

# Eventide Web Design, LLC

## Terms of Service Agreement

### Section I

#### Definition of Terms

##### A) Terms Used

'Eventide Web Design, a Limited Liability Company' will hereafter be referred to as 'Eventide', 'we', 'us', or 'our'. Any person or entity that retains Eventide's services will be referred to as 'The Customer', 'you', or 'your'. 'Services' will refer to any works Eventide produces for the purposes of completing a contracted job, including, but not limited to, any media, including documents – electronic or printed – images, sound, or video, whether said works are supplied to The Customer or not, and including any design concepts not otherwise represented in some media format. 'Web Site' refers to the Web Site The Customer has retained Eventide to develop, maintain, and/or modify, and includes any related media, documents, and files.

By retaining Eventide and its services, The Customer agrees to be legally bound by these Terms of Service, including those Terms of Service incorporated by reference, and any contract the Customer may sign in the process of retaining Eventide for services. Please read these terms carefully. If The Customer does not accept these Terms of Service stated here without modification, he or she may not use Eventide services. Eventide may revise these Terms of Service at any time by updating this document. The Customer should review this document periodically, because they are binding on him or her. The most current version of this Terms of Service Agreement will be maintained on and available at: <http://www.eventidewebdesign.com/documents/Terms of Service Agreement.pdf>

### Section II

#### Services Offered

Eventide and The Customer hereby agree to the following Terms of Service with respect to the services offered by Eventide to The Customer, which are identified and/or described in the contract agreement provided and signed by both parties prior to any Services being provided to The Customer.

##### A) Web Site Design/Single Page Design

The Customer will be provided with Web Site/Page Design services according to the Services described and detailed in the Contract for Web Site Design. The Customer's Web Site will be created through a design process generally consisting of: Design and Layout Briefing; Layout Concept and Feedback; Development and Feedback; and Final Delivery of the Web Site in its entirety to a Web Host of The Customer's choosing, conforming to The Customer's original Design and Layout and subsequent feedback. Additionally, The Customer may elect to retain Eventide's ongoing Services to maintain and update the Web Site from time to time (See section B below: Web Site Maintenance).

- o **1) Design and Layout Briefing.** The Customer is solely responsible for preparing and sending detailed information to Eventide, regarding any and all text and images to be included on any agreed upon Web pages to be produced by Eventide. Eventide may decide, in its sole discretion, to deny a Design and Layout Briefing.
- o **2) Layout Concept and Feedback.** When Eventide provides a Layout Concept illustrating the overall layout of the Web Site and each agreed upon Web page to The Customer, The Customer shall review and respond. If The Customer fails inform Eventide within 15 (fifteen) days of the Layout Concept being submitted that the provided Layout Concept is not reasonably responsive to the provided Feedback, The Customer will be deemed to have accepted the Design as is. If The Customer notifies Eventide that The Customer considers a Layout Concept as not reasonably

responsive to the Feedback, The Customer shall provide information regarding amendments or modification to be made to the Layout Concept. After providing his or her feedback, The Customer will be provided a subsequent Response that conforms to the additional criteria requested by The Customer.

- o **3) Development and Feedback.** Revisions generally consist of additional compositions that incorporate changes requested by The Customer in the Revision Brief. The purpose of each revision stage is to create designs that move forward in a specific direction from a single design composition as chosen by The Customer. The Customer may request significant changes in the 1st and 2nd Responses, and the Responses might be quite different in nature from the original Design Concept. By the 3rd revision request, The Customer's requests shall be modifications of the then current version only. Revision requests that significantly depart from the current composition will be honored by Eventide; however, Eventide reserves the right to charge a reasonable amount for each such subsequent Revision. No such subsequent revision work, which requires additional payment, will be started without authorization from The Customer.
- o **4) Final Delivery.** The Web Site and, hence Eventide's Services, will be considered completed upon mutual agreement between The Customer and Eventide and when the entire contents of the Web Site, including all supporting and necessary files for the proper operation of the Web site, as defined in the Contract for Web Side Design, are placed on a Web Host's server of The Customer's choosing, or otherwise provided to another party outside of Eventide's control. Said termination of Eventide's Services does not include any previously agreed upon, post-Final Delivery Web Site maintenance.

#### **B) Web Site Maintenance**

Eventide will perform one-time or periodic maintenance Services, hereafter referred to as 'Maintenance', on The Customer's Web Site. Such Maintenance can include, but is not limited to, minor page adjustments either in content or method of display, and/or addition or removal of some text or images. In the case of Ongoing Maintenance Services, at the end of each calendar month Eventide will provide to The Customer the number of hours Eventide worked on The Customer's Web site along with the required Fees for such work.

The Customer's Web Site does not necessarily have to have been originally developed by Eventide, however, if The Customer's Web Site was not developed by Eventide, any and all contents of the Web Site, and any Services requested by The Customer of Eventide can not in any way conflict with any part of this Terms of Services Agreement or any contract signed by The Customer and Eventide.

Work requested by The Customer that requires changing or adding to more than 50% of the content of any page to be worked on will be charged Eventide's current Fees for creating a new Web page. Similarly, any new pages The Customer requests that Eventide develop will be charged Eventide's current Fees for creating a new Web page.

All Maintenance Services are provided and charged for on an hourly basis, with the exception of creating new Web pages.

#### **C) Graphic Design**

Eventide does not directly provide or offer services to produce original graphics (images, Flash files, gifs, etc.). However, Eventide sub-contracts business partners to provide such graphical media. Eventide will relate The Customer's graphics requirements to the Sub-Contractor, who will develop the work and respond to Eventide with completed work, which Eventide will in turn provide to The Customer. All graphic work produced as described above is provided to The Customer with full copyright to The Customer, as if they had produced the graphic him- or herself. No work will begin on any graphic projects until explicitly authorized by The Customer. Any and all fees related to the production of such graphics will be charged to The Customer.

## Section III Customer Rights and Responsibilities

### A) Fees

Prior to work commencing The Customer will be provided with an itemized statement, including a total amount, describing all services Eventide will provide under the contracted work. During development of the Web site The Customer may request additional content that was not defined in the original contract to be added to the Web site. The Customer understands that any such requests can and may incur additional fees as determined by Eventide. The Customer will be provided with an amended estimate and will be required to approve the amended estimate prior to the additional work being added.

Note: Due to the extra time and effort required to develop Web pages to be compatible with Internet Explorer versions 7 and above **and** with Internet Explorer versions 6 and below, Eventide will only develop Web pages to be compatible with IE6 and below upon explicit written request by The Customer. Further, it is the policy of Eventide to add a 25% surcharge of the per-page fee for each page that requires such additional work.

### B) Payment

For Web Design Services, payment in full of the agreed upon fees and any subsequently agreed upon charges will be due upon Final Delivery of the Web Site to The Customer's chosen Web Host.

In the case of ongoing Web Site Maintenance Services, The Customer agrees to pay Eventide in advance for each contracted period of service. At the end of each calendar month, regardless of the contracted service period, if Eventide performs work on The Customer's Web Site beyond the contracted per-month hours, The Customer will be billed for the extra hours in accordance with Eventide's current hourly rate at the time the services were rendered.

The methods of payment available to the customer to pay for Services provided by Eventide to The Customer include, but are not limited to, money order, cashier's check, and credit card. The Customer is solely responsible for ensuring that Eventide receive full payment by the agreed upon, contracted due date, regardless of the chosen method of payment.

Payment is due 30 days from the date of invoice. If the account balance is not paid 30 days after its due date, we will assess a finance charge of 1.5% per month of the average daily balance owed during each month that the balance is not paid in full.

### C) Refunds

Prior to acceptance of the Layout Concept of The Customer's Web Site, The Customer may request a refund by providing a written (electronic or physical) Request for Refund, including a detailed explanation for the Request. Upon timely receipt of the completed form, Eventide will refund any payment made by The Customer, minus 10%.

Acceptance of such a refund shall constitute The Customer's sole and exclusive remedy with respect to any product provided in the Layout Concept. Should The Customer receive such a refund, The Customer acknowledges that he or she will have no right, express or implied, to use any Layout Concept work or other work product, content, or media, nor any ownership interest in or to the same.

Refunds will not be provided in the following cases.

- o If The Customer has already confirmed or approved the acceptance of a Layout Concept, Eventide cannot provide a refund. The Customer's approval, however related, represents an acceptance of the final project and serves as an implicit statement of satisfaction.

- o If The Customer has failed to communicate with Eventide for more than sixty (60) days, any refunds will be at the discretion of Eventide.
- o If The Customer for whom the design was performed should close, change its name, or undergo other alterations rendering the currently agreed upon design ill fitting, Eventide cannot issue a refund.
- o Upon final delivery of the Web Site

#### **D) Project duration**

The Customer agrees to provide timely responses to Eventide after receiving status notifications from Eventide. The Customer shall have 15 days to respond to each revision to the Web Site provided to The Customer for review. If after 15 days The Customer has failed to respond, Eventide will assume The Customer is satisfied with the current state of the project and requires no additional alterations/additions to complete the project as described by The Customer up to that point.

If, after an additional 15 days, The Customer has not contacted Eventide, the Project shall be deemed to be complete, whether the Layout Concept has been approved or not, and whether or not The Customer is, in fact, satisfied with the current state of the project. At such time, Eventide shall have no further obligation to The Customer, and The Customer shall pay Eventide all fees and expenses associated with work performed by Eventide. In rare cases, if The Customer feels that it may take him more than 15 days to respond, then The Customer is responsible for informing Eventide accordingly, so that Eventide keeps the project in an active state.

#### **E) Eligibility Requirements for Retaining Eventide Services**

The Customer must be at least 18 years of age, and fully agree to these Terms of Service and the Privacy Policy. By retaining Eventide's services, The Customer represents and warrants that he or she meets these eligibility requirements, that the information The Customer includes as part of the ordering process is complete and accurate and, if The Customer is ordering services on behalf of an entity, that The Customer is authorized to bind that entity to these Terms of Service and any contract The Customer and Eventide sign. Eventide may accept or reject The Customer's order in its sole discretion.

#### **F) Authorization to Use**

Under most circumstances Eventide will work on its own servers and provide access to the specific files being worked on for The Customer so that s/he can provide the necessary feedback. The Customer and only The Customer may access and use the Web site solely in accordance with the Terms of Service and any posted policies and procedures that Eventide provides, either directly to The Customer or posted on the Eventide Web Site. Only The Customer and any persons or entities initially named may provide Responses to Eventide and obtain Responses from Eventide with regards to the intended design and development of the Web Site. At no time shall Eventide be held responsible for any use by The Customer of the Web Site produced by Eventide, or any of the products and/or services provided by the Host of The Customer's Web Site. Subject to the Terms of Service, The Customer may display the Web Site on an Internet access device, however, until The Customer and Eventide agree that the Web Site is complete according to the Contract and that Eventide's' Services are concluded, any product provided by Eventide and posted to the Internet is the sole property of Eventide and Eventide enjoys full rights and responsibilities of said product with the exception of any media and/or text in part or whole that The Customer provides to Eventide, or is provided by or owned by any third-party entity.

#### **G) Prohibited Uses**

The Customer is required to comply with all applicable laws in connection with Customer's use of the Service, and such further limitations as may be set forth in any written or on-screen notice from Eventide. Without limiting the foregoing, The Customer agrees not to transmit, distribute, post, communicate or store information or other material on, to or through the Web Site that (i) is copyrighted, unless The Customer is the copyright owner; (ii) reveals trade secrets, unless The Customer owns them; (iii) infringes on any other intellectual property rights of others or on the privacy or publicity rights of others; (iv) is

obscene, defamatory, threatening, harassing, abusive, hateful, or embarrassing to any other person or entity; (v) is sexually-explicit; (vi) constitutes advertisements or solicitations of business, chain letters or pyramid schemes; or (vii) contains viruses, Trojan horses, worms, time bombs, or other computer programming routines or engines that are intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or information. The Customer further agrees not to (i) use any incomplete, false or inaccurate biographical information or other information for purposes of registering as a Customer; (ii) delete or revise any material or other information of any other user or Eventide; (iii) take any action that imposes an unreasonable or disproportionately large load on the Web Site's infrastructure.

Eventide will investigate occurrences that may involve such violations and may involve and cooperate with law enforcement authorities in prosecuting users who are involved in such violations. Prior to agreed upon completion of The Customer's Web Site Eventide reserves the right to review postings on the Web Site, to remove any postings, and to terminate The Customer's ability to communicate with, or post to, the Web Site at any time without notice, in its sole discretion. Eventide will take commercially reasonable efforts not to disclose any information The Customer communicates with, or posts to, the Web Site but reserves the right to disclose such information to the extent necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part.

#### **H) Operation of Web Site**

Eventide shall not be responsible for any delays or interruptions of, or errors or omissions contained in the Web Site. Eventide reserves the right, but shall not be required, to correct any delays, interruptions, errors or omissions. Although Eventide intends to use commercially reasonable efforts to make the Web Site and Service accessible, Eventide makes no representation, warranty or covenant that the Web Site or Service will be available at all times or at any time. Various circumstances may prevent or delay availability. Eventide shall not be responsible for any loss, cost, damage or liability that may result.

### **Section IV**

#### **Responsibility for Content, Other Representations, Warranties and Covenants**

Eventide shall not be responsible for any use that is or is not made of the Web Site or the Service. Without limiting the foregoing, Eventide makes no representations, warranties or covenants regarding, and does not guarantee, the truthfulness, accuracy, or reliability of any information or other material (including and without limitation), any Creative Brief, Revision brief, Term Sheet, Response or User Identity (as defined hereafter) that are communicated through, or posted to, the Service, whether by Members, The Customer, Eventide or otherwise, nor does Eventide endorse any opinions expressed by any user of the Web Site, including any Member or The Customer. Without limiting the foregoing, Eventide makes no representations, warranties or covenants regarding the validity of the rights to Responses granted pursuant to this Agreement. The Customer acknowledges that any reliance on information or other material, including, without limitation, any Service, Term Sheet, Response or User Identity, communicated through the Service, or posted to the Web Site will be at The Customer's own risk. Without limiting the foregoing, The Customer agrees and acknowledges that he or she uses each Response at his or her own risk and that he or she is responsible for taking any actions he or she deems reasonable to determine whether his or her use of a Response will infringe any third party intellectual property, privacy or publicity rights.

### **Section V**

#### **Ownership, Rights to Use**

##### **A) Rights of Eventide**

The Customer grants Eventide a royalty-free, perpetual, irrevocable, sublicenseable, exclusive, worldwide right (including any moral rights) and license to use, reproduce, modify, adapt, publish,

translate, create derivative works from, distribute, communicate to the public, perform and display (in whole or in part), and/or incorporate in other works, in any form, media, or technology now known or later developed, the designs provided by Eventide, for the full term of any intellectual property rights that may exist in such designs to the extent necessary to provide The Customer with the Service and the Web site.

## **B) Rights of The Customer**

Subject to The Customer's compliance with the Terms of Service of this Agreement, The Customer shall own the final design provided to The Customer by Eventide, as installed on The Customer's chosen Web hosting server. The Customer shall not, however, own any materials, media or other content generated during any revision cycles leading up to the final design, with such right, title and interest expressly reserved to Eventide. The Customer acknowledges and hereby grants to Eventide the right to use the Layout Concept, as well as individual designs provided to The Customer, for internal and filing purposes, and in order to display and promote the Eventide Service. The Customer acknowledges that his or her rights under this Agreement shall be limited solely to the Final Design chosen by him and that no trade or service marks in or to such Final Design is being conveyed under this Agreement. The Customer acknowledges that Eventide shall have no obligation or duty to perform trade or service mark searches or inquiries, or the like, in order to validate the propriety or legality of the provided compositions.

Until the Final Design is approved as per standard contract with Eventide, all logos, artwork, concepts and designs remain the copyright and exclusive property of Eventide except those provided by The Customer. This material may not be reproduced in any other way without the prior written consent of Eventide. Eventide reserves the right to utilize and/or reproduce any image, logo or illustration created by Eventide, in advertising, electronic or traditional reproduction, with the addition of any copyright and/or trademark notice that may be requested by the owner of the work. By placing an order to Eventide, The Customer agrees and consents to these Terms of Service.

Accordingly, The Customer is encouraged to perform its own independent searches with regard to the designs provided by Eventide. Furthermore, The Customer acknowledges that Eventide shall have no responsibility or obligation of any kind to assist The Customer in seeking state or federal intellectual property protection (i.e., without limitation, trademark registration) for the designs, nor shall Eventide be responsible in otherwise assisting The Customer in any way in The Customer's perfection of The Customer's rights in or to the designs.

Ownership (copyright and title) of the final Web site becomes the property of The Customer, having unlimited, indefinite, and royalty-free use of the image upon payment of all fees. Eventide retains rights to display the artwork in its portfolio and advertising materials. Eventide retains the Copyright to all concepts, comprehensives, or other preliminary materials, which are not selected by The Customer or are not included into the final delivery.

Eventide expects The Customer to perform research on their company name to be sure the name is not already in use and securing a copyright, trademark or service mark to protect The Customer's legal rights to any name or image. Eventide is not and will not be held responsible for any legal action that may result from improper due diligence on the availability of a company name or image. Eventide is not responsible for researching or infringing any trademark violations that may or may not arise in our dealings with The Customer and his or her agents. All trademark matters are the full responsibility of The Customer.

The Customer will own all rights to the Web Site once Final Delivery of the Web Site is made and full payment is provided to Eventide.

Eventide will hold The Customer's Web Site files for 1 year from the time of ordering. This service is not guaranteed so it is the responsibility of The Customer to keep his or her files safe once delivered.

Eventide may charge a reasonable amount for re-supplying the logo or design files from its archives after the initial delivery.

## **Section VI Nondisclosure and Privacy**

Eventide intends to use commercially reasonable efforts to follow its privacy policy; as such privacy policy may be changed from time to time at Eventide's sole discretion. Any data gathered from The Customer about The Customer or his or her company will not be disclosed to any third party. Eventide ensures that The Customer's critical data is always protected, no matter what that information may be. However, Eventide is legally bound to reveal information, including personal information, if law enforces it. Notwithstanding the foregoing, Eventide cannot and does not assume any responsibility or liability for any information provided by The Customer to Eventide which may be disclosed by accident or by third parties' illegal acts. Notwithstanding the foregoing, Eventide cannot and does not assume any responsibility or liability for any information submitted to the Web Site or for the use or misuse of any information submitted by The Customer or any other person, including, without limitation, any information accessed by a hacker or by any other malicious act.

## **Section VII Disclaimers, Limitations of Liability**

\* Although Eventide develops its Web pages to be fully W3C compliant to the best of its ability, Eventide's guarantee for Web pages to be W3C compliant is dependent on having full control over all programming code on the Web pages Eventide builds. Eventide may at times be required – whether by Eventide's own development processes or by requirements imposed by The Customer, or by third-party software being implemented in The Customer's Web site – to produce programming code that prevents Eventide from keeping pages fully W3C compliant.

The Service serves solely as a venue for the creation of work and Eventide does not screen or censor any information or material posted to the Web Site. Although Eventide makes commercially reasonable efforts to determine the identity of The Customer, Eventide cannot and does not confirm that any Customer or other user is who they claim to be or that any Customer or other user has the qualifications he or she claims to have. Because Eventide does not and cannot be involved in user-to-user dealings or control the behavior of participants on the Web Site, if The Customer has a dispute with one or more users, The Customer releases Eventide (and any affiliates, agents, and employees) from all claims, demands and damages (actual, consequential, direct, indirect, incidental, special and exemplary) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes.

THE SERVICE AND THE RESPONSES ARE PROVIDED "AS IS." EVENTIDE MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER TO THE CUSTOMER OR ANY OTHER PERSON RELATING IN ANY WAY TO THE SERVICE, INCLUDING ANY PART THEREOF, OR OTHER CONTENT THAT MAY BE PROVIDED BY EVENTIDE.

THE CUSTOMER ACCEPTS THAT THE ELECTRONIC DEVICES AND SOFTWARE USED BY THE CUSTOMER TO REVIEW THE PRODUCTS PROVIDED BY EVENTIDE MAY DISTORT THE COLORS, SHAPES AND EFFECTS USED TO CREATE THE PRODUCTS. EVENTIDE DISCLAIMS ANY WARRANTY RELATED TO THE ACCURACY OF THE OUTPUT DEVICES USED BY THE CUSTOMER - WHATEVER IT'S NATURE - AND KEEP THE RIGHT TO STATE THE SPECIFICATIONS OF A GIVEN DESIGN BY USING STANDARD COLOR, MEASURE AND DESIGN CODES. THE CUSTOMER WILL ACCEPT THOSE SPECIFICATIONS AS THOSE CORRESPONDING TO THE CHOSEN DESIGN.

EVENTIDE DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EVENTIDE DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY LAW ANY AND ALL (i) WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (ii) WARRANTIES AGAINST INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS, (iii) WARRANTIES RELATING TO DELAYS, INTERRUPTIONS, ERRORS, QUALITY OR OMISSIONS IN THE SERVICE, (iv) WARRANTIES RELATING TO THE TRANSMISSION OR DELIVERY OF THE SERVICE, AND (v) WARRANTIES OTHERWISE RELATING TO PERFORMANCE, NONPERFORMANCE, OR OTHER ACTS OR OMISSIONS BY EVENTIDE OR ANY THIRD PARTY. FURTHER, AND WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, THERE IS NO WARRANTY THAT THE SERVICE WILL MEET THE CUSTOMER'S NEEDS OR REQUIREMENTS OR THE NEEDS OR REQUIREMENTS OF ANY OTHER PERSON.

NEITHER EVENTIDE NOR ANY THIRD PARTY SHALL BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON FOR ANY REMEDY, LIABILITY, DAMAGES, COSTS, OR LOSSES WHATSOEVER RELATING IN ANY WAY TO THE WEB SITE, INCLUDING ANY PART THEREOF, OR ANY OTHER CONTENT, WHETHER ARISING UNDER THESE TERMS OF SERVICE OR APPLICABLE LAW, INCLUDING CONTRACT, TORT, STATUTORY, OR ANY OTHER LAW.

IN NO EVENT SHALL EVENTIDE OR ANY THIRD PARTY BE LIABLE TO THE CUSTOMER OR ANOTHER PERSON FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR INDIRECT DAMAGES ARISING UNDER OR IN ANY WAY RELATED TO THE SERVICE PROVIDED BY EVENTIDE, INCLUDING ANY PART THEREOF, OR ANY OTHER CONTENT, (INCLUDING LOST PROFITS, LOSS OF BUSINESS OR DATA, BUSINESS INTERRUPTION, TRADING LOSSES, AND DAMAGES THAT RESULT FROM INACCURACY OF THE INFORMATION OR INCONVENIENCE, DELAY, OR LOSS OF THE PRODUCT(S) PROVIDED BY EVENTIDE, EVEN IF EVENTIDE OR ANY THIRD PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

### **Section VIII Links to Third Party Services**

The Web Site may contain links to third party Web Sites or other services (the "Linked Content"). The Linked Content is not under the control of Eventide and Eventide is not responsible for the Linked Content, including, without limitation, links contained in the Linked Content, or any changes or updates to Linked Content. Eventide is providing Linked Content to The Customer only as a convenience, and the inclusion of such Linked Content is not an endorsement by Eventide of such Linked Content. If The Customer decides to access any Linked Content, he or she does so at his or her own risk.

### **Section IX Indemnification**

Upon a request by Eventide, The Customer agrees to defend, indemnify and hold harmless Eventide and its subsidiaries, affiliates, officers, agents, sub-contractors, co-branders or other partners and employees from all liabilities to, claims of any third party due to or arising out of The Customer's violation of any of these Terms of Service, and any expenses, including, without limitation, reasonable attorneys fees, incurred in connection therewith.

### **Section X Termination**

Eventide reserves the right, in its sole discretion, to terminate the Service, at any time, with or without notice. In the event of such termination, Eventide will work with The Customer to determine the amount of any refund (if any) to be paid to The Customer as a result of such termination. Should The Customer's use of the Service result from The Customer's material breach of the Terms of Service of this Agreement, or any other agreement to which Eventide and The Customer are a party, The Customer shall not be entitled to any refund, unless otherwise mutually agreed upon by the parties.

## Section XI General

These Terms of Service set forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersede any and all prior oral or written agreements and understandings, and any and all contemporaneous oral agreements and understandings between The Customer and Eventide regarding the subject matter of these Terms of Service.

If any provision of these Terms of Service is held by a court of competent jurisdiction to be invalid, void, or unenforceable, then such provision shall be deemed null and void, but the remaining provisions shall continue in full force without being impaired or invalidated in any way. The language of these Terms of Service shall be deemed to be the language mutually chosen by the parties and no rule of strict construction shall be applied against or in favor of either party hereto. The section headings and other headings contained in these Terms shall not affect the meaning or interpretation of these Terms of Service.

If Eventide and The Customer have need for legal recourse to settle any dispute the case will be handled by a court of law having jurisdiction over Eventide Web Design's location i.e. Pope County, Minnesota, United States of America.

Unless otherwise specified and/or credited, all images, artwork, text and graphics, logos and logotypes, Flash animations of and on The Customer's site, manual and/or disk are the copyright and/or trademark of Eventide. All rights reserved. This copyright does not supersede any copyrights that may exist in the logos, artwork and designs presented. These works are copyright and/or trademarked by the various owners. Any authorized reproduction of this material shall be reported to the original holder of said copyright or trademark.

For further information on any of our Terms of Service, or information about licensing images and/or materials from Eventide please contact Eventide at [mark@eventidewebdesign.com](mailto:mark@eventidewebdesign.com).