Unethical activities. If a Virtual Private Server is disabled, the regular monthly fees still apply.
- 9.0 Miscellaneous.
- 9.1 Public Nature of Internet. All information submitted on the Virtual Private Server shall be considered publicly accessible. Important and private information should be protected by you. For example, we are not liable for protection or privacy of electronic mail or other information transferred through the Internet or any other network provider that you may use.
 - 9.2 Unsolicited Electronic Mail. You are expressly prohibited from sending unsolicited bulk mail messages (“junk mail” or “spam”). This includes, but is not limited to, bulk-mailing of commercial advertising, information announcements, and political tracts. Such material may only be sent to those who have specifically requested it. Malicious or threatening email is also prohibited. Although we will make reasonable efforts to alert you to such activities and allow you an opportunity to cure them within a 12-hour period after discovery, we reserve the right to immediately deactivate your use of our service if we discover such activity. Further, you agree to indemnify and hold us harmless from any claim resulting from your use or distribution of electronic mail services through the service provided through this Agreement.
 - 9.3 Governing Law and Attorneys’ Fees. This Agreement will be interpreted and applied in accordance with the laws of the state of New York, without regard to the conflicts of law provisions. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys’ fees, whether or not a suit is actually filed.
 - 9.4 Control and Ownership of IP. We maintain and control ownership of all IP numbers and addresses that may be assigned to you, and we reserve, in our sole discretion, the right to change or remove any and all IP numbers and addresses.
 - 9.5 Excessive CPU Usage. Virtual Private Servers which use, in our discretion, CPU processing capacity on the Physical Server in excess of the designed processing capacity will be subject to immediate deactivation. Upgrades to the processing capacity are available.
 - 9.6 Resale of Services and Flow-down of Obligations. You may resell space on your own Virtual Private Servers but you must first obligate any such resale to the same terms of this Agreement and incorporate into that resale all of our rights, including our rights regarding content and activity.
 - 9.7 Age. You certify that you are at least 18 years of age.
 - 9.8 Transfer. You may not transfer or assign this Agreement without the written consent of Rare Earth Interactive Design, Inc.