

# Terms of Use

## Incendo™ SITE OWNER AGREEMENT AND SOFTWARE LICENSE TERMS VERSION 1.0.11.12.13

Element Eleven, LLC (E11) provides Incendo, a dynamic Content Management System (CMS), to individuals and organizations for use in managing the content on their websites.

The following are the terms and conditions for use of Incendo, the "Services." By signing the Incendo Site Owner Agreement and Software License Terms or by signing in to Incendo (through [incendoapp.com](http://incendoapp.com)), you accept these terms and conditions.

### 1. Acknowledgements

Subject in each case to the terms listed in the remainder of this Agreement, you hereby acknowledge and agree that:

- Incendo may only be used for lawful purposes.
- Your use of the Service is subject to the Prohibited Content and Commerce Statement (below).
- The Services may be subject to monthly subscription fees ("Paid Services").
- You will adopt and maintain the Incendo Privacy Policy which may be modified by Incendo from time to time.
- Incendo may not be used in any way for the sending of unsolicited email (sometimes called "spam").

### 2. Services and Support

2.1 The Services are provided subject to this Agreement, as it may be amended by E11, and any guidelines, rules or operating policies that Incendo may establish and post from time to time (the "Agreement"), including without limitation Incendo's Privacy Policy, as linked from all Incendo websites or otherwise furnished to you (the "Policy") (unless otherwise stated, all references to the Agreement shall include the Policy). By posting updated versions of the Agreement on the [Incendo.com](http://Incendo.com) website, or otherwise providing notice to you, E11 may modify the terms of the Agreement and may discontinue or revise any or all other aspects of the Services in its sole discretion. All such changes shall become effective upon posting of the revised Agreement on the Service or at Incendo's website.

2.2 The Services are available only to persons who can form legally binding contracts under applicable law. Without limiting the foregoing, the Services are

not available to individuals under the age of 18. If you do not qualify, you are not permitted to use the Services.

2.3 You must submit signed Acceptance of an Incendo Proposal in order to use the Services. You will provide true, accurate, current, and complete information about yourself as requested. You are responsible for maintaining the security of your account, passwords, and files.

### **3. Fees and Payment**

3.1 Fees may be billed for Services. The Fees are based on a set fee established by E11. You are responsible for reviewing your invoices and remaining aware of the Fees charged by E11. The Fee Schedule is subject to change at any time in Incendo's discretion. E11 will attempt to notify you via email prior to the effectiveness of any change to the Fee Schedule.

3.2 You will be subject to monthly hosting fees. You will be required to submit payment for Services upon being invoiced. If payment is not received within 30 days of the invoice due date, access to the Services may be disabled until payment is received.

3.3 Payment for Services will be made by check (made payable to Element Eleven, LLC.). Fees are payable in US dollars. Amounts paid for the Services are not refundable.

3.4 You acknowledge and agree that you are responsible for paying Fees for all Services provided through Incendo.

### **4. Website, Email Hosting & Permission Practices**

4.1 You cannot copy an Incendo template or any other features or functionality from the Services and use them for any purpose other than managing the content on your website from the Service.

4.2 You are responsible for complying at all times with the Incendo Prohibited Content and Commerce Policy (below).

4.3 E11, at its own discretion, may immediately disable your access without refund to the Services if E11 believes in its sole discretion that you have violated the Incendo Prohibited Content and Commerce Policy.

### **5. Restrictions and Responsibilities**

5.1 E11 will not use your information or any other customer information for any other purposes than those intended with the Service. Your customer information will not be shared with any other parties unless required by law.

5.2 This is an Agreement for Services, and you are not granted a license to any software by this Agreement. You will not, directly or indirectly: reverse engineer,

decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Services or any software, documentation, or data related to the Services ("Software"); remove any proprietary notices or labels from the Services or any Software, modify, translate, or create derivative works based on the Services or any Software; or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any Software.

You may not display, copy, reproduce, or distribute the Software, any component thereof, any documentation provided in connection with the Services or the Software, or any content that is not your own. Violation of these restrictions may result in the termination of this Agreement.

5.3 The Services shall be used for your internal business (which includes civic or charitable) purposes only, and you shall not use the Services or any Software for timesharing or service-bureau purposes or otherwise for the benefit of a third party.

5.4 You acknowledge and agree that the Services and the E11 and Incendo company names and logos and all related product and service names, design marks and slogans, are the property of E11 or its affiliates or suppliers (collectively, the "Marks"). You are not authorized to use any of the Marks in any advertising, publicity or any other commercial manner without the prior written consent of E11. Your use of the Services confers no title or ownership in the Services, the Software or the Marks and is not a sale of any rights in the Services, the Software or the Marks.

5.5 You represent, covenant, and warrant that you will use the Services only in compliance with the Agreement and all applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation). You hereby agree to indemnify and hold harmless E11 and its business partners, third-party suppliers and providers, licensors, officers, directors, employees, distributors and agents against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise arising from or relating to your use of the Services. In addition, you acknowledge and agree that E11 has the right to seek damages when you use the Services for unlawful purposes, in an unlawful manner, and/or in a manner inconsistent with the terms of this Agreement, and that such damages may include, without limitation, direct, indirect, special, incidental, cover, reliance and/or consequential damages. Although Incendo has no obligation to monitor the content provided by you or your use of the Services, Incendo may do so and may remove any such content

or prohibit any use of the Services it believes may be (or is alleged to be) in violation of the foregoing.

5.6 The Services may only be used for lawful purposes. Transmission or solicitation of any material that violates United States federal, state or other laws that may apply in this jurisdiction or your local area is prohibited. For details, see Incendo's Prohibited Content and Commerce Policy (below), the terms of which are incorporated into this Agreement by reference.

5.7 In using the varied features of the Services, you may provide information (such as name, contact information, or other registration information) to E11. E11 may use this information and any technical information about your use of the Services to tailor its presentations to you, facilitate your movement through the Service, or communicate separately with you. If you licensed the Services as a result of solicitation by a Marketing Partner of E11, E11 may share your information with the Marketing Partner and the Marketing Partner may share information with E11. E11 will not provide information to companies you have not authorized for that purpose unless required by law or if you are terminated from Incendo due to unsolicited commercial email being sent from your Incendo account.

5.8 If you receive special discounts through a Marketing Partner, those discounts may not be available if you cease to continue to be a customer of the Marketing Partner, in which case Incendo's standard rates will apply. The Marketing Partner may notify Incendo of any change in your status.

5.9 The Incendo content management system only functions through E11 hosting and is not transferrable to any other hosting environment. Moving your website to another host or service may discontinue your use of Incendo.

## **6. Termination**

6.1 You may terminate this Agreement at any time by calling E11 at 417-724-9427 or emailing [account@elementeleven.com](mailto:account@elementeleven.com). There are no refunds for any fees paid. You are responsible for saving or transferring any content, imagery or documents from your site. All source code, object code, or underlying structure, ideas, or algorithms of the Incendo content management system are the sole property of E11 and are not transferrable in any way.

6.2 E11 may terminate this Agreement or the Services, disable your account or put your account on inactive status, in each case at any time with or without cause, and with or without notice. E11 shall have no liability to you or any third party because of such termination or action.

6.3 E11 may delete any of your archived data from the Services within 30 days after the date of termination. E11 will provide upon request all customer content entered into Incendo for a fee. All sections of this Agreement that by their nature

should survive termination will survive termination, including, without limitation, ownership, warranty disclaimers and limitations of liability.

6.4 If your account is classified (at E11's sole discretion) as inactive for over 120 days, E11 has the right to permanently remove your subscriber data from the Services. E11 will attempt to contact you via email prior to taking any permanent removal actions.

## **7. Warranty Disclaimer; Remedies**

USE OF THE SERVICES AND ANY RELIANCE BY YOU UPON THE SERVICES, INCLUDING ANY ACTION TAKEN BY YOU BECAUSE OF SUCH USE OR RELIANCE, IS AT YOUR SOLE RISK. E11 DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. THE SERVICES ARE PROVIDED "AS IS" AND E11 DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

Your sole and exclusive remedy for any failure or nonperformance of the Services shall be for E11 to use commercially reasonable efforts to adjust or repair the Services.

## **8. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL E11 OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, BUSINESS PARTNERS, INFORMATION PROVIDERS, ACCOUNT PROVIDERS, LICENSORS, OFFICERS, DIRECTORS, EMPLOYEES, DISTRIBUTORS OR AGENTS (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SECTION AS "E11") BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY MONEY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF E11 SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN THE EVENT THAT NOTWITHSTANDING THE FOREGOING, E11 IS FOUND LIABLE TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), THE LIABILITY OF E11 TO YOU WILL BE LIMITED TO THE AMOUNT YOU PAID FOR THE SERVICES. SOME JURISDICTIONS DO

NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

## **9. Export of Services or Technical Data**

You may not remove or export from the United States or allow the export or re-export of the Services, or any direct product thereof, including technical data, in violation of any restrictions, laws, or regulations of the United States or any other applicable country.

## **10. Miscellaneous**

10.1 If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

10.2 E11 and you agree that the Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of the Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No delay or omission by either party in exercising any right or remedy under this Agreement or existing at law or equity shall be considered a waiver of such right or remedy.

10.3 No agency, partnership, joint venture, or employment is created as a result of the Agreement, and you do not have any authority of any kind to bind E11 in any respect whatsoever.

10.4 In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover its costs and attorneys' fees.

10.5 The Agreement shall be governed by the laws of the State of Missouri, USA without regard to its choice or law or conflict of laws provisions. All legal actions in connection with the Agreement shall be brought in the state or federal courts located in Christian County, Missouri.

10.6 Incendo is a trade name of E11, Inc., a Missouri Limited Liability Company.

10.7 Incendo, Incendo.com, associated Incendo products, and the systems, technologies and applications included therein are the exclusive property of E11, Inc.

# Incendo™ PROHIBITED CONTENT AND COMMERCE STATEMENT

E11, Inc. prohibits the use of the Incendo service by any company or site that engages in any of the following:

1. Provides, sells or offers to sell the following products or content (or services related to the same): pornography or illicitly pornographic sexual products; escort services; illegal goods; illegal drugs; illegal drug contraband; pirated computer programs; instructions on how to assemble or otherwise make bombs, grenades or other weapons
2. Displays material that exploits children, or otherwise exploits children under 18 years of age
3. Posts or discloses any personally identifying information or private information about children without their consent (or their parents consent in case of a minor)
4. Provides material that is grossly offensive, including blatant expressions of bigotry, prejudice, racism, hatred or excessive profanity or post any obscene, lewd, lascivious, filthy, excessively violent, harassing or otherwise objectionable content
5. Sells or promotes any products or services that are unlawful in the location at which the content is posted or received
6. Introduces viruses, worms, harmful code and/or Trojan horses on the Internet
7. Promotes, solicits or participates in pyramid schemes
8. Engages in any libelous, defamatory, scandalous, threatening, harassing activity
9. Posts any content that advocates, promotes or otherwise encourages violence against any governments, organizations, groups or individuals or which provides instruction, information or assistance in causing or carrying out such violence
10. Provides content, including images, of authors, artists, photographers or others without the express written consent of the content owner

In addition, Incendo reserves the right to prohibit the use of Incendo by any company or site in its sole discretion.

This may change from time to time. Any questions about whether your site can use Incendo can be emailed to [info@elementeleven.com](mailto:info@elementeleven.com)

## Trademarks

Incendo, Incendo Menu, Incendo Portfolio and all Incendo Logos, are trademarks or service marks or registered trademarks or service marks of E11, Inc. All other company and product names may be trademarks or service marks of their respective owners.

## Changes

The documents and graphics published on this server could include technical inaccuracies or typographical errors. Questions or problems regarding this web site should be directed to [info@elementeleven.com](mailto:info@elementeleven.com) E11, Inc. and/or its

respective suppliers may make improvements and/or changes in the product(s) and/or the program(s) described herein at any time.

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